ANNETTA VEST,

Grievant,

v. **Docket No. 06-12-138**

GRANT COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Annetta Vest ("Grievant") filed this grievance at level four on April 27, 2006, after she was transferred to a half-time position on May 10, 2006. (See footnote 1) She seeks as relief to be reinstated to her full-time position at Petersburg High School ("PHS"). A level four hearing was conducted in the Grievance Board's office in Elkins, West Virginia, on June 2, 2006. Grievant was represented by Anita Mitter of the West Virginia Education Association ("WVEA"), and Respondent was represented by counsel, Dennis DiBenedetto. This matter became mature for consideration upon receipt of the parties' fact/law proposals on July 3, 2006.

The following material facts have been proven by a preponderance of the evidence.

Findings of Fact

1. Grievant has been employed by the Grant County Board of Education ("GCBOE") since 1999. Her assignment during the 2005-2006 school year was as a full- time business education teacher at PHS.

2. Grievant is certified in Business Education and Business Math, 5-12.

3. James White is also certified in Business Education, 5-12, and was assigned to the Union Educational Complex in 2005-2006, holding two half-time positions. He has less seniority than Grievant.

4. In early 2006, Principal Dennis Albright informed Grievant that, due to having too few students register for business courses, and the need for additional "core" classes (such as social studies and math), he could potentially be recommending that her position be reduced to half-time for

the upcoming school year. At least two subsequent meetings with Mr. Albright, during which WVEA representatives were present, took place to talk about the potential reductions for the upcoming school year, including Grievant's position being reduced to half-time.

5. By the spring of 2006, GCBOE officials had determined that the total number of full-time equivalent positions needed to be reduced by one. Because of the low number of students registered for business classes, both Grievant and Mr. White would be recommended for reduction to half-time.

6. By certified letter dated March 1, 2006, Superintendent Marsha Carr-Lambert notified Grievant that she was being considered “for transfer” and the stated reason was “program reconfiguration” and “program reduced to half-time.”

7. In response to this notification, Grievant requested a hearing before the Board, which was scheduled for March 28, 2006. 8. At Grievant's request, the Board hearing was postponed, and it was eventually held on April 25, 2006. By correspondence dated May 10, 2006, Superintendent Carr-Lambert informed Grievant that she had been transferred to a half- time position as Business Education Teacher at PHS.

9. There are currently no full-time business education positions in Grant County.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her claims by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2004); *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.

Grievant argues that the Board's proposed action was improperly called a transfer, and it was actually a reduction in force (“RIF”). Therefore, she believes that improper procedures were followed, and that she had “bumping” rights to be employed in a less senior business teacher's position, namely Mr. White, who she believes should have been RIF'd completely. (See footnote 2) Respondent contends that, despite whether the action was termed a transfer or a RIF, the applicable procedures were followed, and Grievant has no right to a full-time position which does not exist.

Grievant is correct in her assertion that the events which are the subject of this grievance were not an actual transfer. Transfers are governed by W. Va. Code § 18A-2-7, and involve actions where

an employee is transferred from one position to another, andtheir assignment or school is changed. However, in the instant case, an actual reduction in the number of full-time positions in the county was the reason for the recommendation, which is governed by the provisions of W. Va. Code § 18A-4-7a(j). That section provides, in pertinent part:

Whenever a county board is required to reduce the number of professional personnel in its employment, the employee with the least seniority shall be properly notified and released from employment pursuant to the provisions of ... [18A-2-2] ... of this chapter .... Provided, however, That an employee subject to release shall be employed in any other professional position where such employee is certified and was previously employed or to any lateral area for which such employee is certified and/or licensed, if such employee's seniority is greater than the seniority of any other employees in that area of certification and/or licensure: Provided further, That if an employee subject to release holds certification and/or licensure in more than one lateral area and if such employee's seniority is greater than the seniority of any other employee in one or more of those areas of certification and/or licensure, the employee subject to release shall be employed in the professional position held by the employee with the least seniority in any of these areas of certification and/or licensure.

In turn, W. Va. Code § 18A-2-2 provides that a teacher's continuing contract can only be terminated upon proper written notice, stated cause and an opportunity for a hearing before the Board. That statute further provides that a teacher's dismissal for lack of need must be “based upon known or expected circumstances which will require dismissal for lack of need.”

County boards of education have broad discretion in personnel matters, including making job assignments and transfers, but must exercise that discretion in a manner which is not arbitrary or capricious. *Dillon v. Wyoming County Bd. of Educ.*, 351 S.E.2d 58 (W. Va. 1986); *Conrad v. Nicholas County Bd. of Educ.*, Docket No. 97-34-388 (Jan. 12, 1998);*Mullins v. Logan County Bd. of Educ*., Docket No. 94-23-283 (Sept. 25, 1995); *Dodson v. McDowell County Bd. of Educ.*, Docket No. 93-33-243 (Feb. 15, 1994).

Generally, an action is considered arbitrary and capricious if the agency 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 was so implausible that it cannot be ascribed to a difference of opinion. *See Bedford County Memorial Hosp. v. Health and Human Serv.,* 769 F.2d1017 (4th Cir.

1985); *Yokum v. W. Va. Schools for the Deaf and the Blind*, Docket No. 96-DOE-081 (Oct. 16., 1996). While a searching inquiry into the facts is required to determine if an action is arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute her judgment for that of the board of education. *See generally Harrison v. Ginsberg*, 169 W. Va. 162, 286 S.E.2d 276, 283 (1982).

It appears that Grievant believes that, pursuant to the above-cited portion of W. Va. Code § 18A-4-7a, she has somehow been deprived of her "bumping" rights. However, a review of the evidence reveals that this is clearly not the case. Although there is very little evidence explaining what the situation was at the Union Education Complex, where Mr. White is assigned, it must be concluded that there continued to be a need for a half-time business education teacher. (See footnote 3) Likewise, at PHS, there continued to be a similar need forthe upcoming school year. Accordingly, the undersigned cannot find anything improper in Respondent's actions. Whether the action is referred to as a "RIF" or a "transfer," Grievant was provided her statutory right to notice and a hearing, and proper reasons were shown for the reduction in positions. Because the courses Grievant teaches are electives and had low registration numbers, and funding was needed for required core classes, Respondent was faced with the obvious need to reduce business offerings. Accordingly, reduction of Grievant's position to half-time was a logical decision. Grievant has demonstrated no right to "bump" into Mr. White's position, because his school continued to need a half-time business teacher.

The following conclusions of law support this decision.

Conclusions of Law

1. Grievant has the burden of proving her claims by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2004); *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 an employee is reduced in force, he or she is entitled to placement "in any other professional position where such employee is certified and was previously employed or to any lateral area for which such employee is certified" if the employee has more seniority than the person holding the position. W. Va. Code § 18A-4-7a. 3. County boards of education have broad discretion in personnel matters, including making job assignments and transfers, but must exercise that discretion

in a manner which is not arbitrary or capricious. *Dillon v. Wyoming County Bd. of Educ.*, 351 S.E.2d 58 (W. Va. 1986); *Conrad v. Nicholas County Bd. of Educ.*, Docket No. 97-34-388 (Jan. 12, 1998); *Mullins v. Logan County Bd. of Educ*., Docket No. 94-23-283 (Sept. 25, 1995); *Dodson v. McDowell County Bd. of Educ.*, Docket No. 93-33-243 (Feb. 15, 1994).

4. Generally, an action is considered arbitrary and capricious if the agency 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 was so implausible that it cannot be ascribed to a difference of opinion. *See Bedford County Memorial Hosp. v. Health and Human Serv.,* 769 F.2d1017 (4th Cir. 1985); *Yokum v. W. Va. Schools for the Deaf and the Blind*, Docket No. 96-DOE-081 (Oct. 16., 1996).

5. A teacher's dismissal for lack of need must be “based upon known or expected circumstances which will require dismissal for lack of need.” W. Va. Code § 18A- 2-2.

6. Grievant has failed to prove that the reduction of her position to half-time was arbitrary and capricious, an abuse of discretion, or otherwise improper.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County, or to the Circuit Court of Grant County. Any such appeal must be filed within thirty (30) days ofreceipt 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 9, 2006

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DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

Upon convening the level four hearing, the undersigned was informed that this grievance had not proceeded through the lower levels of the grievance procedure, due to Grievant's belief that she was "terminated." Although W. Va. Code § 18A-2-8 only allows grievances to come directly to level four when an employee has been terminated/suspended for disciplinary reasons, the parties agreed that this matter could proceed at level four.

Footnote: 2

This argument is somewhat difficult to understand, in light of the fact that Mr. White's position is also only half-time for the 2006-2007 school year.

Footnote: 3

Without additional evidence, this case must be distinguished from Edgell v. Marion County Board of Education, Docket No. 93-24-192 (Dec. 28, 1993), wherein the board reduced three employee's contracts by one-half in order to eliminate one and a half positions. There was no evidence in that case regarding continued need for half-time positions, so it was determined that "partial reduction of all employees' employment to offset the number of positions eliminated" was contrary to law. However, in the instant case, the evidence established that only a half-time position was still needed at each school, so a full reduction of the least senior teacher would still have left Grievant with onlya half-time position.