

NANCY PERRY, et al.

v. Docket No. 96-10-205

FAYETTE COUNTY BOARD OF EDUCATION

DECISION

Grievants Nancy Perry, Carmen D'Angelo, and Patricia Adkins, all classified as Supervisory Aides, but assigned as "Title I" aides at various schools during the 1995-96 school year, complain because they were placed on a transfer, subsequent assignment list for the 1996-97 school year, while at least one less-senior aide was retained at each of their respective schools. They allege their employer, Respondent Fayette County Board of Education (FCBE), violated its "longstanding policy and practice of involuntarily transferring service personnel on the basis of seniority" and request the "rescission" of the transfers. FCBE denies wrongdoing, and insists no county-wide, seniority-based transfer policy for service personnel exists. Upon adverse decisions at the lower grievance levels, Grievants appealed to level four and requested a decision based on the record adduced at the May 1, 1996, level two hearing. The case became mature on July 24, 1996, the designated last day to file level four written argument and rebuttal. There is little dispute regarding the underlying facts which gave rise to this grievance. Based on all matters of record, including the transcript of the May 5, 1996 level two hearing, the following findings of fact are made.

Findings of Fact

1. During the 1995-96 school term, Grievant Adkins was a Title I aide at Mount Hope Elementary School, Grievant D'Angelo was a Title I aide at Rosedale Elementary School, and Grievant Perry was a Title I aide at Collins Middle School.

2. Grievants Adkins and Perry were the most senior aides at their respective schools, while Grievant D'Angelo and another aide at Rosedale were tied as most senior

aide there.

3. Because a Title I budget reduction was projected for the 1996-97 school year, and due to the need to direct available funds to early intervention procedures at qualifying schools, FCBE eliminated programs which required the services of Title I aides at Grievants' schools for the 1996-97 school year.

4. FCBE at times transfers service personnel from one school to another on the basis of seniority, but at other times, when a program has been eliminated, it transfers the personnel involved with the "abolished" program. [\(See footnote 1\)](#)

5. At one time, Grievant D'Angelo served as a early childhood aide at another school and was transferred to Rosedale even though she had been the most senior aide at her former school. T.12.

6. Following timely notice to Grievants that they would be recommended for transfer and subsequent assignment, FCBE conducted transfer hearings. At that time Superintendent Rick Powell recommended that Grievants be placed on the transfer list, and Grievants presented reasons why they should not be transferred. Thereafter, FCBE approved Grievants' transfers.

Discussion

Grievants never alleged a procedural violation with respect to the notice and hearing requirements of W.Va. Code §18A-2-7, relative to their transfers. Additionally, the statutes which govern the employment of school personnel do not mandate seniority-based transfers. Moreover, teachers, and other school personnel, have no "vested right" to be assigned to a particular school. See State ex rel. Hawkins v. Tyler County Bd. of Ed., 275 S.E.2d 908, 912 (W.Va. 1980). Thus, boards of education have substantial discretion in matters pertaining to the transfer of personnel when necessary.

Here, Grievants' claim is based on an alleged violation of an alleged "longstanding policy and practice" of FCBE to place on transfer within a school the least-senior service worker, whether an aide, custodian or whatever the case might be. Grievants are correct that, generally, boards of education and other public sector entities must follow the policies they have properly established to manage their administrative

needs. Powell v. Brown 238 S.E.2d 220 (W.Va. 1977). See generally, Finamore v. Marion County Bd. of Educ., Docket No. 94-24-511 (Apr. 24, 1996); Hall v. Mingo County Bd. of Educ., Docket No. 95-29-529 (Mar. 28, 1996); Heatwole v. Regional Jail Authority, Docket No. 93-RJA-238 (May 1, 1994); Ellis v. Division of Energy, Docket No. 91-ENGY-181 (Jan. 13, 1993). However, in this case, Grievants failed to produce any evidence that FCBE ever had a written policy or consistent practice which compelled seniority-based transfers every time an overage of service personnel existed within a school, much less to present any evidence about what procedure is followed in instances when a service worker's specific job within a program in a school is eliminated because the program has been abolished. FCBE's personnel director testified credibly that seniority is not a factor in transfer determinations when a program is abolished in a school, and that the service worker assigned duties in conjunction with the program no longer needed is targeted for the transfer. [\(See footnote 2\)](#) Grievants did not refute his testimony or present any evidence to the contrary. [\(See footnote 3\)](#)

Moreover, it cannot be found that it is an abuse of discretion or an arbitrary and capricious act on FCBE's part to transfer service personnel on the basis of seniority in some instances and to transfer them on a different basis when the worker in a program has lost her job because the program has been eliminated, as long as it acts consistently. There is no evidence in this record that FCBE has acted inconsistently in these matters. For these reasons, Grievants are not entitled to the relief they seek.

In addition to the foregoing discussion and determinations, the following formal conclusions of law are made.

Conclusions of Law

1. It is incumbent upon the Grievants to establish every element in their grievance by a preponderance of the evidence. Rupich v. Ohio County Bd. of Educ., Docket No. 89-35-719 (June 29, 1990); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988).

2. Generally, boards of education must follow the policies they have properly established to manage the school system. Powell v. Brown, 238 S.E.2d 220 (W.Va.

1977).

3. Grievants failed to establish that the Fayette County Board of Education violated a "longstanding policy and practice" in approving the recommended transfers of Grievants from their present assignments, effective the 1996-97 school year. See Finamore v. Marion County Bd. of Educ., Docket No. 94-24-511 (Apr. 24, 1996); Hall v. Mingo County Bd. of Educ., Docket No. 95-29-529 (Mar. 28, 1996); Heatwole v. Regional Jail Authority, Docket No. 93-RJA-238 (May 1, 1994); Ellis v. Division of Energy, Docket No. 91-ENGY-181 (Jan. 13, 1993).

4. Grievants failed to establish they were entitled to remain at their respective schools as a matter of law.

Accordingly, the grievance is **DENIED**. Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Fayette County and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code §18-29-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate Court.

NEDRA KOVAL

Senior Administrative Law Judge

Date: July 25, 1996

[Footnote: 1](#)

For example, Grievant Perry's principal, David Perry (the relationship of the two persons was not established in the record, but both parties verified in their level four argument that the Perrys were husband and wife), testified that transfers of service personnel from the buildings he had served had been on the basis of seniority with the

least senior worker being transferred. He did not state precisely why the transfers occurred. On the other hand, FCBE's Director of Personnel, Douglas L. Kincaid, testified that the transfer practice followed in the school system when a program was eliminated in a school was to transfer the personnel associated with the eliminated program.

[Footnote: 2](#)

Of record is a list of FCBE's "Administrative Transfers For 1996-97." EX 3. This document shows that, in addition to Grievants, thirteen other aides were placed on transfer because their particular jobs were abolished.

[Footnote: 3](#)

Grievants' argument that they should have been retained at their respective schools due to their willingness to accept duties other than Title I aide duties the upcoming school year is not persuasive. In making that argument, they relied on two Grievance Board decisions which generally determined that, since aide's positions were not program-specific, principals could alter an aide's duties if the aide agreed to the within-school reassignment. The cited cases, Winland/Steele v. Wetzel County Bd. Of Educ., Docket No. 92-52-940 (Feb. 16, 1993), and Gemmer v. Wood County Bd. Of Educ., Docket No. 91-54-274 (Dec. 23, 1991), arose under different factual circumstances and primarily involved posting issues. Thus, those cases are not dispositive of the issue in this case.