REBECCA MOHN, .

.

Grievant, .

.

v. . DOCKET NO. 93-20-500 .

KANAWHA COUNTY BOARD OF EDUCATION, .

.

Respondent. .

D E C I S I O N

This is a grievance by Rebecca Mohn (hereinafter Grievant), currently employed by the Kanawha County Board of Education (hereinafter KCBE) as a Librarian, alleging a violation of W. Va. Code §18A-4-16 in regard to her being required to perform duties as lunch room supervisor. This matter was initially grieved at Level I on October 25, 1993. Following denial of her grievance at Level I, a hearing was held at Level II on November 10, 1993. After her grievance was denied at Level II, Grievant timely appealed directly to Level IV as provided under W. Va. Code §18-29-4(c). Grievant elected to waive her right to a hearing at Level IV and have this grievance decided upon the basis of the record developed below. (See footnote 1) Because there is no material dispute as to the facts in this matter, the following findings of fact are appropriate:

FINDINGS OF FACT

1. Grievant is employed by KCBE as a Librarian at Oakwood Elementary School. T at 7. (See footnote 2)

2. Grievant entered into a contract with KCBE to perform the duties of a Lunchroom Supervisor for the 1992-93 school year for $200. See G Ex 1. Grievant performed the same duties under a similar written contract for the two previous school years and without a written contract for the school year prior to that. T at 8.

3. Prior to the 1993-94 school year, Grievant advised the school principal that she no longer

wanted to supervise the lunch room. When the principal failed to find another teacher willing to accept that responsibility, he assigned Grievant to perform those duties from 11:40 a.m. to 12:10 p.m., allowing her a duty-free lunch period from 11:10 a.m. to 11:40 a.m.

4. Grievant received no additional compensation for lunch room duty during the 1993-94 school year, since she was afforded a duty-free lunch period.

DISCUSSION

Grievant contends that she cannot be assigned to perform duty as a lunch room supervisor without her agreement under W. Va. Code§18A-4-16. That statute, which governs "Extracurricular assignments," contains the following pertinent language:

> (1) The assignment of teachers and service personnel to extracurricular assignments shall be made only by mutual agreement of the employee and the superintendent, or designated representative, subject to board approval. Extracurricular duties shall mean, but not be limited to, any activities that occur at times other than regularly scheduled working hours, which include the instructing, coaching, chaperoning, escorting, providing support services or caring for the needs of students, and which occur on a regularly scheduled basis.

Respondent argues that this matter is controlled by Kiser v. Kanawha County Board of Education, Docket No. 20-88-049 (June 22, 1988), wherein this Board upheld the employer's action in assigning a classroom teacher to supervise students participating in a breakfast program. (Accord, Hanson v. Kanawha County Bd. of Educ., Docket No. 91-20-092 (Apr. 24, 1991).) After reviewing Kiser, it appears that the outcome there hinged on an interpretation of W. Va. Code §18-5-37, which prohibits classroom teachers from participating in the operation of the school breakfast program. Thus, it does not appear that §18A-4-16 was directly considered in deciding Kiser.

The undersigned finds that the decision of the West Virginia Supreme Court of Appeals in Cruciotti v. McNeel, 396 S.E.2d 191 (W. Va. 1990), is more instructive. There, it was determined that an athletic trainer position involved an extracurricular assignment under W. Va. Code §18A-4-16 since "most of the athletic trainer's duties take place after regular school day hours." Id. at 194 (emphasis in original). Since the duties assigned to Grievant are to be performed during the school day, they do not constitute anextracurricular assignment within the meaning of W. Va. Code §18A-4-16.

In addition to the findings of fact made earlier and the foregoing discussion, the following conclusions of law are appropriate in this matter:

CONCLUSIONS OF LAW

1. Grievant has the burden of proving each element of a grievance of this nature by a preponderance of the evidence. Stout v. Harrison County Bd. of Educ., Docket No. 93-17-081 (Apr. 12, 1994); Randolph v. Harrison County Bd. of Educ., Docket No. 17-88-001-2 (June 30, 1988).

2. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel so long as that discretion is exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious. Dillon v. Bd. of Educ., 351 S.E.2d 58 (W. Va. 1986).

3. Assignment of a school librarian to duties as a lunch room supervisor during the normal school day does not involve an extracurricular assignment within the meaning of W. Va. Code §18A-4-16 and, thus, this statute was not violated. See Cruciotti v. McNeel, 396 S.E.2d 191 (W. Va. 1990).

4. Under the circumstances present here, KCBE did not abuse its discretion by assigning Grievant to duty as a lunch room supervisor while providing a duty-free lunch period.

Accordingly, the 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. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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LEWIS G. BREWER

Administrative Law Judge

Dated: June 27, 1994

Footnote: 1This case became mature for decision on May 23, 1994 upon expiration of the established time limit for

submission of written arguments. Neither party elected to supplement their previous pleadings in this matter.

Footnote: 2All transcript references relate to Grievant's Level II hearing on November 10, 1993.