NANCY CARR

v. DOCKET NO. 94-27-074

MERCER COUNTY BOARD OF EDUCATION

DECISION

Grievant, Nancy Carr, employed by the Mercer County Board of Education (Board) as a teacher, filed a level one grievance on November 9, 1993, in which she alleged violations of W.Va. Code §§18A-2-7a and 18A-2-7. Specifically, she stated

> Suzanne Lowry transferred to another school. In-school transfer was made to fill her position. I was given the position instead of 8/9 held by Mrs. Lowry. Newspaper and board agenda said I replaced Mrs. Lowry. Mrs. Lowry was not employed in position I now have. I have much more experience than person currently working in 8/9. I do not get to work with the show choir, I have 7th grade general chorus and 7/8 general music. I feel with my seniority I should have better position. (See footnote 1)

The grievance was denied at levels one, two, and three. Appeal was made to level four on February 28, 1994, and both parties agreed to submit the matter for decision based upon the record. Proposed findings of fact and conclusions of law were received on or before August 10, 1994, at which time the case became mature for decision. (See footnote 2)

The facts of this matter are as follows. By posting dated August 18, 1994, the Board advertised a position vacancy for "Music Teacher - Princeton Junior High." Grievant submitted anapplication and was interviewed for the position. The exact nature of the assignment was made known to Grievant by this time as evidenced by her letter, dated September 14, 1993, to the principal at Princeton Junior High thanking him "for the opportunity to interview for the seventh grade position." An undated page of Board minutes establishes that Grievant was transferred from "Music Teacher, Spanishburg High to Music Teacher, Princeton Junior High, effective October 1, 1993. Replacing: Suzanne Lowry, transferred." A newspaper article (not identified by name or date) covering personnel actions taken

by the Board, reported that Grievant was transferred to Princeton Junior High School, replacing Suzanne Lowry who had previously been transferred to Princeton High School. Ms. Lowry had taught eighth grade music and general choir and ninth grade show choir prior to her transfer. Those classes were assigned to Allen Kade, another music teacher at Princeton Junior High School, effective the 1994-95 term.

Based upon the foregoing facts, Grievant argues that Mr. Kade was transferred, without the Superintendent's recommendation or the Board's approval, into Ms. Lowry's position, a violation of W.Va. Code §18A-2-7. Grievant asserts that because she was given Board approval to replace Ms. Lowry and, is entitled to the same teaching schedule assigned to Ms. Lowry during her last year at Princeton Junior High School, i.e., ninth grade show choir.

The Board argues that the posting for the position at Princeton Junior High School specified only a vacancy for a musicteacher. There was no indication of which grade levels or courses would be assigned to the successful candidate. Grievant indicated that she knew at the time of her interview which classes she would assume and that she accepted the position with that knowledge. In consideration of these facts the Board argues that it was not prohibited from assigning Grievant a class schedule which would better meet the needs of the school and that Grievant has failed to prove that it acted in an arbitrary or capricious manner or otherwise acted improperly in this matter.

Grievant offers no authority to support her claim of entitlement to a specific class schedule upon her transfer into a certain position, and the undersigned is aware of none. Grievant primarily relies on the theory that Mr. Kade was improperly transferred into the position previously held by Ms. Lowry. Although not specifically addressed in the record, it is not unreasonable to assume that since Grievant was generally employed as a music teacher without reference to grade levels or subject assignments, Mr. Kade was likewise employed. This procedure allows for some flexibility in scheduling from year to year to best meet the needs of the school. (See footnote 3) Teachers employed generally as music teachers have no claim to specific grade levels or subjectassignments. Thus, assigning Mr. Kade the ninth grade show choir was not outside his appointment as a music teacher at Princeton Junior High School and was not a transfer. See Schafstall v. Brooke Co. Bd. of Educ., Docket No. 05-86-347-3 (March 30, 1987), which held that only a substantial change outside a "teacher's presently utilized area of certification, discipline, department or grade level of many years standing" may be considered a transfer as contemplated by W.Va. Code §18A-2-7.

Professional school personnel positions are not defined by an individual's class schedule, but rather by the position description. In this case, Grievant applied for a position as music teacher at Princeton Junior High School. This position was vacant due to the transfer of Ms. Lowry. Grievant in fact received Ms. Lowry's position which was music teacher at Princeton Junior High School. Grievant is not entitled to any specific grade level or subject assignment which may be taught within the boundaries of that appointment.

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

Conclusions of Law

1. Grievant has failed to prove by a preponderance of the evidence that another teacher was transferred in violation of W.Va. Code §18A-2-7.

2. A teacher employed to provide instruction in a general subject, such as music, has no entitlement to an assignment ofpreferred grade levels or subjects.

Accordingly, this grievance is DENIED.

December 30, 1994 Sue Keller, Senior Admn. Law Judge

Footnote: 1Grievant did not pursue the seniority claim at either level two or level four; therefore, this issue is deemed abandoned.

Footnote: 2This matter was transferred to the Elkins office in October 1994 for administrative reasons.

Footnote: 3In fact, Ted Gillespie, principal at Princeton Junior High School during the 1992-93 school year, testified at level two that he had based Mr. Kade's 1993-94 assignment on an assumption that the position vacated by Ms. Lowry was to be reduced to half-time. Mr. Gillespie transferred out of Princeton Junior High School prior to the position posting and had no further involvement with the matter.