CAROLYN WALLS

v. Docket No. 95-55-157

WYOMING COUNTY BOARD OF EDUCATION

DECISION

The grievant, Carolyn Walls, is employed by the Wyoming County Board of Education (Board) as a half-time Custodian at Baileysville Elementary School (BES). She filed this grievance at Level I October 11, 1994, over her unsuccessful bid for an additional half-time Cook position at Pineville Riverside School (PRS). (See footnote 1) Her supervisor was without authority to address the complaint and the grievance was denied at Level II following a hearing held March 1, 1995. The Board, at Level III, declined to consider the matter
and appeal to Level IV was made April 24, 1995. A hearing was held May 16, 1995, and the parties submitted proposed findings of fact and conclusions of law by June 19, 1995.

The PRS position was posted August 2, 1994. The grievant, who served as a substitute Cook prior to taking her Custodian position,and Gloria Stewart, an Aide on the Board's preferred recall list (See footnote 2) who had passed the Cook competency test, (See footnote 3) made timely applications. At the time the grievant made application for the post, she advised the Board's central office that she would not relinquish her half-time, 3:00 p.m. to 6:30 p.m. BES position and was seeking to hold both. (See footnote 4) At some point, Superintendent of Schools Frank Blackwell or other administrators determined that there would be scheduling conflicts, particularly in the area of state-mandated in-service training, if the grievant were allowed to hold both positions. She was eventually told that she could not hold both. (See footnote 5) The grievant refused to withdraw her conditions and Ms. Stewart was ultimately awarded the job.

The grievant asserts that Superintendent Blackwell's determination that her placement in the position would cause conflicts in schedules was flawed and the rejection of her application was, therefore, arbitrary and capricious. The Board maintains Mr. Blackwell's assessment was accurate and was based not only on obvious in-service training conflicts but was also predicated on his belief that there would be other, less predictable conflicts. The Board urges that the superintendent's

assessment be afforded deference.

Implicit in the provisions of W.Va. Code §18A-4-8b governing the appointment of school service employees (See footnote 6) is that an employeemaking application must be available to assume the duties of a position at the times designated by the Board. See, Barber v. McDowell County Bd. of Educ., Docket No. 94-33-405 (April 21, 1995). (See footnote 7) When an employee places conditions, such as retention of a currently held position, on his application and those conditions are rejected for reasons which are not arbitrary or capricious, the employee has essentially made no application. Since county board administrators are clearly in a better position to appraise the feasibility of allowing an employee to concurrently occupy two positions, deference should be afforded their determinations in the matter. Id. The grievant herein has not proven by a preponderance of the evidence that Superintendent Blackwell's decision to reject her application was unreasonable, based on inaccurate information or otherwise arbitrary or capricious.

It is not necessary to set forth an extensive analysis of the evidence regarding the conflicts in schedules that the grievant's appointment to the position might cause. It is sufficient to note that the Board has demonstrated that accommodations in her schedules at the two different schools and perhaps even the countyschedule for the in-service training sessions for the two classifications would be necessary if the grievant were to hold both. (See footnote 8) While the grievant presented evidence which tends to discount the extent to which those accommodations would be inconvenient or disruptive, that evidence falls considerably short of establishing that Mr. Blackwell was unreasonable or relying on inaccurate information in rejecting her bid for the position.

Moreover, the grievant's evidence does not address the superintendent's conclusion that there would be other, unforeseen situations where the grievant's assignment to both schools would cause problems of a logistical nature. Notice can be taken that the efficient operation of a school necessitates that school employees, particularly Custodians, occasionally work beyond or make adjustments in their regularly scheduled shifts. After hours student and staff functions, weather conditions and even the unexpected personal needs of the employee all can require deviation from the schedule. In short, Mr. Blackwell's assertion at Level II that "emergencies" do occur is more than unfounded speculation. The undersigned, therefore, concludes that the grievant has failed to show that the Board acted arbitrarily in the rejection of her bid for the PRS position.

Accordingly, the grievance is **DENIED**.

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

_____

JERRY A. WRIGHT

ADMINISTRATIVE LAW JUDGE

Dated: August 29, 1995

Footnote: 1The grievant initially also protested her non-selection for a half-time position at Road Branch School. At Level IV, she withdrew that portion of her complaint.

Footnote: 2W.Va. Code §18A-4-8b provides,

> *All employees whose seniority with the county board is insufficient to allow their retention by the county board during a reduction in work force shall be placed upon a preferred recall list and shall be recalled to employment by the county board on the basis of seniority.*

Footnote: 3W.Va. Code §18A-4-8e provides,

> *The state board of education shall develop and cause to be made available competency tests for all of the classification titles defined in section eight [§ 18A-4-8] and listed in section eight-a [§ 18A-4-8a] of this article for service personnel.*

Footnote: 4The PRS position was apparently a morning post.

Footnote: 5The record does not reveal with whom the grievant was communicating in the office. The evidence is also unclear as to whether the grievant was told she would be awarded the position or that she would only be considered therefor if she gave up her Custodian position. In any event, for the reasons hereinafter discussed, it is not necessary to make definitive rulings on whether the grievant would have received the position per W.Va. Code §18A-4-8b had her application been given consideration.

Footnote: 6The statute, in relevant part, provides,

A county board of education shall make decisions affecting promotion and filling of any service personnel positions of employment or jobs occurring throughout the school year that are to be performed by service personnel as provided in section eight [§ 18A-4-8], article four of this chapter, on the basis of seniority, qualifications and evaluation of past service.

Qualifications shall mean that the applicant holds a classification title in his category of employment as provided in this section and must be given first opportunity for promotion and filling vacancies. Other employees then must be considered and shall qualify by meeting the definition of the job title as defined in section eight, article four of this chapter, that relates to the promotion or vacancy. If the employee so requests, the board must show valid cause why an employee with the most seniority is not promoted or employed in the position for which he applies. Applicants shall be considered in the following order:

(1) Regularly employed service personnel;

(2) Service personnel whose employment has been discontinued in accordance with this section;

(3) Professional personnel who held temporary service personnel jobs or positions prior tothe ninth day of June, one thousand nine hundred eighty-two, and who apply only for such temporary jobs or positions;

(4) Substitute service personnel; and

(5) New service personnel.

Footnote: 7Barber involved a professional employee and was decided under the hiring provisions of W.Va. Code §18A-4-7a. The principle on which the ultimate holdings in the case were based, however, is equally applicable here.

Footnote: 8Regulations of the West Virginia Department of Education would require her to attend nine hours of Cook training and nine hours of Custodian training.