KAREN VANCE,

Grievant,

v. **Docket No. 02-19-030**

JEFFERSON COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Karen Vance (Grievant), employed by the Jefferson County Board of Education (JCBE) as an Aide/Paraprofessional, filed a level one grievance on or about October 14, 2001, in which she alleged a violation of W. Va. Code § 18A-4-8b when job postings failed to provide the job description and other information helpful to the employee to understand the particulars of the job. For relief, Grievant requested that job postings be formatted in a manner required by statute, and identifying the assignment as "Itinerant" only when there is a definitive need to do so.

The grievance was denied at levels one and two, and Grievant elected to bypass consideration at level three, as is permitted by W. Va. Code § 18-29-4(c). A level four appeal was received by the Grievance Board on February 4, 2002, and a hearing to supplement the record was conducted in the Morgantown office on March 1, 2002. Grievant was represented by Harvey Bane of WVEA, and JCBE was represented by Dr. Gerry R. Sokol, Assistant Superintendent. The matter became mature for decision with the filing of proposed findings of fact and conclusions of law by both parties on or before March 19, 2002.

The following facts are undisputed.

Findings of Fact

1. Grievant has been employed by JCBE since 1992, and is presently assigned half-time as an Aide at Jefferson County High School, and as a telephone receptionist at the JCBE offices the remainder of the day.

2. On October 10, 2001, JCBE issued a Notice of Vacancy Posting # 2020, "Special Education/Transportation/General/Classroom Aides - ITINERANT." The attached job description noted that "changes in job assignment/job site and responsibilities can occur throughout the year. Initial site located in Charles Town Middle/Jr. High School."

3. JCBE had similarly posted six aide positions as itinerant on July 27, 2001.

4. On December 3, 2001, JCBE posted the position of “Special Education Aide at T.A. Lowery Elementary School”.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §4.21 (2000); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ. Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code §18-29-6.

Grievant argues that the identification of a position as “itinerant” renders the posting non-specific, and violates W. Va. Code § 18A-4-8b(g) which requires in part that “the notice of the 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 employee to understand the particulars of the job.” Because posting #2020 was identified as itinerant, Grievant argues that she was unable to determine with any specificity what duties or location the position might entail. At level four, Grievant further argues that the position isin violation of W. Va. Code § 18A-4-8a (7), which provides that “no service employee may have his or her daily work schedule changed during the school year without the employee's written consent.” Grievant expressed concerns that wholesale changes could be made to the daily work schedule of a service employee under an itinerant posting.

Dr. Sokol explained that JCBE has recently begun advertising some Special Education Aide positions as itinerant in order to better meet the needs of the students. Specifically, advertising a position as itinerant allows JCBE flexibility in assigning aides as needed, and is fiscally responsible in that additional personnel need not be employed. Dr. Sokol noted that employees assigned to these positions need not fear that their location or hours would be altered monthly or weekly, as evidenced by the fact that five of the current six itinerant Aides have experienced no changes in their schedule or job location this year. He concluded that it is not JCBE's intent to post all future Aide positions as itinerant, but each vacancy will be evaluated on a case by case basis.

The Grievance Board adheres to the doctrine of stare decisis in adjudicating grievances that come before it. (See footnote 1) This adherence is founded upon a determination that the employees and employers, whose relationships are regulated by this agency, are best guided in their actions by a

system that provides for predictability, while retaining the discretion necessary to effectuate the purposes of the statutes applied. Consistent with this approach, this Grievance Board follows precedents established by the Supreme Court of Appeals of West Virginia as the law of this jurisdiction. Likewise, prior decisions of thisGrievance Board are followed unless a reasoned determination is made that the prior decision was clearly in error. Belcher v. W. Va. Dep't of Transp., Docket No. 94-DOH-341 (Apr. 27, 1995).

The question of whether an Aide position could be designated as “itinerant” was first addressed by the Grievance Board in Conrad v. Nicholas County Board of Education, Docket No. 97-34-388 (Jan. 12, 1998), in which it was held that W. Va. Code § 18A-4-8a does not prohibit an employee from being designated as itinerant. Noting that Special Education Aides are in a unique setting, and their designation as itinerant allows their assignments to vary with the special needs of the children in that program, the ALJ concluded that the itinerant posting was within the discretion of the board of education and was not arbitrary and capricious. This holding was applied in Bailey v. Raleigh County Board of Education, Docket No. 97-41-495 (Apr. 20, 1998), in which a similar factual situation was presented.

While Grievant's concern that an itinerant assignment might result in a subsequent change of assignment is possible, it appears not to be probable. However, the individual employee must determine whether or not to accept that possibility before applying for an itinerant position. JCBE's decision to designate certain Aide positions is not violative of W. Va. Code §§ 18A-4-8a or 18A-4-8b.

In addition to the foregoing discussion, the following Conclusions of Law are appropriate in this matter.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rulesof the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §4.21 (2000); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ. Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code §18-29-6.

2. Neither W. Va. Code §§ 18A-4-8a nor 18A-4-8b(g) prohibit a county board of education from designating a Special Education Aide position as “itinerant.” Bailey v. Raleigh County Bd. of Educ., Docket No. 97-41-495 (Apr. 20, 1998); Conrad v. Nicholas County Bd. of Educ., Docket No. 97-34-

388 (Jan. 12, 1998).

3. Grievant failed to prove that the Jefferson County Board of Education violated any statute when it posted Special Education Aide positions as “itinerant”.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Jefferson 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. However, the appealing party is required by W. Va. Code §29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

Date: March 28, 2002 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

Literally, stare decisis means “to stand by things decided.” This is the doctrine that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases, where the facts are substantially the same. Black's Law Dictionary 1577 (Revised 4th Ed. 1968).