MARK McCOMAS,

Grievant,

v.

DOCKET NO. 98-22-246

LINCOLN COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Mark McComas, filed this grievance on May 5, 1998, protesting his transfer from Guyan Valley High School at the end of the 1997-98 school year. The grievance was denied at level one on May 6, 1998, and a level two hearing was held on May 29, 1998, and denied by Charles S. McCann, Hearing Examiner, on June 22, 1998. The grievance was bypassed at level three, and appealed to level four on July 16, 1998. Hearing was held in the Grievance Board's Charleston, West Virginia office on September 23, 1998, at which time this case became mature for decision. Grievant appeared pro se, and the Lincoln County Board of Education ("Board") was represented by Erwin L. Conrad, Esq., Conrad & Clay.

SUMMARY OF EVIDENCE

Level Two Grievant's Exhibits

Ex. 1 -

Grievance form 98-53.

Ex. 2 -

Grievance form. 99-54.

Level Two Board Exhibits

Ex. 1 -

May 18, 1998 letter from A. Edward Smith, Principal, Guyan Valley High School to Mr. Mark McComas.

Ex. 2 -

April 6, 1998 Lincoln County Board of Education minutes.

Ex. 3 -

Transcript of Transfer Hearing before the Lincoln County Board of Education, dated April 6, 1998.

Level Four Grievant's Exhibits

Ex. A -

W. Va. Code § 18A-4-7a.

Ex. B -

List of teachers and seniority dates who are teaching at Guyan Valley High School for the 1998-99 school year.

Ex. C -

Lincoln County Teacher Seniority List.

Ex. D. -

Chart, Guyan Valley High School Projected Special Education Students in Core Subjects 1998-1999 School Year.

Ex. E -

July 2, 1998 letter from West Virginia Department of Education to Mark McComas.

Ex. F -

Guyan Valley High School Class Schedule 1998-1999.

Level Four Board Exhibits

Ex. 1 -

126 C.S.R.136, Minimum Requirements for the Licensure of Professional/Paraprofessional Personnel and Advanced Salary Classifications (5202).

Testimony

Grievant testified in his own behalf and presented the testimony of Donna McComas, Edward Smith, Dr. Donna Martin and Charles McCann. The Board presented the testimony of Dr. Donna Martin.

FINDINGS OF FACT

The facts are not in dispute, and are set forth in the following findings.

1. Grievant is currently employed by the Board as a teacher at Branchland Elementary School.

2. During the 1997-98 school year, Grievant was employed by the Board as a teacher at Guyan Valley High School, which has a 7-12 grade configuration. Grievant iscertified to teach Elementary Education 1-8, Health and Physical Education 1-9, and Athletic Trainer/Sports Medicine K-12.

3. Grievant was originally hired at Guyan Valley to teach Basic Skills, Heath and Physical Education, and Sports Medicine. At some point, he was asked to teach Social Studies, 7-8, and prior to his transfer, he had taught Social Studies at Guyan Valley High School for six or seven years. Grievant is not certified in Social Studies, nor does he have an authorization to teach 7th or 8th grade social studies.

4. Two other teachers in the Social Studies Department, Andy Banfi and Mary Bell, have less teaching seniority than Grievant.

5. Mr. Banfi is certified in Social Studies 7-12, and Physical Education 7-12. Ms. Bell is certified in Social Studies 7-12, and as a Counselor, 5-12.

6. In December 1997, Director of Personnel Charles McCann met with the faculty to inform

them of an amendment to West Virginia Department of Education Policy 5202, effective July 1, 1998, which provides as follows:

> 9.8. Assignment of Elementary or Multisubjects Teachers. -Effective July 1, 1998, personnel licensed for elementary education or multi-subjects may not be newly assigned to teach specific content specializations (e.g., mathematics, English language arts, music) in a departmentalized seventh and/or eighth grade unless the educator holds appropriate licensure to teach the content specialization or exhibits subject matter competence to deliver the instructional goals and objectives approved by the State Board. The educator who exhibits subject matter competence shall be issued, upon recommendation from the county superintendent, an Authorization to continue to teach this specialization. In addition, an educator who is currently assigned to teach a single subject within the elementary curriculum in a departmentalized seventh and/or eighth grade based on a previous State Board policy shall be issued, upon recommendation from the county superintendent, an Authorization to continue to teach this specialization. In both cases, the Authorization is valid only within the county from which the recommendation was issued. An elementary education teacher may beassigned to a departmentalized setting below seventh grade without securing an Authorization.

7. Mr. McCann informed the faculty that, in order to be prepared for this change in policy, they should think about either going back to school to receive additional certification, applying for an out-of-field authorization, and/or applying for an authorization to teach one grade level above their area of certification.

8. Grievant requested and received, effective May 14, 1998, an authorization from the West Virginia Department of Education to teach one grade level above his certification in Health and Physical Education; therefore, he can teach Health and Physical Education in grades 1-10. G. Ex. E.

9. In February 1998, the Principal at Guyan Valley, Mr. Edward Smith, Dr. Donna Martin, Assistant Superintendent, and Mr. Charles McCann, Personnel Director, discussed the need to reduce the number of teaching positions at Guyan Valley for the next year due to declining student enrollment.

10. A review of all positions at Guyan Valley concluded that one teaching position in the Social Studies department could be eliminated for the next school year.

11. On March 19, 1998, Grievant was informed by R. P. Powell, Superintendent of Schools, that he would be recommended for transfer and subsequent assignment for the 1998-99 school year. That letter afforded Grievant the opportunity for a hearing before the Board.

12. On April 6, 1998, Grievant had a hearing on his proposed transfer before the Board. LII Ex. 3. 13. The Board voted to accept the Superintendent's recommendation that Grievant be

transferred and reassigned for the 1998-99 school year.

DISCUSSION

Grievant alleges the Board's actions in transferring him were arbitrary and capricious, and violated W. Va. Code §§ 18A-2-7 and 18A-4-7a. (See footnote 1) The Board contends there was a reduction in student population projected for the 1998-99 school year, justifying the elimination of a Social Studies teaching position at Guyan Valley High School. Grievant concedes that student enrollment did decline, but argues he was not the least senior teacher in the Social Studies department, or at Guyan Valley, and thus his transfer should be rescinded.

Transfers of school personnel are governed by W. Va. Code § 18A-2-7, which provides, in pertinent part:

> The superintendent, subject only to approval of the board, shall have authority to assign, transfer, promote, demote or suspend school personnel and to recommend their dismissal pursuant to provisions of this chapter.

With regard to Grievant's argument that his transfer should be rescinded because he is not the least senior teacher at Guyan Valley High School, it is well-settled that a board of education has substantial discretion in matters relating to the assignment and transfer of school personnel. The power to transfer teachers must be exercised reasonably and in the best interests of school systems and may not be exercised arbitrarily or capriciously. Dillon v. Wyoming County Bd. of Educ., 351 S.E.2d 58 (W. Va. 1986); State ex rel. Hawkins v. Tyler County Bd. of Educ., 166 W. Va. 363, 275 S.E.2d 908(1980). Nothing in Code § 18A-2-7, nor anywhere else in that chapter, however, speaks to the use of seniority as a basis in determining which employees shall be transferred. In the absence of a county policy, seniority is not determinative in the decision to transfer personnel; only in the decision to reduce personnel. See Belladonna v. Logan County Bd. of Educ., Docket No. 97-23-321 (Oct. 16, 1997); Blankenship v. Logan County Bd. of Educ., Docket No. 97-23-039 (July 14, 1997).

Grievant's claim that it was arbitrary and capricious for the Board to transfer him from Guyan Valley High School because he had been teaching Social Studies there in the past is incorrect. The law simply cannot be ignored that, in order for an applicant to be basically qualified for a classroom teaching position vacancy in West Virginia, that person must hold the appropriate certification. Peters v. Putnam County Bd. of Educ., Docket No. 90-40-247 (Aug. 16, 1991). See Via v. Nicholas County

Bd. of Educ., Docket No. 89-34- 710 (Apr. 11, 1990); Ashworth v. Putnam County Bd. of Educ., 89-40-560 (Oct. 31, 1989). Although the new policy provides that a multisubjects teacher who had been teaching specific content specializations could receive an authorization from the State Board of Education to continue to do so, upon the Superintendent's recommendation, there is nothing in the policy that mandates that this be done. In this instance, the Superintendent did not recommend that Grievant be issued an out-of-field specific content authorization to teach Social Studies at Guyan Valley High School. Grievant was not entitled to remain in his Social Studies teaching position at Guyan Valley High School because he was not certified in Social Studies at the time of his transfer, nor was he certified by the end of the school year. Bailey v. Mingo County Bd. of Educ., Docket No. 97-29-392 (Jan. 6, 1998);Dunford v. Mercer County Bd. of Educ., Docket No. 94-27-618(Dec. 21, 1994); See Adams v. Mercer County Bd. of Educ., Docket No. 92-27-455 (Mar. 31, 1993).

The Board in this instance determined that it was necessary to retain teachers at Guyan Valley High School who were fully certified to teach secondary level courses, and it had teachers available who could teach those classes. It was in the best interests of the school when faced with having to eliminate one Social Studies position, to have the teacher certified to teach the most classes at the secondary level remain at Guyan Valley. This cannot be found to be an arbitrary or capricious reason for its reason to transfer Grievant and retain Mr. Banfi and Ms. Bell.

CONCLUSIONS OF LAW

1. it is well-settled that a board of education has substantial discretion in matters relating to the assignment and transfer of school personnel. The power to transfer teachers must be exercised reasonably and in the best interests of school systems and may not be exercised arbitrarily or capriciously. Dillon v. Wyoming County Bd. of Educ., 351 S.E.2d 58 (W. Va. 1986); State ex rel. Hawkins v. Tyler County Bd. of Educ., 166 W. Va. 363, 275 S.E.2d 908 (1980).

2. Nothing in Code § 18A-2-7, nor anywhere else in that chapter, speaks to the use of seniority as a basis in determining which employees shall be transferred. Seniority is not determinative in the decision to transfer personnel, only in the decision to reduce personnel. See Belladonna v. Logan County Bd. of Educ., Docket No. 97-23-321 (Oct. 16, 1997); Blankenship v. Logan County Bd. of Educ., Docket No. 97-23-039 (July 14, 1997).

3. In order for an applicant to be basically qualified for a classroom teaching position vacancy

in West Virginia, that person must hold the appropriate certification. Peters v. Putnam County Bd. of Educ., Docket No. 90-40-247 (Aug. 16, 1991). See Via v. Nicholas County Bd. of Educ., Docket No. 89-34-710 (Apr. 11, 1990); Ashworth v. Putnam County Bd. of Educ., 89-40-560 (Oct. 31, 1989).

4. Grievant was not entitled to remain in his Social Studies teaching position at Guyan Valley High School, because he was not certified in Social Studies at the time of his transfer, nor was he certified by the end of the school year. Bailey v. Mingo County Bd. of Educ., Docket No. 97-29-392 (Jan. 6, 1998); Dunford v. Mercer County Bd. of Educ., Docket No. 94-27-618 (Dec. 21, 1994); See Adams v. Mercer County Bd. of Educ., Docket No. 92-27-455 (Mar. 31, 1993).

5. Grievant has failed to prove by a preponderance of the evidence that his transfer from Guyan Valley High School violated W. Va. Code § 18A-2-7, or 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 Lincoln 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.

_____

MARY JO SWARTZ

Administrative Law Judge

Dated: October 7, 1998

Footnote: 1

W. Va. Code § 18A-4-7a is not applicable to this grievance. That Section applies to reductions-in-force and Grievant was not reduced-in-force.