NOEL R. NAPIER

v. **Docket No. 94-23-541**

LOGAN COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Mr. Noel Napier, alleges the Logan County Board of Education ("LCBOE") violated W. Va. Code §18A-4-7a when part of the duties assigned to the Assistant Superintendent were transferred to a Director without posting. This grievance was denied at Levels I and II and waived at Level III. Grievant appealed to Level IV, and on February 15, 1995, a hearing was held. The parties agreed the case would become mature for decision on March 10, 1995, following the submission of proposed findings of fact and conclusions of law. (See footnote 1)

Issue

Grievant alleges the duties of the Assistant Superintendent dealing with transportation were transferred to Mr. Workman, the Director of Facilities, Assessment, and Planning, without posting. Grievant also alleges "the job of transportation director . . . should have been posted," and W. Va. Code §18A-4-7a was violatedwhen this posting was not done. Grievant also complains Mr. Workman received an increase in pay when he assumed these additional duties.

LCBOE argues that some of the duties of the Assistant Superintendent position were realigned and transferred to other individuals currently employed by LCBOE, and that no new position was created. The duties transferred from that position included transportation, hot lunch services, and building and maintenance.

Findings of Fact

1. On July 1, 1994, Mr. Ted Mattern resigned as Assistant Superintendent of Logan County Schools. His duties had included: elementary and secondary curriculum and instruction, secondary administration, some elementary administration, building and maintenance, transportation, and hot

lunch services.

2. Superintendent Myers wished to realign the duties of the vacant Assistant Superintendent position so that the individual in this position would be in charge of elementary and secondary instruction, curriculum, and administration. This reorganization would bring Logan County's school administration more in line with the delineation of duties in other counties.

3. The other duties of this position were assumed voluntarily by other LCBOE employees. Mr. Walter Watson, in charge of finances, took over hot lunch services. Superintendent Myers assumed the duties of building and maintenance along with the building and maintenance personnel. Mr. Workman, Director ofFacilities, Assessment and Planning, voluntarily took the transportation duties.

4. Mr. Workman received a $13.75 per day raise after he added these duties to his other responsibilities. This raise put his salary in line with other directors.

5. Superintendent Myers did not know why Director Workman's pay was lower than the other directors, because this discrepancy occurred before he became Superintendent.

6. Mr. Workman had no daily experience in transportation, but had worked on transportation issues that had arisen in numerous school closings.

7. The redefined Assistant Superintendent position was posted. Mr. Skip Hackworth was awarded the position.

8. No new administrative positions were created as a result of changing the responsibilities of the Assistant Superintendent position.

9. There was no position of Director of Transportation either before or after July 1, 1994.

Discussion

W. Va. Code §18A-4-7a states in pertinent part:

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. The notice shall be posted within twenty working days of such position openings and shall include the job description. Any special criteria or skills that are required by the position shall be specifically statedin the job description and directly related to the performance of the job. (See footnote 2) **(Emphasis Added.)**

Grievant argues the above-cited code section was violated by LCBOE's failure to post the duties

of the Assistant Superintendent dealing with transportation. This argument is without merit. W. Va. Code §18A-4-7a requires boards "to post . . . all openings in established, existing or newly created positions . . .", not the partial job duties of a position. The only open position was that of Assistant Superintendent, and that position was posted and filled. The transfer of duties did not create a new position within the meaning of W. Va. Code §18A-4-7a.

Inherent in Grievant's argument is that when duties are transferred from one position to another, a position is created which must be posted. To accept this argument would severely limit the ability of a superintendent of a board of education to reorganize and manage a county school system. Boards of education have the authority "[t]o control and manage all of the schools and school interests for all school activities . . . ." W. Va. Code §18-5-13(l); Cox v. Bd. of Educ. of Hampshire County, 355 S.E.2d 365, 369 (W. Va. 1987). Superintendents have the authority to "[a]ssign, transfer, suspend or promote teachers and all other school personnel", subject to the approval of the board, or in this case, the approval of State Superintendent Henry Marockie. (See footnote 3) W. Va.Code §18-4-10(3). Additionally, a county superintendent's duties include "powers of independent judgment and discretion." Hall v. Pizzino, 363 S.E.2d 886, 888 (W. Va. 1980). Clearly, a superintendent is allowed to reorganize the duties of his administrative staff when the personnel involved voluntarily accept the change.

Grievant's complaint that Mr. Workman received a raise that brought his salary in line with other directors after he voluntarily accepted these additional duties is also without merit. Mr. Workman's position is considered an "in-between position" in that it is a combination of both professional and service personnel duties. W. Va. Code §§18A-4-5, 18A-4-5a and 18A-4-5b speak to uniformity of compensation for all regularly employed personnel performing like duties and assignments. To give an employee a raise to bring his salary in line with other similarly situated employees, especially when he has accepted additional duties, is in compliance with these code sections.

The above discussion and findings of fact will be supplemented by the following conclusions of laws.

Conclusions of Law

1. In a nondisciplinary action, Grievant has the burden of proving his case by a preponderance of the evidence. Barker v. Kanawha County Bd. of Educ., Docket No. 94-20-634 (Jan. 31, 1995).

2. County superintendents have the authority to make organizational changes in their administrative staff when the personnel involved accept these changes. Accord Hall, supra.

3. Grievant has failed to demonstrate a violation of W. Va. Code §18A-4-7a.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Logan 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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JANIS I. REYNOLDS

Administrative Law Judge

Dated: April 25, 1995

Footnote: 1Neither party elected to submit these materials.

Footnote: 2Given the Statement of Grievance it is assumed the only issue was "the failure to post."

Footnote: 3The Logan County School system was taken over by the State Department of Education and Superintendent Myers seeks approval from Dr. Marockie for his administrative actions.