KIM LOVEJOY-CLAYTON,

Grievant

v. Docket No. 97-22-040

LINCOLN COUNTY BOARD OF EDUCATION,

Respondent

and

JEFF HUFFMAN,

Intervenor

D E C I S I O N

Grievant, Kim Lovejoy-Clayton, employed by the Lincoln County Board of Education (Board) as a teacher, filed a level four grievance appeal on January 23, 1997, in which she alleged that a position for an Elementary Dean of Students at Hamlin Elementary School (HES) had been posted and filled, but that the successful applicant was also serving at Hamlin Jr. High School. (See footnote 1) Grievant asserted that the assignment at the junior high school constituted a new position which was not posted, a violation of W. Va. Code §18A-4-7a. The parties agreed to submit the grievance for decision based on the level two record, and the matter became mature for decision on March 14, 1997, with the submission of a final written statement by Intervenor. (See footnote 2) The facts of this matter are not in dispute and may be set forth as the following findings of fact.

Findings of Fact

1. Grievant Kim Lovejoy-Clayton is employed by the Lincoln County Board of Education as a teacher at Hamlin Elementary School.

2. On June 26, 1996, the Board posted a full-time position for Dean of Students at Hamlin Elementary School.

3. Grievant did not apply for the position because she was not interested in a full- time

administrative assignment on the elementary level.

4. Jeff Huffman was subsequently appointed to the position.

5. On September 16, 1996, the Board abolished the position of Assistant Principal at Hamlin High School as a result of ongoing financial constraints and a recommendation by the State Department of Education.

6. Sometime later, Mr. Huffman agreed to perform certain administrative duties at the High School. He now spends half of his day at the High School where he has an office. His duties include teacher evaluations, and he has check signing authority; however, his title remains Dean of Students at HES.

Grievant argues that the change in Mr. Huffman's duties constitutes a new position which must be posted and filled in accordance with W. Va. Code §18A-4-7a, which states inpertinent part that:

[b]oards 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 opening and shall include the job description. Any special or skills that are required by the position shall be specifically stated in the job description and directly related to the performance of the job.

The Board argues that no new position was created when Mr. Huffman, who is qualified and employed on the same campus, willingly agreed to help the principal by undertaking additional duties. The Board also notes that his title remains unchanged.

The relief requested by Grievant is that the position held by Mr. Huffman, as it currently exists, be posted so that she might have the opportunity to apply. This does not constitute any meaningful relief in that Grievant does not state in her level two testimony, or post-hearing submissions, that she actually has any intent to apply for the position. She has clearly stated that she was not interested in the elementary position, and those duties are performed by Mr. Huffman. Without a claim that she would actively seek appointment to the position, the relief Grievant seeks would simply cause additional administrative processing for no apparent purpose. Generally, any action which is an exercise in futility is not required. See State ex rel. Bd. of Educ. of the County of Kanawha v. Casey, 176 W. Va. 733, 349 S. E.2d 436 (1986).

Even if Grievant's statement should be interpreted that she would submit an application for the position, she has made no assertion that she is more qualified than Mr. Huffman. IfGrievant believed herself entitled to the position, such a claim should have been made a part of this complaint so that the matter could have been efficiently resolved. Lacking a claim of entitlement to the position, an evaluation of whether the change in duties constituted a new position has no practical purpose and would provide only an advisory opinion. This Grievance Board does not render advisory opinions. Procedural rules of the West Virginia Education & State Employees Grievance Bd. §4.20 156 C.S.R. 1 (1996); Muncy v. Mingo County Bd. of Educ., Docket No. 96-29-211 (Mar. 28, 1997); Brightwell v. Tyler County Bd. of Educ., Docket No. 96-48-255 (Nov. 22, 1996). While no further consideration of this matter is necessary, further discussion of this issue may be found in Allen v. Raleigh County Bd. of Educ., Docket No. 96-41-287 (June 9, 1997), which held that a realignment of duties and professional personnel does not require that a vacancy be posted when the total number of positions is not increased.

In addition to the foregoing findings of fact and discussion it is appropriate to make the following conclusions of law.

Conclusions of Law

1. Generally, any action which is for all practical purposes an exercise in futility is not required. See State ex rel. Bd. of Educ. of the County of Kanawha v. Casey, 176 W. Va. 733, 349 S. E.2d 436 (1986).

2. Because Grievant did not assert that she would apply for the position, or that shewas more qualified than Mr. Huffman, the determination of whether the position should be reposted would simply be advisory in nature. This Grievance Board does not render advisory opinions. Procedural rules of the West Virginia Education & State Employees Grievance Bd. §4.20 156 C.S.R. 1 (1996); Muncy v. Mingo County Bd. of Educ., Docket No. 96-29-211 (Mar. 28, 1997); Brightwell v. Tyler County Bd. of Educ., Docket No. 96-48-255 (Nov. 22, 1996).

3. Because Mr. Huffman agreed to the realignment of his duties, no new professional administrative position was created.

Accordingly, the grievance is DENIED.

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

Date: August 29, 1997 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

The level two transcript and decision indicate that Vickie Damron was also a grievant; however, it does not appear that she chose to continue at level four.

Footnote: 2

The decision is based upon the level two transcript and decision, proposed findings of fact and conclusions of law submitted by Grievant, and the position statement by Intervenor. The Board did not elect to file any additional proposed findings and conclusions at level four, and, notwithstanding three requests by the Grievance Board, did not provide the exhibits admitted at the level two hearing.

This matter was transferred to the undersigned in July 1997, for administrative reasons.