DANNY DEWHURST,

Grievant,

v v.

DOCKET NO. 02-26-052

MASON COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Danny Dewhurst, filed this grievance against his employer, the Mason County Board of Education ("Board"), on June 7, 2001:

> Violations of WV Code 18A-2-7 in regard to his transfer to Hannan High School.
> Unfairness in scheduling of classes for the 2001-2001 school year.
>
> Relief sought is to be reinstated at Mason County Vocation Center.

The grievance was denied at level one on July 18, 2001, by Ruth E. Caplinger, Vocational Director, and a level two hearing was held on October 10 and December 6, 2001. The grievance was again denied in a written decision dated January 11, 2002, by Dr. Larry E. Parsons, Superintendent. The Board waived participation at level three, and Grievant appealed to level four on February 26, 2002. The parties agreed to submit the grievance on the record developed at the lower levels, and this matter became mature for decision on April 26, 2002, the deadline for the parties' submission of proposed findings of fact and conclusions of law. Grievant was represented by Susan Hubbard, West VirginiaEducation Association, and the Board was represented at level two by Suzanne Dickens, Assistant Superintendent, and at level four by Howard E. Seufer, Jr., Esq., Bowles Rice McDavid

Graff & Love.

SUMMARY OF EVIDENCE

Grievant's Exhibits

None.

Board's Exhibits

Ex. 1 -

March 22, 2001 letter from Dr. Larry E. Parsons to Danny Dewhurst.

Ex. 2 -

Undated letter from Danny Dewhurst to Dr. Larry E. Parsons.

Ex. 3 -

April 17, 2001 Minutes of Mason County Board of Education.

Ex. 4 -

April 24, 2001 Minutes of Mason County Board of Education.

Ex. 5 -

May 14, 2001 Minutes of Mason County Board of Education.

Ex. 6 -

May 15, 2001 memorandum from Suzanne Dickens to Danny Dewhurst.

Ex. 7 -

Mason County Career Center Class Count Fall 2000; Spring 2001; Mason County Career Center Master Schedule Spring 2001; Fall 2001.

Ex. 8 -

January 31, 2001 faculty roster.

Ex. 9 -

August 13, 1999 memorandum from Donald Michael to Ruth Caplinger, Danny Dewhurst, Roger Rainey, Gary Walbrown and Jim Wilson; October 20, 2000

memorandum from Donald Michael and Keith R. Burdette to Dr. Larry Parsons, Ruth Caplinger, Danny Dewhurst, Roger Rainey and Gary Walbrown.

Ex. 10 -

January 3, 2001 Staff Meeting Agenda and Minutes, MCCC (Mason County Career Center).

Ex. 11 -

November 17, 2000 Mason County Career Center Bell Schedule 2000-2001; 2001-2002.

Ex. 12 -

May 15, 1997 Mason County Schools Posting of Position Vacancies for 1997-98.

Ex. 13 -

Mason County Vocational-Technical Center Course Descriptions 2000-2001.

Ex. 14 -

Mason County Career Center Course Description Book 2001-2002.

Ex. 15 -

W. Va. Code § 18A-2-7.

Testimony

Grievant testified in his own behalf, and presented the testimony of Vana Bordman, and Ruth Caplinger. The Board presented the testimony of Ruth Caplinger and Danny Dewhurst.

FINDINGS OF FACT

Based on a careful review of the testimony and evidence of record, I find the following facts have been proven by a preponderance of the evidence.

1. Grievant has been employed by the Board as a vocational agriculture instructor for approximately 21 years, and prior to the 2001-2002 school year, taught at the Mason County Career Center ("MCCC").

2. Student enrollment has been declining in vocational agricultural courses at MCCC, at least

in recent years, due to the overall decline in secondary school enrollment, and due to less student interest in pursuing careers in agriculture.

3. The school system has attempted to reverse the declining student enrollment in agriculture courses, and has tried to interest more students in pursuing this career field. However, these efforts have not reversed the trend.

4. During the 2000-2001 school year, MCCC assigned three teachers to agriculture classes. In the Spring of 2001, after students had made their schedule requests for the 2001-2002 school year, it was apparent that the students' needs could be filled with 2.5 agriculture instructors. Accordingly, the number of agriculture teachers at MCCC was reduced.

5. The Board accomplished the reduction for 2001-2002 by moving, and not replacing, Grievant from MCCC, and transferring him to teach vocational agriculture at Hannan Junior/Senior High School, which has its own agriculture curriculum.

6. The other two certified agriculture teachers at MCCC in 2000-2001 had more seniority than Grievant. A “half” teacher who remained for 2001-2002, Mrs. Morris, helda full-time position, and was considered to be assigned to teach half a day as an agriculture teacher, and half a day as a resource teacher, the latter assignment requiring special education teaching certifications. Even though Mrs. Morris was less senior than Grievant, Grievant did not have the special education certifications needed to perform the resource half of that assignment.

7. Other programs at MCCC had fewer students than vocational agriculture. However, those programs, Machine Tool Technology and Welding, both had only one instructor, and to eliminate those positions would result in elimination of the programs.

DISCUSSION

Grievant contends the Board somehow configured the 2001-2002 master course schedule in a manner that discouraged students from signing up for agriculture courses at MCCC. Grievant also contends Mrs. Morris should have been transferred instead of him as she has less teaching seniority. The Board denies it violated any rules, regulations, statutes, or policies in transferring Grievant.

Grievant has the burden of proving each element of his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); 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.

West Virginia Code § 18A-2-7 governs the transfer of professional employees of a county board of education, and provides, in pertinent part:

> (a) 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. However, an employee shall be notified in writing by the superintendent on or before the first Monday in April if he is being considered for transfer or to be transferred. Only those employees whose consideration for transfer or intended transfer is based upon known or expected circumstances which will require the transfer of employees shall be considered for transfer or intended for transfer and the notification shall be limited to only those employees. Any teacher or employee who desires to protest such proposed transfer may request in writing a statement of the reasons for the proposed transfer. Such statement of reasons shall be delivered to the teacher or employee within ten days of the receipt of the request. Within ten days of the receipt of the statement of the reasons, the teacher or employee may make written demand upon the superintendent for a hearing on the proposed transfer before the county board of education. The hearing on the proposed transfer shall be held on or before the first Monday in May. At the hearing, the reasons for the proposed transfer must be shown. (See footnote 1)

"County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. Nevertheless, this discretion must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary or capricious." Syllabus Pt. 1, Hyre v. Upshur County Bd. of Educ., 186 W. Va. 267, 412 S.E.2d 267 (1991), quoting Syllabus Pt. 3, Dillon v. Bd. of Educ., 177 W. Va. 145, 351 S.E.2d 58 (1986).

The evidence does not support Grievant's theory that the master course schedule was drawn up in such a way as to discourage students from signing up for agriculture courses. In fact, the evidence demonstrated that the three agriculture teachers had input into the courses submitted for the 2001-2002 school year, and that the courses they recommended were included in the students' course booklet. The students then signedup for courses in which they have an interest, and depending upon how students signed up, a course either was placed on the master schedule or was scratched. In fact, there was enough interest in Agricultural Science I to fill four sections, two in the Fall and two in the Spring. Unfortunately, there was not enough interest in other agriculture courses to justify keeping the three teachers. Thus, the Board acted reasonably and in the best interests of the schools when it reduced the number of faculty members assigned to teach vocational agriculture at MCCC.

With respect to Grievant's argument that he has more seniority than Mrs. Morris, there is no requirement in W. Va. Code § 18A-2-7 that transfers be based on seniority. Howard v. Mingo County Bd. of Educ., Docket No. 99-29-241 (Sept. 16, 1999); Tracewell v. Wood County Bd. of Educ., Docket No. 90-54-365 (Aug. 2, 1991). In this case, the Board did look to experience among the three vocational agriculture teachers in determining which position to reduce. Moreover, even though Grievant does have more teaching seniority than Mrs. Morris, he does not have special education certification, which is a requirement for the resource teacher portion of her assignment. The evidence established that Mrs. Morris is a half-time agriculture teacher and a half-time resource teacher. It would have been inefficient for the Board to transfer Mrs. Morris only so Grievant could teach half-time, and then have to hire another half-time instructor for the resource position.

CONCLUSIONS OF LAW

1. Grievant has the burden of proving each element of his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State EmployeesGrievance Bd. 156 C.S.R. 1 § 4.21 (2000); 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. W. Va. Code § 18A-2-7 governs the transfer of professional personnel, and Grievant received all necessary due process under that statute.

3. “County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. Nevertheless, this discretion must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary or capricious.” Syllabus Pt. 1, Hyre v. Upshur County Bd. of Educ., 186 W. Va. 267, 412 S.E.2d 267 (1991), quoting Syllabus Pt. 3, Dillon v. Bd. of Educ., 177 W. Va. 145, 351 S.E.2d 58 (1986).

4. There is no requirement in W. Va. Code § 18A-2-7 that transfers be based on seniority. Howard v. Mingo County Bd. of Educ., Docket No. 99-29-241 (Sept. 16, 1999); Tracewell v. Wood County Bd. of Educ., Docket No. 90-54-365 (Aug. 2, 1991).

5. The record does not establish that the Board exercised its transfer power arbitrarily or not in good faith for the benefit of the school system. The Board did not abuse its discretion in transferring Grievant on the basis that he was the least senior MCCC vocational agriculture teacher, and did not

have the special education certification which would have allowed him to stay at MCCC.

Accordingly, this grievance is **DENIED**.

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

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MARY JO SWARTZ

Administrative Law Judge

Dated: May 9, 2002

Footnote: 1

Grievant does not allege any due process deficiencies in his notice of transfer.