DEBRA GLOVER,

Grievant,

v. DOCKET NO. 95-36-408

PENDLETON COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Debra Glover, filed this grievance on August 23, 1995, alleging the Pendleton County Board of Education ("Board") "[v]iolated W.Va. Code 18A-4-7a - A second and third grade position was created at FGS, and the position was not posted to public, but given to a teacher from FGS." Grievant's requested relief is for the position to be posted in order that she have the opportunity to bid on the position. The parties agreed to submit the case on the level two record developed below, and the case became mature on October 2, 1995, the deadline for submission of proposed findings of fact and conclusions of law.

The facts in this case are not in dispute and are more properly set forth in the following findings of fact.

Findings of Fact

1. Grievant is an 11-year employee of the Board and is employed as a first-grade teacher at Upper Tract School.

2. The Board determined in the Spring 1995 it was necessary to reduce some professional positions, including one held by Carol Vandevander, who was at that time filling a position of gifted teacher. Ms. Vandevander also held a library certification and an elementary education certification.

4. Pursuant to W. Va. Code § 18A-2-7, Ms. Vandevander was placed on the transfer list in Spring 1995.

5. Pursuant to W. Va. Code § 18A-4-7a, the Board reviewed its roster of professional

personnel to see if there was an employee with less seniority within Ms. Vandevander's areas of certification.

6. Donita Kimble had been hired for the 1993-94 school year as an elementary education teacher at Franklin Grade School and had been assigned to teach a first and second grade (1/2) split classroom. Ms. Kimble had less seniority than Ms. Vandevander.

7. Ms. Vandevander was transferred into Ms. Kimble's position as elementary teacher at Franklin Grade School, and Ms. Kimble was bumped from her position.

8. During the 1995-96 school year, due to enrollment, it became necessary to realign the teaching assignment previously held by Ms. Kimble, and Ms. Vandevander was assigned to teach a 2/3 split classroom.

9. The total number of classroom teaching positions at Franklin Grade School did not increase from one school year to the next.

10. Grievant learned in August, 1995, that the 2/3 split classroom position had been filled by Ms. Vandevander and filed the instant grievance.

Discussion

Grievant alleges the Board violated W. Va. Code § 18A-4-7a when it filled the 2/3 split classroom position without posting the position, relying on the provision of that Code section that states

> Boards shall be required to post and date notices of all openings in established, existing or newly created positions in conspicuous working places for all professional personnel to observe for at least five working days.

Grievant also relies on Marion County Bd. of Educ. v. Bonfantino, 366 S.E.2d 650 (W. Va. 1988), wherein the West Virginia Supreme Court held:

> Where a vacancy occurs in a teaching position at a public school, the county board of education must post a notice of such vacancy pursuant to W. Va. Code, 18A-4-8b(a), and the principal of the school in which the vacancy occurs is without authority to assign another teacher to the vacancy.

The Board argues that it acted in conformance with the statute when it transferred a professional employee whose position was being reduced into a position held by the least senior employee within

the transferred employee's areas of certification. The undersigned agrees with the Board.

Grievant's reliance on Bonfantino, supra, is misplaced. Bonfantino was a correct statement of the law at the time, but the applicable statute has been repealed, replaced, and amended several times since that case was decided. W. Va. Code § 18A-4-8b, relied upon in Bonfantino, was repealed and replaced in 1990 with currentCode § 18A-4-7a. Since that time, Code § 18A-4-7a has been amended several times, and exceptions have been provided to the general rule requiring posting of "all openings in established, existing or newly created positions". W. Va. Code § 18A-4-7a, ¶10.

Those exceptions are more fully set forth in this Grievance Board's decision in Lloyd, et al. v. Kanawha County Bd. of Educ., Docket No. 91-20-327 (Oct. 29, 1991), aff'd, Circuit Court of Kanawha County, Civil Action No. 91-AA-251 (Dec. 6, 1993). Included in those exceptions is Code § 18A-4-7a, ¶6, the provision of the statute applicable to the instant grievance. That provision provides:

> Whenever a county board is required to reduce the number of professional personnel in its employment, the employee with the least amount of seniority shall be properly notified and released from employment pursuant to the provisions of section two [§ 18A-2-2], article two 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/or licensed, if such employee's seniority is greater than the seniority of any other employee 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 those areas of certification and/or licensure.

Thus, when Ms. Vandevander's position was identified to be reduced, it was proper for the Board to review its professional roster for the least senior employee within the areas of certification held by Ms. Vandevander, bump that employee, andplace Ms. Vandevander into that position, i.e., the elementary teacher position at Franklin Grade School. (See footnote 1)

With regard to Grievant's allegation that the position was a "new" position because Ms. Kimble had taught a 1/2 split, and Ms. Vandevander was now teaching a 2/3 split, the statute once again provides an exception to the posting requirements in that instance. W. Va. Code § 18A-4-7a, ¶11 states:

> Notwithstanding any other provision of the code to the contrary, where the total number of classroom teaching positions in an elementary school does not increase from one school year to the next, but there exists in that school a need to realign the

> number of teachers in one or more grade levels, kindergarten through six, teachers at the school may be reassigned to grade levels for which they are certified without that position being posted: Provided, That the employee and the county board of education mutually agree to the reassignment.

Thus, the Board did not violate the statute when it reassigned the 1/2 split teaching position to a 2/3 split teaching position for the 1995-96 school year without posting the position.

Conclusions of Law

1. W. Va. Code § 18A-4-7a, ¶6, like Code § 18A-4-7a, ¶¶11 and 12, which relate to the filling of certain elementary school teaching positions, creates an exception to the posting requirements of Code § 18A-4-7a,¶10. Unless Code § 18A-4-7a, ¶¶6, 11, or 12, applies to the vacancy, it must be posted. See Thomas v. Kanawha County Bd. of Educ., Docket No. 91-20-287 (Nov. 14,1991), citing Lloyd v. Kanawha County Bd. of Educ., Docket No. 91-20-327 (Oct. 29, 1991), aff'd, Circuit Court of Kanawha County, Civil Action No. 91-AA-251 (Dec. 6, 1993).

2. Grievant has failed to prove that the Board violated Code § 18A-4-7a in not posting the elementary teacher vacancy created by the bumping and transferring of professional employees in accordance with Code § 18A-4-7a, ¶6.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Pendleton 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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MARY JO SWARTZ

Administrative Law Judge

Dated: October 19, 1995

Footnote: 1 *There is no allegation that Ms. Vandevander was placed into an area of certification in which she had little or no experience. Cf. State ex rel. Melchiori v. Bd. of Educ. of County of Marshall, 188 W. Va. 575 (W. Va. 1992).*