T. HOWARD BUTCHER,

Grievant,

v. DOCKET NO. 95-23-015

LOGAN COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, T. Howard Butcher, contends the Logan County Board of Education ("LCBOE") violated W. Va. Code §18A-4-8b when it filled the position of Transportation Director without posting. Grievant seeks instatement into the position with all back pay, seniority, and any other benefits. This grievance was denied at Levels I and II, and at Level III, Dr. Henry Marockie, State Superintendent of Schools, (See footnote 1) waived Grievant's appeal directly to Level IV. A hearing was held on May 30, 1995, and this grievance became mature for decision on that date.

This grievance involves many of the same issues raised in Napier v. Logan County Bd. of Educ., Docket No. 94-23-541 (Apr. 25, 1995). The grievant in that case argued the duties of the Assistant Superintendent, dealing with transportation, were transferred to Mr. David Workman, the Director of Facilities,Assessment And Planning, without posting. In this grievance, Mr. Butcher argues the Transportation Director position was filled without posting. At Level IV Grievant raised, for the first time, an equal opportunity argument. He also argued very briefly the issues of discrimination, favoritism, and questioned Mr. Workman's qualifications. (See footnote 2)

LCBOE argues the duties of the Assistant Superintendent position were realigned, and multiple duties of that position were transferred to other administrative staff. No new positions were created or filled. Since there was no new position, no posting was required.

The facts of this case are not in dispute.

Findings of Fact

1. Grievant has been an employee of LCBOE for thirteen years. He is currently employed as a Supervisor of Transportation in the Chapmanville area. He oversees the drivers and mechanics in his

area.

2. There are other supervisors who oversee the Logan and Mann areas.

3. In the Summer of 1994, Mr. Ted Mattern, Assistant Superintendent, resigned his position. His duties had included elementary and secondary curriculum and instruction, educational administrative duties, building and maintenance, transportation,and food service.

4. Superintendent Myers wished to realign the duties of the vacant position so the next assistant superintendent would be in charge of elementary and secondary instruction, curriculum, and administration, only. This reorganization would bring Logan County's school administration more in line with the delineation of duties in other counties.

5. The other duties of this position were assumed by administrative staff already employed by LCBOE. Mr. Walter Watson, Director of Finance and Treasurer, assumed the hot lunch duties. Superintendent Myers assumed the building and maintenance duties. Mr. David Workman, Director of Facilities, Assessment, and Planning assumed the transportation duties.

6. Mr. Workman had no daily experience in transportation, but had worked on transportation issues that had arisen in numerous school closings. Many of these school closings were not in Grievant's area.

7. The redesigned Assistant Superintendent's position was posted.

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

9. There was no position of Transportation Director either before or after Mr. Mattern's resignation.

Discussion

W. Va. Code §18A-4-8b states in pertinent part:

Boards shall be required to post and date notices of all job vacancies of established existing or newly created positions in conspicuous working places for all school service employees to observe for at least five working days. The notice of such job vacancies shall include the job description, the period of employment, the amount of pay and any benefits and other information that is helpful to the employees to understand the particulars of the job. **(Emphasis Added .)**

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

of Transportation Director. This argument is without merit. W. Va. Code §18A-4-8b requires boards "to post . . . all job vacancies of established existing or newly created positions . . . ", not the partial duties of a position. Napier, supra. The only vacant 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-4-8b. Napier, supra.

Inherent in Grievant's argument is the idea 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 to reorganize and manage the 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(1); 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 theapproval of the board, or in this case the approval of State Superintendent Marockie. 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 may reorganize the duties of his administrative staff when they voluntarily accept the change.

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

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 voluntary organizational changes in their administrative staff. Accord Hall v. Pizzino, 363 S.E.2d 886, 888 (W. Va. 1980); Napier v. Logan County Bd. of Educ., Docket No. 94-23-541 (Apr. 25, 1995).
3. Grievant has failed to demonstrate a violation of W. Va. Code §18a-4-8b.

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.

JANIS I. REYNOLDS

Administrative Law Judge

Dated: July 27, 1995

Footnote: 1 The Logan County Board of Education was taken over by the State Department of Education in August, 1992.

Footnote: 2 As Grievant presented no evidence on any of these issues other than saying he "didn't think" Mr. Workman had done any work in transportation, these issues are considered without merit and are DENIED.