RHONDA HANEY and WILMA SEABOLT,

Grievants,

v. DOCKET NO. 97-29-292

MINGO COUNTY BOARD OF EDUCATION,

Respondent,

and,

RITA WARD and PEGGY HANNAH,

Intervenors.

DECISION

This grievance was filed by Grievants Rhonda Haney and Wilma Seabolt on or about April 28, 1997, against Respondent Mingo County Board of Education ("MBOE"), alleging that they should have been informed at the transfer hearing that they would be placed in itinerant teaching positions; and it was arbitrary and capricious to place Grievants in itinerant teaching positions stationed at the new Burch Middle School, after they were told at the transfer hearing they would be transferred to the new Burch Middle School. Grievants also initially alleged violations of W. Va. Code §§ 18A-4-7a, 18A-4-8f, 18A-4-7b, and 18A-1-1; however, they did not explain how MBOE violated these Code Sections, and no evidence was placed in the record which would support a finding that any of these Code Sections was applicable or violated. Accordingly, Grievants failed to prove a violation of these Code Sections. The following Findings of Fact necessary to the Decision reached, are made based upon the evidence presented at the Level II and Level IV hearings. (See footnote 1)

Findings of Fact

1. Grievants are employed by MBOE as classroom teachers. During the 1996-97 school year they were employed at Burch Middle School teaching Special Education.

2. After the end of the 1996-97 school year, Delbarton Grade School was closed, and the building housing Burch Middle School was closed. Burch Middle School was moved to the building

which had housed Delbarton Grade School, and Burch Middle School's grade levels were changed to 4 through 8, from some other grade configuration not identified in the record.

3. In the Spring of 1997, MBOE gave notice to all classroom teachers at Burch Middle School, including Grievants, that they would be transferred. The notice indicated Grievants could be transferred anywhere in the county. Grievants requested a hearing on their transfer.

4. At a transfer hearing held before MBOE near the first of March 1997, Superintendent Everett Conn stated Grievants would be placed at Burch Middle School, but that the principal would decide what grade level to assign to each teacher. Grievants were not told they would be placed in positions as itinerant teachers. 5. MBOE approved the Superintendent's recommendation that Grievants be transferred from their previous positions at the old Burch Middle School. (See footnote 2)

6. Near the end of April 1997, six Special Education teachers assigned to Burch Middle School for the 1997-98 school year met with Karen Browning, MBOE's Director of Special Education. Grievants, who are the least senior Special Education teachers, learned they would be placed as itinerant teachers, and as such, could be moved out of the building if needed.

7. Grievants are itinerant Special Education teachers stationed at Burch Middle School for the 1997-98 school year.

Discussion

Grievants argued that they were not informed at the transfer hearing that their titles would be changed to itinerant, and that it was arbitrary and capricious for MBOE to change them to "itinerants after they were told during the transfer hearing that the transfer meant moving from one building to another only." Grievants' Proposed Conclusions of Law. Grievants contended that when the Superintendent stated at the transfer hearing that all professionals at the old Burch Middle School would be moved to the new Burch Middle School "lock, stock, and barrel," this meant there would be no changes.

MBOE pointed to its broad discretion in personnel matters, and to the proposition that a teacher has no vested right to be assigned to a particular school. It argued that statements made bythe Superintendent and individual MBOE members (See footnote 3) were not binding on the Board. Intervenors argued Grievants were in fact transferred to the new Burch Middle School as they are stationed there.

Superintendent Conn stated at the transfer hearing that Grievants would be moving from the old Burch Middle School to the new Burch Middle School. Upon hearing this, Grievants' representative stated, "[t]hat's what they wanted to hear." Grievants presented no objection to the transfer. Superintendent Conn did make it clear it would be up to the principal of the new school to make decisions about what each person would be teaching.

The purpose of the transfer hearing is to allow employees to state why they should not be transferred from a particular position, and to allow the employees to question the Superintendent regarding his recommendation that they be transferred. W. Va. Code § 18A-2-7. Grievants have no quarrel with their transfer from the old Burch Middle School, but with the positions in which they were subsequently placed.

There is no requirement that Grievants be told their new assignments either at the transfer hearing or at the time the transfer is approved. Stewart, et al., v. Kanawha County Bd. of Educ., Docket No. 96-20-370 (Jan. 31, 1997). Itinerant teaching positions, while not preferred by Grievants, are still classroom teaching positions, and this same rule applies when an employee is transferred into an itinerant teaching position. See Vance v. Hardy County Bd. of Educ., Docket No. 92-16-162 (Aug. 31, 1992). The Superintendent was not required to tell Grievants at the transfer hearing that they would be itinerant teachers, and MBOE was not required to tell them this when the transfer was approved. Further, classroom teachers have no vested right to be assigned to aparticular school in the county. State ex rel. Hawkins v. Tyler County Bd. of Educ., 275 S.E.2d 908 (W. Va. 1981).

With this in mind, Grievants have not proven a statutory violation or obligation, or that the statements made by the Superintendent amounted to an enforceable promise or agreement, as Grievants failed to prove consideration was given for the promise, an essential element of a contract or promise. Grievants further failed to prove the Superintendent had the authority to make such a promise.

> Consideration is a requirement for all contracts, including those covering terms of employment. First Nat. Bank of Gallipolis v. Marietta Mfg. Co., 153 S.E.2d 172 (W.Va. 1967). It appears, however, that in cases involving promises made within the context of an employer-employee relationship, courts have taken a liberal approach to the requirement. . . . In Mankin v. Bryant, 56 S.E.2d 447 (Ga. 1949), it was held that consideration could be found in "any benefit accruing to `[the promisor]' or any loss, trouble, disadvantage undergone by, or charge imposed upon him to whom `[the promise]' is made." In Brewer [.v First Nat. Bank of Danville, 120 S.E.2d 273 (Va. 1961)], the Court went further and held that a "slight advantage to one party or trifling inconvenience to the other is sufficient to support a promise."

Chezik, et al., v. Marshall Univ., Docket No. 93-BOT-126/130 (May 19, 1994). Grievants' right to be heard and to question the Superintendent at the transfer hearing regarding whether they should be moved from the old Burch Middle School was not compromised by the Superintendent's statements regarding Grievants' subsequent assignments. Grievants did not rely upon the Superintendent's statements to their detriment, nor did they give something of value in return for the promise that they would be placed in some undisclosed positions at the new Burch Middle School. Grievants failed to show they suffered any disadvantage or inconvenience as a result of the Superintendent's statements. The most that can be said is that Grievants were relieved to hear theywould be placed at the new Burch Middle School, they were upset or disappointed to learn they would be itinerant teachers, and they do not like being placed as itinerant teachers.

Respondent argued that the Superintendent had no authority to bind MBOE by his statement. Indeed, in those matters where authority to act is vested with the county board of education, the superintendent has no authority to bind the board. See Lee v. Hampshire County Bd. of Educ., Docket No. 95-14-424 (Jan. 22, 1996); and Boyd v. Mercer County Bd. of Educ., Docket No. 90-27-390 (Sept. 30, 1991). While neither party presented any evidence regarding how teachers are officially assigned after transfer, it would appear that this would involve the approval by MBOE of the teachers' contracts. As such, the authority to make assignments would ultimately be vested with MBOE, not the Superintendent.

"County boards of education have broad discretion in personnel matters, including transfers, but must exercise that discretion in a manner which is not arbitrary or capricious." Dodson v. McDowell County Bd. of Educ., Docket No. 93-33-243 (Feb. 15, 1994). The Supreme Court of Appeals of West Virginia has "repeatedly held that the power to transfer teachers must be exercised in a reasonable manner and in the best interests of the school." Townshend v. Bd. of Educ. of County of Grant, 396 S.E.2d 185, 188 (W. Va. 1990). See Dillon v. Bd. of Educ. of County of Wyoming, 351 S.E.2d 58 (W. Va. 1986).

The evaluation of a personnel decision under the arbitrary and capricious standard entails close examination of the process used to make the decision. Considerable deference must be afforded the professional judgment of those who made the decision. Cowen v. Harrison County Bd. of Educ., 195 W. Va. 377, 465 S.E.2d 648 (1995). Baird v. Kanawha County Bd. of Educ., Docket No. 95-20-445 (Sept. 16, 1996). "In applying the `arbitrary and capricious' standard, a reviewingbody applies a

narrow scope of review, limited to determining whether relevant factors were considered in reaching that decision and whether there has been a clear error of judgment. Bowman Transp. v. Arkansas-Best Freight System, 419 U.S. 281, 285 (1974); Harrison v. Ginsberg, 169 W. Va. 162, 286 S.E.2d 276 (1982). Moreover, a decision of less than ideal clarity may be upheld if the agency's path in reaching that conclusion may reasonably be discerned. Bowman, supra, at 286." Hill and Cyrus v. Kanawha County Bd. of Educ., Docket No. 96-20-362 (Jan. 30, 1997).

Grievants did not challenge that two Special Education teachers at Burch Middle School had to be assigned to itinerant positions. They did not present any evidence that any particular criteria should have been evaluated in determining which two teachers would be placed in the itinerant positions, or that they were not the best choices for placement in these positions. Grievants were the least senior teachers in the pool. Although MBOE did not have to choose the least senior teachers to place in the itinerant positions, Grievants presented no reason why they should not have been the teachers chosen for placement into these positions.

The following Conclusions of Law support the Decision reached.

Conclusions of Law

1. The burden of proof is upon Grievants to prove the elements of their grievance by a preponderance of the evidence. Vance v. Logan County Bd. of Educ., Docket No. 92-23-045 (May 21, 1992).

2. "County boards of education have broad discretion in personnel matters, including transfers, but must exercise that discretion in a manner which is not arbitrary or capricious." Dodson v. McDowell County Bd. of Educ., Docket No. 93-33-243 (Feb. 15, 1994). The Supreme Court of Appeals of West Virginia has "repeatedly held that the power to transfer teachers must be exercisedin a reasonable manner and in the best interests of the school." Townshend v. Bd. of Educ. of County of Grant, 396 S.E.2d 185, 188 (W. Va. 1990). See Dillon v. Bd. of Educ. of County of Wyoming, 351 S.E.2d 58 (W. Va. 1986).

3. Classroom teachers have no vested right to be assigned to a particular school in the county. State ex rel. Hawkins v. Tyler County Bd. of Educ., 275 S.E.2d 908 (W. Va. 1981).

4. There is no requirement that employees be told their new assignments either at the transfer hearing or at the time the transfer is approved. Stewart, et al., v. Kanawha County Bd. of Educ.,

Docket No. 96-20-370 (Jan. 31, 1997). Itinerant teaching positions are classroom teaching positions, and this same rule applies when an employee is transferred into an itinerant teaching position. See Vance v. Hardy County Bd. of Educ., Docket No. 92-16-162 (Aug. 31, 1992).

5. The Superintendent's statement regarding where Grievants would be placed if the transfer was approved was not an enforceable promise, as the Superintendent was not obligated to provide this information to Grievants at the transfer hearing, and Grievants gave no consideration for the promise, nor did they rely upon it to their detriment.

6. Grievants failed to prove that the Mingo County Board of Education abused its broad discretion or acted in an arbitrary and capricious manner when it chose to transfer them, or that the decision to place them in itinerant teaching positions was arbitrary and capricious.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mingo 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 intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

BRENDA L. GOULD

Administrative Law Judge

Dated: October 30, 1997

Footnote: 1

The grievance was denied at Level I on April 28, 1997. A Level II hearing was held on June 12, 1997, and the grievance was denied at Level II on June 19, 1997. Grievant waived Level III, appealing to Level IV on June 23, 1997. A Level IV hearing was held before the undersigned Administrative Law Judge on August 5, 1997, and this grievance became mature for decision on August 27, 1997, upon receipt of the last of the parties' written arguments.

Footnote: 2

The record does not reflect whether MBOE approved transferring Grievants to the new Burch Middle School.

Footnote: 3

Grievants also argued that certain Board members promised at the transfer hearing that they would be transferred to Burch Middle School. The undersigned finds no such statements in the transcript of the transfer hearing, made a part of the record as Grievants' Exhibit 1.