

SHELBY CANTERBURY,

Grievant,

v.

DOCKET NO. 99-31-499

MONROE COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Shelby Canterbury, filed this grievance against her employer, the Monroe County Board of Education ("Board"), on September 9, 1999:

WV Code 18A-4-8f was violated when the grievant was not placed in the kindergarten position at Mountain View Elementary/Middle School.

Relief sought: Grievant placed in the kindergarten position in Mountain View Elementary/Middle School.

The grievance was denied at level one by Principal Larry Mustain. A level two hearing was conducted on November 18, 1999, and a decision denying the grievance was issued by Superintendent Lyn Guy on November 29, 1999. Grievant by-passed level three, and appealed to level four on December 6, 1999. The parties agreed to submit the grievance on the record developed at level two, and this case became mature for decision on January 8, 2000, the deadline for the submission of proposed findings of fact and conclusions of law. Grievant was represented at level two by Anita R. Maxwell, West Virginia Education Association, and the Board was represented by Patty Hancock.

SUMMARY OF EVIDENCE

Grievant's Exhibits

Ex. 1 -

January 14, 1999 Notice of Vacancies, Professional, 1999-2000 School Term.

Ex. 2 -

First page of seniority list for 1998-1999.

Ex. 3a -

July 26, 1999 Notice of Vacancy, Professional, for Resource Teacher, Mountain View Elementary/Middle School, 1999-2000 School Term.

Ex. 3b -

August 10, 1999 Minutes of Special Meeting of Monroe County Board of Education.

Ex. 4 -

August 4, 1999 Notice of Vacancy, Professional, for Grade K, Mountain View Elementary/Middle School, 1999-2000 School Term.

Ex. 5 -

August 16, 1999 Minutes of Regular Meeting of Monroe County Board of Education.

Ex. 6 -

1999-2000 School Calendar for Monroe County.

Board Exhibits

None.

Testimony

Grievant testified in her own behalf, and presented the testimony of Patty Hancock.

FINDINGS OF FACT

1. Grievant is employed as a Resource teacher at Mountain View Elementary/Middle School.

2. During the 1998-1999 school year, Grievant was employed as a teacher at Gap Mills School.

3. At the end of the 1998-1999 school year, Gap Mills School was closed and consolidated with Union Elementary to create the new Mountain View Elementary/Middle School, which opened for the 1999-2000 school year.

4. As provided in W. Va. Code § 18A-4-8f, teachers in Monroe County voted during the 1998-1999 school year to give priority to teachers at Gap Mills and Union Elementary with respect to all positions posted for Mountain View Elementary/Middle School.

5. Grievant utilized her priority status and applied for and received a Kindergarten position at Mountain View in January 1999.

6. As a part of the reduction-in-force process in March, 1999, Grievant was reduced-in-force (RIF'd) because her seniority was insufficient to allow her to retain her employment as a Kindergarten teacher. Grievant had one year of seniority.

7. Linda Coffman, another teacher at Gap Mills School with 13 years of seniority, and who had Code § 18A-4-8f priority, was placed in the Kindergarten position previously awarded to Grievant. Ms. Coffman had not yet been placed in a position utilizing her priority.

8. On July 25, 1999, the Board posted a federally-funded, one-year Resource Teacher position at Mountain View. The last day of the posting was August 3, 1999. Grievant applied for and was officially awarded this position at the August 10, 1999, Board meeting. Grievant received this position based on the hiring criteria outlined in W. Va. Code § 18A-4-7a, and not due to Code § 18A-4-8f priority.

9. On August 4, 1999, a posting for the Kindergarten position at Mountain View which had been awarded to Linda Coffman was posted, with a closing date of August 12, 1999. Ms. Coffman had requested and received a transfer from Mountain View to Peterstown Elementary School.

10. At the August 10, 1999, Board meeting, Ms. Coffman was officially transferred from the Kindergarten position at Mountain View to a 4th grade teaching position at Peterstown Elementary.

11. Grievant applied for the Kindergarten position at Mountain View, but the position was awarded to Betty Wilson, utilizing the hiring criteria in W. Va. Code § 18A-4- 7a. Ms. Wilson had two years of seniority.

12. Betty Wilson had been a teacher at Peterstown Elementary, a school which was not affected by the consolidation, and whose teachers did not have priority for positions at Mountain

View.

13. On August 3, 1999, the Board rescinded a previous RIF action and reinstated the affected individual (Jane Nash) when Sandra Pell exercised her priority status and applied for and received a newly created third grade position at Mountain View. Ms. Pell vacated the Title I Math position at Peterstown Elementary, a position to which she had been transferred in March, 1999, and the same position which had been held by Ms. Nash. The Board rescinded Ms. Nash's RIF and placed her back in the Title I Math position without posting the position.

DISCUSSION

Grievant alleges the Board violated the priority provisions of W. Va. Code § 18A-4-8f when it awarded the Kindergarten position to Betty Wilson, following the transfer of Linda Coffman from Mountain View. Grievant further alleges the Board had a pattern and practice of rescinding RIFs if the justification for the RIFs was lost, and acted in an arbitrary and capricious manner by not placing her back into the Kindergarten position once Ms. Coffman transferred.

The Board denies it violated W. Va. Code § 18A-4-8f, because it alleges Grievant no longer had priority status with regard to the Kindergarten position after Ms. Coffman transferred. The Board also denies it acted in an arbitrary and capricious manner towards Grievant by not placing her back into the Kindergarten position once Ms. Coffman transferred.

W. Va. Code § 18A-4-8f provides, in pertinent part:

Notwithstanding any provision of this article to the contrary, when a majority of the classroom teachers, as defined in . . . § 18A-1-1. . . , who vote to do so, in accordance with the procedures established herein, and who are employed by a county board of education, the board shall give priority to classroom teachers in any school or schools to be closed as a result of a consolidation or merger when filling positions in the new school created by consolidation, or newly created positions in existing schools as a result of the merger. . . The teachers in school or schools to be closed shall have priority in filling new positions in the new or merged schools for which the teachers are certified and meet the standards set forth in the job posting on the basis of seniority within the county; Provided, That a teacher shall only receive priority for filling a position at a school impacted by a merger, or consolidation with the position being created by the influx of students from a consolidated or merged school into the school receiving students from their closed school or grade level. The most senior teacher in the closed school or schools shall be placed first, the second most senior shall be placed next and so on until all the newly created positions are filled, or until all the teachers in the closed school or schools who wish to transfer into the newly created positions are placed: Provided, however, That if there are fewer new positions in the newly created school or merged school than there are classroom teachers in the school or schools to be closed, the teachers who were not placed in the new positions shall retain the same rights as all other teachers with regard to seniority, transfer and reduction in force: Provided further, That nothing herein shall be construed to grant any employee additional rights or protections with regard to reduction in force.

Grievant alleges she was denied her right as afforded in the above statute that states “or until all the teachers in the closed school or schools who wish to transfer into the newly created positions are placed.” Grievant contends the Kindergarten position at Mountain View had never been “filled” because no one ever entered into the duties of that position, and thus, she should have had priority for that position when Ms. Coffman vacated it.

Grievant relies on this Grievance Board's recent decision in Damron v. Wayne County Bd. of Educ., Docket No. 99-50-015 (Feb. 18, 1999), in support of her theory. In Damron, a position affected by the consolidation of schools was awarded to a classroom teacher, Mr. Norris, with priority under W. Va. Code § 18A-4-8f. Subsequently, Mr. Norris declined that position, and bid on and received another position. The Board posted the position, and filled it with another classroom teacher with priority under the statute. The grievant, Mr. Damron, argued that, once Mr. Norris had accepted the subject position, it ceased to be a “newly created position” at the consolidated school, and that it was improper for the county board to utilize the priority provisions of Code § 18A-4-8f to fill it a second time.

The board of education argued that, since the consolidated school had not yet opened, it acted appropriately in filling the position by priority status. The Administrative Law Judge found it was not arbitrary and capricious, or an abuse of discretion, for the county board of education to fill the subject position with another classroom teacher with priority, because the position had never been “filled,” as mandated by W. Va. Code § 18A- 4-8f. The ALJ held that “[a] county board of education may fill newly created positions ata consolidated school under the priority provisions of W. Va. Code § 18A-4-8f at any time prior to the opening of the new school.”

Grievant's reliance on Damron is misplaced. First, Grievant used up her priority when she first applied for and was awarded the Kindergarten position in January, 1999. That action preceded her reduction-in-force in the Spring of 1999, and once she was awarded a position at Mountain View, the applicable provisions of Code § 18A-4-8f were fulfilled, in that Grievant was “placed” into a position. The statute specifically provides “that nothing herein shall be construed to grant any employee additional rights or protections with regard to reduction in force.” Therefore, Grievant did not attain any special rights or privileges which would protect her from being reduced-in-force due to her seniority in the Spring of 1999. Grievant ceased to have priority status following her placement by the Board in January, 1999, and the Board correctly utilized the hiring criteria of W. Va. Code § 18A-4-7a

to fill the Kindergarten position once it became vacated by Ms. Coffman's transfer. [\(See footnote 1\)](#)

Second, in Damron, there was still at least one teacher affected by the consolidation of schools who had not yet been “placed” in accordance with W. Va. Code § 18A-4-8f. The ALJ found that the position was to be treated as “newly created” within the meaning of that statute for purposes of placing a teacher with priority, because no one had actually entered into the duties of that position at the time the position was vacated. In this case, there were no other teachers with priority under Code § 18A-4-8f to be placed, and therefore, the Board filled the Kindergarten position according to the selection criteria found in Code § 18A-4-7a. This was the correct procedure for filling the Kindergarten position, once all priority teachers had been placed.

Grievant's second argument is the Board acted in an arbitrary and capricious manner by not reinstating her into the Kindergarten teacher position once Ms. Coffman declined that position, contrary to a pattern and practice of rescinding transfers and RIF's following the end of a school year.

It is well settled that county boards of education have substantial discretion in matters relating to the hiring of school personnel as long as their decisions are in the best interest of the schools and are not arbitrary and capricious. See Hyre v. Upshur County Bd. of Educ., 186 W. Va. 267, 412 S.E.2d 265 (1991); Syl. Pt. 3, Dillon v. Bd. of Educ. of County of Wyoming, 177 W. Va. 145, 351 S.E.2d 58 (1986).

The arbitrary and capricious standard of review requires a searching and careful inquiry into the facts; however, the scope of review is narrow, and the undersigned may not substitute her judgment for that of the decision-maker. See generally, Harrison v. Ginsberg, 169 W. Va. 162, 286 S.E.2d 276 (1982). “An action is arbitrary and capricious if the agency making the decision did not rely on criteria intended to be considered; explained or reached the decision in a manner contrary to the evidence before it; or reached a decision that is so implausible that it cannot be ascribed to a difference of opinion.” See Bedford County Memorial Hosp. v. Health and Human Serv., 769 F.2d 1071 (4th Cir. 1985); Snodgrass v. Kanawha County Bd. of Educ., Docket No. 97-20-255 (Mar. 19, 1998). An action may also be arbitrary and capricious if it is willful and unreasonable without consideration of facts. Black's Law Dictionary, 55 (abr. 5th ed. 1985). Arbitrary is further defined as being “synonymous with bad faith or failure to exercise honest judgment.” See Trimboli v. W. Va. Dept. of Health and Human Serv., Docket No. 93-HHR- 322 (June 27, 1997).

Whenever a county board is required to reduce the number of professional personnel in its

employment, the employee with the least amount of seniority shall be properly notified and released from employment. W. Va. Code § 18A-4-7a. A RIF'd employee is only entitled to reinstatement to his or her former position if a board knows, before taking the final RIF action, that the RIF of that employee was no longer needed. If, after the final RIF action, the RIF is no longer required as the need to decrease the number of teachers in the certification area has changed, the position is to be filled following the proper statutory provisions of W. Va. Code § 18A-4-7a. The appropriateness of a specific reinstatement after a RIF must be examined in light of all the personnel affected in the county within the certification area, and not just to the specific facts of an individual situation. The key issue to examine would be the seniority of the RIF'd teachers. Daughtery/Harshbarger v. Lincoln County Bd. of Educ., Docket No. 96-22-528 (Dec. 31, 1997).

Grievant presented no evidence to show that the need to decrease the number of teachers in the certification area had changed before her final RIF action. The Board correctly posted the Kindergarten position after the final RIF action had occurred, in conformance with Daughtery/Harshbarger, supra, which held that if, after the final RIF action, the RIF is no longer required, the position is to be filled following the proper statutory procedures of W. Va. Code § 18A-4-7a.

Grievant did present evidence that, in March 1999, Jane Nash was RIF'd from a Title I Math Teacher position at Peterstown Elementary School, when a more senior teacher, Sandra Pell, was transferred into that position. Subsequently, on August 2, 1999, Ms. Pell applied for and received a third grade position at Mountain View Elementary/Middle School. Rather than posting the Title I Math position, the Board rescinded Ms. Nash's RIF, and placed her into the Title I Math position at Peterstown which she previously held. This action by the Board was contrary to the holding in Daughtery/Harshbarger. The Title I Math position should have been posted and filled according to W. Va. Code § 18A-4-7a. Grievant's attempt to make this unlawful reinstatement a "pattern and practice" must, therefore, fail.

Consistent with the foregoing findings and discussion, the following conclusions of law are made.

CONCLUSIONS OF LAW

1. In a non-disciplinary matter, Grievant must prove the allegations of her complaint by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance

Bd. 156 C.S.R. 1 § 4.19 (1996); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code § 18-29-6.

2. When a majority of the teachers in a county vote to do so, a board of education shall give priority to classroom teachers in any school or schools to be closed as a result of a consolidation or merger when filling positions in the new school created by the consolidation. W. Va. Code § 18A-4-8f.

3. County boards of education have substantial discretion in matters relating to the hiring of school personnel as long as their decisions are in the best interest of the schools and are not arbitrary and capricious. See Hyre v. Upshur County Bd. of Educ., 186 W. Va. 267, 412 S.E.2d 265 (1991); Syl. Pt 3, Dillon v. Bd. of Educ. of County of Wyoming, 177 W. Va 145, 351 S.E.2d 58 (1986).

4. A county board of education may fill newly created positions at a consolidated school under the priority provisions of W. Va. Code § 18A-4-8f at any time prior to the opening of the new school.

5. Whenever a county board is required to reduce the number of professional personnel in its employment, the employee with the least amount of seniority in the certification area to be reduced shall be properly notified and released from employment. W. Va. Code § 18A-4-7a.

6. A RIF'd employee is only entitled to reinstatement to his or her former position if a board knows, before taking the final RIF action, that the RIF of that employee is no longer needed. If, after the final RIF action, the RIF is no longer required as the need to decrease the number of teachers in the certification area has changed, the position is to be filled following the proper statutory provisions of W. Va. Code § 18A-4-7a. Daughtery/Harshbarger v. Lincoln County Bd. of Educ., Docket No. 96-22-528 (Dec. 31, 1997).

7. The appropriateness of a specific reinstatement after a RIF must be examined in light of all the personnel affected in the county within the certification area, and not just to the specific facts of an individual situation. The key issue to examine would be the seniority of all the RIF'd teachers. Daughtery/Harshbarger, *supra*.

8. Once a teacher with priority status under W. Va. Code § 18A-4-8f is placed into a position affected by the consolidation or merger of schools, that teacher ceases to have priority status for hiring under that Code Section.

9. W. Va. Code § 18A-4-8f does not grant any employee additional rights or protections with regard to reduction in force.

10. The Board correctly placed Grievant into the Kindergarten position at Mountain View in January 1999, due to her priority status under W. Va. Code § 18A-4-8f. After that placement, Grievant ceased to have priority status under that Code Section.

11. Because Grievant did not receive additional rights or protections with regard to reduction-in-force under W. Va. Code § 18A-4-8f, she was subject to reduction-in-force in the Spring of 1999. The Board correctly RIF'd her in March 1999 and placed her on the preferred recall list.

12. Grievant applied for and received a position at Mountain View under the hiring criteria set forth in W. Va. Code § 18A-4-7a. Subsequently, and after June 30, 1999, Ms. Coffman, the teacher who "bumped" Grievant out of the Kindergarten position, vacated that position.

13. Grievant had no entitlement to reinstatement into the Kindergarten position following the transfer of Ms. Coffman. 14. The Board correctly posted and filled the Kindergarten teacher position in August 1999, in conformity with the applicable laws and statutes, as set forth in Daughtery/Harshbarger, *supra*.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of the Monroe County. Any 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. However, the appealing party is required by W. Va. Code § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

MARY JO SWARTZ

Administrative Law Judge

Dated: January 27, 2000

[Footnote: 1](#)

Grievant does not contest the validity of the selection process under W. Va. Code § 18A-4-7a.