CAROL WOOD,

Grievant,

v. **Docket No. 01-41-398**

RALEIGH COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Carol Wood, filed this grievance when the Raleigh County Board of Education ("RBOE") placed her on transfer. As relief Grievant seeks to be returned to her former assignment. (See footnote 1)

The following Findings of Fact are made from the evidence presented at Level II.

FINDINGS OF FACT

1. Grievant has been employed as an Aide by RBOE since 1973. She has been employed as a Title I Aide at Cranberry-Prosperity Elementary School ("CP Elementary") for 16 years.

2. Five Aides were employed at CP Elementary during the 2000-2001 school year. Grievant was the most senior Aide at CP Elementary, and she was the only Title I Aide at the school. Two of the Aides were Kindergarten Aides, and two were Pre-school Handicapped Aides.

3. There were three Title I Aides in Raleigh County during the 2000-2001 school year. One of these Aides had less seniority than Grievant.

4. By letter dated March 27, 2001, Grievant was notified that she was being recommended for transfer at the end of the school year. The transfer letter stated that the reason for the transfer was insufficient Title I funding for CP Elementary, and Grievant was the least senior Title I Aide at CP Elementary. Grievant requested a hearing before RBOE, and a hearing was held.

5. By letter dated May 7, 2001, Grievant was notified that the Superintendent's recommendation that she be placed on transfer at the end of the school year had been approved by

RBOE.

6. RBOE has adopted a policy which provides that when the number of aides at a particular school is reduced, the least senior aide in the particular program area where the reduction is to occur will be placed on transfer. The policy lists the different program areas as Kindergarten, Special Education, Title I Remedial, and Transportation. RBOE followed its policy in placing Grievant on transfer.

DISCUSSION

Grievant bears the burden of proving the elements of her grievance by a preponderance of the evidence. Tibbs v. Mercer County Bd. of Educ., Docket No. 96-27- 074 (Oct. 31, 1996). Grievant did not dispute that RBOE's policy regarding transfers was followed. Rather she contended that the policy itself was unlawful, asserting that it extinguishes a seniority right granted to the employee by state law. She argued it is improper to separate Aides into different program areas when deciding which Aide is to be transferred, because an Aide is an Aide, regardless of the type of work being performed. She cited Gemmer v. Wood County Board of Education, Docket No. 91-54-274(December 23, 1991), in support of her argument. Grievant did not allege a procedural violation with respect to the notice and hearing requirements of W.Va. Code §18A-2-7, relative to her transfer.

RBOE argued it had properly followed its policy, and the law applicable to transferring employees.

Grievant's argument that RBOE's policy is unlawful would certainly be correct if the statutes governing the transfer of employees mandated that the transfer of service personnel be based upon seniority. This is not the case. Transfers of school service 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. . ..

"[T]he 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)." Perry, et al., v. Fayette County Bd. of Educ., Docket No. 96-10-205 (July 25, 1996). Watts v. Lincoln County Bd. of Educ., Docket No. 98-22-348 (Nov. 30, 1998); Eckenrode v. Kanawha County

Bd. of Educ., Docket No. 96-20-302 (Jan. 22, 1997). “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). Transfer decisions "are based on the needs of the school, as decided in good faith by the superintendent and the board. [State ex rel.] Hawkins v. Tyler County Bd. of Educ., 166 W. Va. 363, 275 S.E.2d [908 (1980)], and Post [v. Harrison County Bd. of Educ., Docket No. 89-17-355 (Feb. 20, 1990)]. See Jochum v. Ohio County Bd. of Educ., Docket No. 91-35-396 (Jan. 31, 1992)." Stewart, et al., v. Kanawha County Bd. of Educ., Docket No. 96-20-370 (Jan. 31, 1997). “No statutory limitations have beenplaced on the superintendent's authority to transfer school personnel. The power to transfer employees must be exercised reasonably and in the best interests of school systems and may not be exercised arbitrarily or capriciously. State ex. rel. Hawkins [supra]; see also, Wellman v. Mercer County Bd. of Educ., Docket No. 95-27-327/300 (Nov. 30, 1995).” Eckenrode v. Kanawha County Bd. of Educ., Docket No. 96-20-302 (Jan. 22, 1997).

Grievant's reliance on Gemmer, supra, is also misplaced. In that case the grievant was arguing that the board of education had to place other Aides at other schools on transfer and post Aide positions at those schools, even though the number of Aide positions at the schools did not change, because the programs in which the Aides were working had changed. She argued the programs were distinct, and such changes in job duties constituted a newly created position which had to be posted. The Administrative Law Judge found no statute supported the grievant's interpretation that Aide positions were both “site- and program-based and that an aide vacancy is created when one program in a school is discontinued and another is initiated.” Id. This case is not applicable to the situation at hand. Here we have a policy adopted by RBOE to assist it in making decisions about which employee will be transferred; a decision which is not governed by statute. No statute precludes RBOE from categorizing its Aide positions into program areas when making transfer decisions, if it chooses to do so. The only question is whether this decision was arbitrary and capricious.

Grievant argues the policy is arbitrary and capricious because it is inconsistent, noting that, had there been other less senior Title I Aides at her school, she would not have been the employee subject to transfer, yet she was not allowed to displace a less senior Title I Aide at another school.

The evaluation of a personnel decision under the arbitrary and capricious standard entails close examination of the process used to make the decision. Considerabledeference 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 reviewing body 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).

The undersigned finds nothing unreasonable in RBOE's policy as applicable to this situation. The total number of Aides at CP Elementary was reduced by one. Someone at the school had to be placed on transfer. It was Grievant's program which suffered the loss here, at her school, and there were no less senior Aides in the Title I program at her school. It seems a reasonable approach to put the employee on transfer whose program is being eliminated at a particular school, so long as this approach is used consistently. Perry, supra.

The following Conclusions of Law support the Decision reached.

CONCLUSIONS OF LAW

1. The burden of proof is upon Grievant to prove the elements of her grievance by a preponderance of the evidence. Tibbs v. Mercer County Bd. of Educ., Docket No. 96- 27-074 (Oct. 31, 1996).

2. “[T]he statutes which govern the employment of school personnel do not mandate seniority-based transfers.” Perry, et al., v. Fayette County Bd. of Educ., Docket No. 96-10-205 (July 25, 1996). Watts v. Lincoln County Bd. of Educ., Docket No. 98-22-348 (Nov. 30, 1998);Eckenrode v. Kanawha County Bd. of Educ., Docket No. 96-20-302 (Jan. 22, 1997).

3. “An employee . . . has no vested right to any particular assignment within the county school system. State ex rel. Hawkins v. Tyler County Bd. of Educ., [166 W. Va. 363], 275 S.E.2d 908 (W. Va. 1980); Cawthon [v. Lewis County Bd. of Educ., Docket No 21-87-244-2 (Feb. 16, 1988)].” Gunnells v. Mingo County Bd. of Educ., Docket No. 97-29- 398 (Dec. 10, 1997).

4. "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). Transfer decisions "are based on the needs of the school, as decided in good faith by the superintendent and the board. [State ex rel.] Hawkins,[supra], and Post [v. Harrison County Bd. of Educ., Docket No. 89-17-355 (Feb. 20, 1990)]. See Jochum v. Ohio County Bd. of Educ., Docket No. 91-35-396 (Jan. 31, 1992)." Stewart, et al., v. Kanawha County Bd. of Educ., Docket No. 96-20-370 (Jan. 31, 1997). “No statutory limitations have been placed on the superintendent's authority to transfer school personnel. The power to transfer employees must be exercised reasonably and in the best interests of school systems and may not be exercised arbitrarily or capriciously. State ex. rel. Hawkins[, supra]; see also, Wellman v. Mercer County Bd. of Educ., Docket No. 95-27-327/300 (Nov. 30, 1995).” Eckenrode v. Kanawha County Bd. of Educ., Docket No. 96-20-302 (Jan. 22, 1997).

5. 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 reviewing body 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).

6. “The provisions of W. Va. Code § 18A-4-8b do not provide 'bumping rights' for displaced employees whose positions have been eliminated, but whose seniority is sufficient to allow them continued employment.” Miller v. Hancock County Bd. of Educ., Docket No. 97-15-334 (Nov. 17, 1997).

7. Grievant has not demonstrated RBOE's transfer policy, as applied to her, violated any law, or that it was applied in an arbitrary and capricious manner.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the Circuit Court of Raleigh 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 Grievance Board with the civil action number so that the record can be prepared and transmitted to the circuit court.

BRENDA L. GOULD

Administrative Law Judge

Dated: August 24, 2001

Footnote: 1

This grievance was filed on or about May 10, 2001. The grievance was denied at Level I. Grievant appealed to Level II, where a hearing was held on May 24, 2001, and a decision denying the grievance was issued on June 6, 2001. Grievant waived Level III, appealing to Level IV on June 11, 2001. The parties agreed to submit this grievance for decision based upon the record developed at Level II. Grievant was represented by Gary Archer, and Respondent was represented by Erwin L. Conrad, Esquire. This matter became mature for decision on August 7, 2001, upon receipt of the Level II record.