MICHELLE MCHAFFIE,

Grievant,

v. **Docket No. 96-15-457**

HANCOCK COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant Michelle McHaffie is employed by the Hancock County Board of Education as a teacher, certified in elementary multi-subject K-8 and math 5-8. Her original grievance form, dated September 20, 1996, states that:

> I feel that the Hancock County Board of Education did not follow state statute 18A-4-7a which states that boards shall be required to post and date notices of all openings... I was never given the opportunity to bid on an Oak Glen Middle School Math position, because it was never posted. I am requesting that this position be posted.

Adverse decisions were rendered at Levels I and II (September 23, 1996 and October 17, 1996, respectively) (See footnote 1) . On or about November 1, 1996, she appealed to Level IV. The parties agreed that a decision could be rendered based upon the lower level record. A briefing schedule was set and the case became mature for decision on January 29, 1997 with the receipt of Grievant's proposed findings of fact and conclusion of law. At the beginning of the 1996-97 school year, a math teaching position opened up at the Oak Glen Middle School (Middle School). The principal of the school assigned Robert Glass, a full-time social studies teacher at Middle School, to the math position. The vacant social studies position was posted. Grievant asserts that instead, the math position should have been posted. Respondent claims that a realignment of teachers was done at the Middle School, leaving the social studies position open. This position was posted.

DISCUSSION

The applicable statute, W. Va. Code §18A-4-7a, and related case law must be reviewed to determine the powers of the Board regarding the filling of positions and the reallocation of professional personnel. Grievant proposes that the Eighth grade mathematics position should have

been posted. Indeed, Code §18A-4-7a states at the tenth paragraph, “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.” This general requirement has an exception which would relieve elementary schools of the obligation to post under certain conditions. However, this exception does not apply to middle schools.

Code §18A-4-7a empowers the Board to use its discretion regarding teaching qualifications as to hiring, but does not empower it to do so regarding posting. “Boards shall be required to post and date notices...”

The law seems obvious and in support of Grievant's contention, but before one comes to a conclusion, questions must be answered. Was there a math position open and subject to posting? Or, was there a mere reassignment of math classes, not constituting a position and not requiring posting? A review of the transcript of the Level II hearing indicates that Robert Glass was a social studies teacher during the 1995-1996 school year. He taught four social studies classes and two exploratories. (See Level II transcript, page 16.) For the 1996-1997 school year, an eighth grade math teacher was relieved of four math classes and was assigned to computer instruction. Prior to this reassignment, he had taught both math and computer classes. The four math classes were assigned to Mr. Glass who was certified to teach them. The math classes were not posted. Mr. Glass no longer taught social studies, instead teaching the four math classes and two exploratory classes. A social studies position was then posted. Grievant argues that if the social studies position was posted, then so should the math classes. However, no evidence was presented describing the social studies position. The number of classes within the social studies position was not revealed. This is significant because Grievant is attempting to equate the four math classes to the social studies position. This cannot be done based upon the record and evidence in this case. The evidence is that Mr. Glass would continue to teach two exploratories as before. His teaching load would be only partially altered. There is no evidence indicating that the four social studies classes formerly taught by Mr. Glass constituted the position that was posted.

The case of Swope v. Kanawha County Bd. of Educ., Docket No. 90-20-361 (Oct. 31, 1994) is pertinent. The facts were that Dunbar High School was closed, resulting in an influx of students at South Charleston High School. It was necessary to increase the number of driver education classes at SCHS by nine. These were assigned to two instructors who taught a smaller number of driver

education courses the year before. After assuming the new driver education classes, they would continue to have other teaching responsibilities. Grievant contended that the nine new classes were in reality a full position and more. A normal teaching load was six to seven periods a day. The ALJ agreed and ruled that there should have been a posting of the positions. Upon appeal by theBoard, the Kanawha County Circuit Court reversed this decision. In its Order dated March 26, 1993, the court stated that "West Virginia Code, §18A-4-8b (See footnote 2) [superseded by §18A-4-7a] does not prohibit the assignment of varying class loads in particular subject areas to teachers who teach in those areas as instructional needs of the students change from year to year."

The Circuit Court's ruling in Swope is not absolutely binding as would be a Supreme Court decision. However, its reasoning is persuasive to the undersigned and will be accepted as precedent.

Consistent with the foregoing discussion, the following Findings of Fact and Conclusions of Law are appropriate.

FINDINGS OF FACT

1. Grievant Michelle McHaffie is certified to teach math, grades 5-8, and is employed by Respondent Hancock County Board of Education.

2. At Oak Glen Middle School, effective for the 1996-1997 school term, four math classes were reassigned to Robert Glass, a certified math teacher, who the year before had taught four social studies classes.

3. The four math classes were not posted by Respondent.

4. A social studies position was posted.

5. No description of the social studies position was in evidence.

CONCLUSIONS OF LAW

1. Grievant bears the burden of proving her claims by a preponderance of the evidence. Runyon v. Mingo County Bd. of Educ., Docket No. 93-29-481 (Apr. 4, 1993).

2. Boards shall be required to post and date notices of all openings in established, existing or newly created **positions** (emphasis added) W.Va. Code §18A-4-7a. 3. There is insufficient evidence from which to conclude that the math classes constituted a position requiring posting.

Accordingly, this grievance is hereby **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Hancock 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 appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate Court.

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JAMES D. TERRY

Administrative Law Judge

DATE: June 25, 1997

Footnote: 1

A Level II hearing was held on October 11, 1997.

Footnote: 2

The statute in effect at the time of Swope was amended in 1990, at which time §18A-4-7a dealt with posting requirements for professional personnel.