ROBERT PHARES,

Grievant,

v. **Docket No. 97-42-296**

RANDOLPH COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Robert Phares, employed as Director of Transportation by the Randolph County Board of Education (RCBE or Board), initiated these proceedings in April 1997, following a decision by RCBE to eliminate the position of Transportation Director, and reassign Grievant as a bus operator, during a reduction in force. Grievant asserts that RCBE failed to provide him a meaningful reduction in force hearing because (a) certain board members were prejudiced against him and had already determined to eliminate the position prior to the hearing, and (b) the administration failed to state the reasons for the proposed action at the hearing. Grievant also alleges violations of W. Va. Code §§18A-2-6 and 18A-4-8b, and asserts that the action was not based on a lack of need, but was arbitrary, capricious, and not in the best interest of the school system. Grievant requests reinstatement to the position of Director of Transportation, with all wages, benefits, seniority to which he is entitled, effective July 1, 1997, and interest on all monetary sums.

Grievant's immediate supervisor lacked the authority to resolve the dispute. Following an evidentiary hearing at level two, the grievance was denied by Superintendent Larry Pritchard. Grievant elected to bypass consideration at level three, as is permitted by W. Va. Code §18-29-4(c), and advanced the matter to level four on July 3, 1997. Following hearings on September 8 and 9, 1997, the grievance became mature for decision with the submission of proposed findings of fact andconclusions of law by both parties on October 6, 1997. (See footnote 1)

The following formal Findings of Fact are properly made from the record in its entirety.

Findings of Fact

1. Grievant has been employed by the Randolph County Board of Education since 1972, and has held the full-time, service position of Director of Transportation since 1989.

2. In Spring 1997, Superintendent Larry Pritchard notified Grievant that he would recommend to the Board that the Director of Transportation position be eliminated, and Grievant reassigned as a bus operator.

3. Pursuant to the provisions of W. Va. Code §18A-2-7, Grievant requested a hearing before the Board acted upon the Superintendent's recommendation. Following the hearing, on March 25, 1997, the Board voted 4 - 1 to accept the recommendation to eliminate the position of Director of Transportation, and transfer Grievant into a vacant position of bus operator.

4. The responsibilities of the Transportation Director were assigned to Clifford Wilmoth, Administrative Assistant for Building Maintenance, Transportation, Vocational Education and Facilities. Mr. Wilmoth had previously been Grievant's supervisor.

5. Mr. Wilmoth's duties were revised during this reorganization. The Maintenance duties and a substantial portion of the duties relating to Facilities were reassigned. Currently, he retains those duties relating to Vocational Education and Transportation.

6. In July 1997, the Board posted vacancies for four (4) Area Transportation Team Leaders, to be assigned throughout the county. These positions are classified as extra-dutyassignments and offer an annual compensation of $600.00. The employees are to provide services for their geographical areas, and assist Mr. Wilmoth, as needed.

7. Grievant's evaluations have been good, and Respondent agrees that he is a knowledgeable and productive employee; performance is not at issue.

8. During the 1996-97 school year, RCBE employed more service personnel employees than were allocated through the state funding formula. These additional service positions were funded solely from local monies. RCBE has not had an excess levy for several years, and was facing a deficit of approximately $500,000.00 at the beginning of the 1996-97 school year.

9. RCBE will save $27,454.01 during the 1997-98 school year by eliminating the position of Director of Transportation.

Decision

Grievant first argues that he was not granted a meaningful hearing prior to his transfer because the administration failed to give him reasons for the action, thereby depriving him of the opportunity to present reasons why the action should not be taken, and that certain RCBE members had prejudged his case, rendering the hearing meaningless. Grievant's second argument is that RCBE did not

demonstrate a lack of need for the position of Director of Transportation, while subsequent actions taken by the Board clearly demonstrate the need for its existence. RCBE argues that it has substantial discretion in matters relating to personnel, so long as it is exercised reasonably. In this case, the Board asserts that the elimination of the position was based upon a logical, appropriate, and fully justifiable recommendation by the superintendent. Prejudgment by any Board member was disavowed.

Grievant's argument that he was denied a meaningful hearing because RCBE failed to givehim reasons for the action, is inaccurate. At the March 25, 1997, hearing Superintendent Pritchard stated that he did not believe that the Board could afford to have a freestanding position for transportation, and that a reduction in central office employees would allow more funding for students and keep a deficit situation in control. (RIF Hearing Trans. p. 20). Financial concerns were the stated reason for the elimination of this, and another central office supervisory position. Upon closer review, Grievant's concern appears to be more that the administration would not explain during the RIF hearing how the duties of the position would be reassigned. He asserts that without this information he was deprived of the opportunity to present his reasons why the action should not be taken. The record reflects that RCBE officials declined to give Grievant information regarding the reassignment of his duties because it involved the recommendation for transfer of another employee, and such discussion might jeopardize a fair and impartial hearing in that related matter.

The employee bears a substantial burden in transfer cases triggered by a reduction in force. It is not enough merely to show a need for his services, the grievant must establish that the Board erred or otherwise abused its discretion in deciding which terminations and/or reassignments were the most reasonable. Dial v. McDowell County Bd. of Educ., Docket No. 96-33-259 (Apr. 30, 1997). Although information regarding the reassignment of duties would have given Grievant an opportunity to address RCBE's future plans, the lack of such information did not impede his ability to argue that the position should be retained. To have given Grievant specific information regarding the reassignment of the transportation duties would have compromised Mr. Wilmoth's hearing, raising prejudgment issues in his transfer.

Grievant's concern that his case had been subject to prejudgment is more troublesome. GarySkinner, previously employed by RCBE as a bus operator until the 1996-97 school year, testified that shortly after Sherwood Collett was elected to the RCBE in 1994, they had a conversation in

which Mr. Collett advised Mr. Skinner that he had two objectives as a board member. First, to change the name of the high school back to Elkins High School, and second, “to see . . . that Bob Phares doesn't have a job as Transportation Director.” Mr. Skinner stated that Mr. Collett explained he did not like the way Grievant had treated his wife when she worked as a substitute bus operator. (Level II Trans. pp. 17-18). David Thompson, currently employed as a bus operator, testified that in Fall 1996, he heard Mr. Collett make a statement that Grievant would either be driving a bus or sitting on his porch the following school year. (Level II Trans. p. 24).

Richard Weiford, employed as a substitute bus operator, testified that while attending a band auxiliary meeting at the beginning of the 1996-97 school year, he heard RCBE President Ed Tyre state that they “needed to get Mr. Phares out of this position.” (Level II Trans. p. 35). At level four, Carolyn Dolly, a twenty-eight year employee of RCBE, testified that in early 1996 she learned that the Board was contemplating the purchase of an automated telephone answering system, which would have displaced her as a Switchboard/Receptionist/Secretary. Referring to notes made in her diary, Ms. Dolly stated that she visited Mr. Tyre on February 21, 1996, to discuss her position, when he advised her that “[w]e're getting rid of Bob Phares. Bob Kittle got rid of him once and we need to get rid of him.” (See footnote 2)

Mr. Collett did not testify at either hearing; however, as noted by RCBE, he voted to retain the Transportation position following the hearing on March 25, 1997. Grievant argues that the action was disingenuous, nevertheless, the vote was in Grievant's favor. Mr. Tyre testified at the level fourhearing that he had not discussed Superintendent Pritchard's recommendations with him prior to the Board meeting because he was fully aware that it would give rise to prejudgment claims. Mr. Tyre further stated that he would not discuss Grievant's position with Ms. Dolly because she was known to be a gossip and a busybody. He specifically denied the comment attributed to him regarding the fact that Mr. Kittle had previously “gotten rid of” Grievant. Mr. Tyre also denied the claim of Mr. Weiford regarding Grievant. He did recall that he had been elected on a platform which included the proposition that too many people were employed at the central office.

None of the remaining three RCBE members testified at either hearing, so it is unknown what, if any, influence Mr. Collett and Mr. Tyre had on their decision. More importantly, Superintendent Pritchard unequivocally testified that his recommendation to eliminate the position was his decision, made as a part of a reorganization plan, without input from the Board members. Absent any attack on

the Superintendent's credibility, this testimony is accorded substantial weight in determining that, notwithstanding what appears to be personal animosity toward Grievant by two Board members, the decision to eliminate the position was not subject to prejudgment.

Finally, Grievant argues that there is a need for the Director of Transportation position, as evidenced by the fact that major revisions were made to another employee's duties so that he could manage the transportation responsibilities, and four additional employees were hired under extracurricular contracts to assist him. Grievant argues that the duties of Director of Transportation were assigned, virtually intact, to Mr. Wilmoth, and therefore, it was his position which should have been eliminated. Testimony offered by Mr. Wilmoth substantiates Grievant's assertion that the complete duties of the Transportation Director were reassigned to him; however, Mr. Wilmoth also retains duties relating to the Vocational Center. These are duties of a professional employee whichGrievant cannot perform. While Grievant's position is understandable, and the record reflects that other employees agree with him that Director of Transportation was a position with many responsibilities which should not have been eliminated, it cannot be determined that the action was in violation of any statute, regulation, or policy, or was arbitrary and capricious.

In addition to the foregoing findings of fact and discussion it is appropriate to make the following conclusions of law.

Conclusions of Law

1. As a reduction in force action does not involve a disciplinary matter, Grievant has the burden of proving the allegations of his complaint by a preponderance of the evidence. W. Va. Educ. & State Employees Grievance Bd. Procedural Rule 4.19, 156 C.S.R. 1 (1996); Collins et al. v. Mingo County Bd. of Educ. and Grossl, Docket No. 97-29-328 (Jan. 28, 1998). See W. Va. Code §18-29-6.

2. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel so long as that discretion is exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious. Dillon v. Bd. of Educ., 177 W. Va. 145, 351 S.E.2d 58 (1986).

3. Grievant failed to prove that he was not given the reasons for elimination of the position he held, or any other violation of W. Va. Code §18A-2-6.

4. Grievant failed to prove that the Board had prejudged the recommendation that the position of Director of Transportation be abolished, and Grievant transferred.

5. Grievant failed to prove that a position other than Director of Transportation should have been abolished.

6. Although the duties relating to transportation will continue to exist, Grievant failedto prove that they could only be performed by a Director of Transportation, or that the position was eliminated in violation of W. Va. Code §18A-4-8b.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Randolph 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.

Date: March 24, 1998 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1 *This matter was transferred to the undersigned for administrative reasons on March 4, 1998.*

Footnote: 2 *Robert Kittle was previously employed by RCBE as superintendent.*