SANDRA KING,

Grievant,

v. **Docket No. 02-20-147**

KANAWHA COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Sandra King, employed by the Kanawha County Board of Education (KCBOE) as a teacher, filed a level one grievance on April 3, 2002, in which she alleged violations of W. Va. Code §§ 18A-4-7a and 18A-2-7, when she was transferred. For relief, Grievant requested reinstatement to John Adams Junior High School. Grievant's immediate supervisor lacked authority to grant the requested relief at level one, and the grievance was denied at level two. Grievant elected to bypass consideration at level three, and a level four appeal was filed on May 28, 2002. The parties agreed that a level four decision could be made based upon the lower-level record. A stipulation of facts and proposed conclusions of law were filed by Anita Mitter of WVEA, Grievant's representative, and KCBOE counsel James Withrow, Esq., on July 16, 2002, at which time the matter became mature for decision.

The facts stipulated to by the parties are set forth as the following findings of fact.

Findings of Fact

1. Grievant, Sandra King, has been employed by the Kanawha County Board of Education as a classroom teacher since August 24, 1971. She is certified in Physical Education and Health 7 - 12, Home Economics 7 - 9, and Counseling 7 - 12.

2. During the 2001 - 2002 school year, Grievant was assigned to teach fourperiods of Family and Consumer Science (Home Economics), one period of Health, and one period of Steps 9, a class involving career choices, at John Adams Junior High School (John Adams).

3. Beginning with the 2002 - 2003 school year, John Adams is converting to a middle school configuration encompassing only grades 6 - 8.

4. Due to a projected decrease in enrollment, the professional staff was scheduled to be

reduced by one regular classroom teacher. To meet this reduction, the Home Economics programs was eliminated, and Grievant placed on the transfer list. This action did not involve a reduction in force.

5. Grievant was the only teacher at John Adams assigned to teach Home Economics during the 2001 - 2002 school year; however, she had taught Health in prior years.

6. A number of individuals assigned to teach Health at John Adams have less seniority than Grievant.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her 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. A preponderance of the evidence is defined as "evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the facts sought to be proved is more probable than not." Black's LawDictionary (6th ed. 1991), Leichliter v. W. Va. Dept. of Health and Human Res., Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, a party has not met its burden of proof. Id.

Grievant argues that because she holds multiple certifications, and has been assigned to teach Health and Physical Education over the course of her employment at John Adams, KCBOE should have transferred the Health teacher with the least seniority. KCBOE asserts that it properly transferred the teacher with the least seniority in the area being reduced, i.e., Home Economics.

Although Grievant alleged violations of W. Va. Code §§ 18A-4-7a and 18A-2-7, she only generally relies on these provisions to support her claim that seniority was the only factor to be considered when making the staff reduction. KCBOE relies upon its Administrative Regulation G44A, which provides, in part:

If a reduction in staffing at a school is scheduled to occur commencing with the next ensuing school year as a result of declining enrollment, the principal shall determine how best to meet the curricular needs of the school with remaining staff. In reaching this determination the principal shall determine the curricular area[s] where reductions could be absorbed. The **least senior classroom teacher**

currently assigned to teach in the area[s] to be reduced shall be recommended for transfer unless the principal determines that such least senior teacher has teaching responsibilities in another curricular area which may not be absorbed by remaining staff.
(Emphasis added)

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 employeeshall 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.

"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).

In the present matter, the Board acted reasonably and in the best interest of the schools when it eliminated a program not required by the middle school curriculum, and transferred the only faculty member assigned to teach that subject. With respect to Grievant's argument that she has more seniority than other individuals assigned to teach Health, there is no requirement in W. Va. Code §

18A-2-7 that transfers be based on seniority. Dewhurst v. Mason County Bd. of Educ., Docket No. 02-26-052 (May 9, 2002); Howard v. Mingo County Bd. of Educ., Docket No. 99-29-241 (Sept. 16, 1999); Tracewellv. Wood County Bd. of Educ., Docket No. 90-54-365 (Aug. 2, 1991). In addition to the foregoing findings of fact and discussion, it is appropriate to make the following formal conclusions of law.

Conclusions of Law

1. Grievant has the burden of proving her 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.

2. "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).

3. There is no requirement in W. Va. Code § 18A-2-7 that transfers be based on seniority. Dewhurst v. Mason County Bd. of Educ., Docket No. 02-26-052 (May 9, 2002); 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).

4. 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 by transferring Grievant on the basis that she was the only Home Economics teacher assigned to the school, and the program was eliminated. Accordingly, this grievance is **DENIED**.

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

Date: August 20, 2002 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE