MICHAEL JOHNSON,

Grievant,

v. **Docket No. 02-42-238**

RANDOLPH COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Michael Johnson ("Grievant") initiated this proceeding on May 24, 2002, alleging he should not have been transferred from his position as Driver's Education teacher at Elkins High School. He seeks reinstatement to his former position. The grievance was denied at level one, and a level two hearing was held on July 2, 2002. A written decision, denying the grievance at level two, was issued on July 18, 2002. Level three consideration was bypassed, and Grievant appealed to level four on August 1, 2002. Upon appeal to level four, the parties elected to have a decision rendered based upon the record developed below, supplemented by written fact/law proposals submitted on September 24, 2002. Grievant was represented by Mary Snelson of the West Virginia Education Association, and Respondent was represented by counsel, Kimberly Croyle.

The following findings of fact are made based upon a preponderance of the evidence of record.

Findings of Fact

1. Grievant has been employed by Respondent Randolph County Board of Education ("RCBOE") for twenty-four years. He has most recently been assigned to Elkins High School ("EHS") as the Driver's Education teacher for the past fifteen years.

2. In the spring of 2002, EHS Principal Tom Pritt was asked to eliminate three positions from the school, due to declining student enrollment and a resulting loss of state funding.

3. Grievant's position was proposed for elimination at EHS, because Driver's Education is considered an elective course not required for graduation. Grievant was the least senior Driver's Education teacher at EHS.

4. Grievant was properly notified of his proposed transfer and received a hearing before RCBOE on May 6, 2002. (See footnote 1)

5. Following the hearing, Grievant was transferred to a Physical Education teaching assignment at Coalton and Beverly Elementary Schools beginning with the 2002- 2003 school year.

6. After the elimination of Grievant's position, there were still three Driver's Education classes offered each semester for the 2002-2003 school year, and all students who requested the course had been registered for it.

Discussion

Grievant bears the burden of proving the elements of his grievance by a preponderance of the evidence. Tibbs v. Mercer County Bd. of Educ., Docket No. 96-27- 074 (Oct. 31, 1996). Grievant contends that the elimination of his position has caused a hardship upon the students enrolled in Driver's Education at EHS. Because there will only be one teacher for each course, the students who are not actually driving will be sent to other teachers' classrooms while the teacher is driving with the remaining students. In the past, the students who were not driving received classroom instruction from the other Driver's Education teacher.

"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). The Supreme Court of Appeals of West Virginia has "repeatedly held that the power to transfer teachers must be exercised in a reasonable manner and in the best interests of the school." Townshend v. Bd. of Educ. of County of Grant, 183 W. Va. 418, 396 S.E.2d 185, 188 (1990). See Dillon v. Bd. of Educ. of County of Wyoming, 177 W. Va. 145, 351 S.E.2d 58 (1986). Since Grievant has not alleged that the provisions of the transfer statute were violated in any way, the only issue to be addressed is whether or not his transfer was arbitrary and capricious.

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).

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). Classroom teachers have no vested right to be assigned to a particular school in the county. Hawkins, supra. W. Va. Code § 18A-2-7 "grants broad discretion to a superintendent, and gives him the authority to transfer school personnel subject only to the approval of the board. Post [supra]." Stewart, supra.

In the instant case, Grievant contends that only 12% of the eligible students were allowed to enroll in Driver's Education for the 2002-2003 school year. However, he has misinterpreted the information introduced at Level Two. RCBOE considered every student in the 10th, 11th and 12th grades as "eligible" students, then determined how many seatswere available in the course, resulting in the conclusion that 12% of those eligible would be able to take the course. However, not every student in those three grades requested the course, and Respondent's evidence establishes clearly that all those who requested it for the 2002-2003 school year have been enrolled.

Grievant has cited W. Va. Code § 18-6-8, governing Driver's Education programs, as a provision which has been violated by Respondent in this case. That statute provides:

> Before any pupil is graduated from a secondary school after the first day of September, one thousand nine hundred seventy-five, he shall first be provided an opportunity and encouraged to successfully complete a driver education course approved by the state board in a public, private, parochial or denominational secondary school within the State. If a pupil has successfully completed a similar course in a secondary school of another state and the course is accepted by the state board as adequately meeting and complying with the course standards established by the state board, the aforementioned requirement shall be deemed fulfilled regarding that pupil.

The evidence in this case does not support a conclusion that this statute has been violated, there being no evidence that students at EHS have been denied their opportunity to take the course prior to graduation. In addition, this Grievance Board has previously recognized that "[this statutory

scheme] operates to make a course in driver education a 'required elective' in public secondary schools but does not compel a board of education to maintain a specific ratio of driver education teachers to the student population eligible to complete such a course of instruction." Hill v. Kanawha County Bd. of Educ., Docket No. 94-20-537 (Mar. 22, 1995), aff'd sub nom., Hill v. Raglin, No. 95-AA-106 (Circuit Court of Kanawha County, Jan. 8, 1997).___

Accordingly, the undersigned finds that, in view of its diminishing funds and need to eliminate teaching positions, along with the evidence that interested students at EHSare still provided the opportunity to take Driver's Education, Grievant's transfer was not arbitrary and capricious or in violation of any statute.

The following conclusions of law support the decision reached.

Conclusions of Law

1. Grievant bears the burden of proving the elements of his grievance by a preponderance of the evidence. Tibbs v. Mercer County Bd. of Educ., Docket No. 96-27- 074 (Oct. 31, 1996).

2. 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).

3. "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).

4. Grievant's transfer from his Driver's Education position was not arbitrary and capricious or otherwise improper.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or 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. 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: October 21, 2002 _____

DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

Grievant does not contend that his transfer was procedurally flawed in any respect.