MITZI AKERS

v. Docket No. 94-41-1076

RALEIGH COUNTY BOARD OF EDUCATION

DECISION

The grievant, Mitzi Akers, is employed by the Raleigh County Board of Education (Board) as a Secretary II assigned to Beckley Junior High School (BJHS). She filed this complaint at Level I October 3, 1994, alleging, "Respondent has assigned school service personnel duties to a professional employee in violation of W.Va. Code §18A-4-8b" and requesting that "these duties be posted as school service personnel positions as required by W.Va. Code §18A-4-8b." Her supervisor was without authority to grant relief and the grievance was denied at Level II following a hearing held October 24, 1994. The Board, at Level III, declined to address the matter and appeal to Level IV was made November 23, 1994. A hearing was held January 25, 1995, and the case became mature on February 14, 1995, with the submission of proposed findings of fact and conclusions of law.

There is little if any dispute over the facts of the case. The target of the complaint is certain duties performed by Sue Britton, a Math and Computer teacher assigned to Woodrow WilsonHigh School (WWHS). During the 1986-87 school year, then-WWHS Principal Racine Thompson was attempting to computerize and streamline the school's process for maintaining student attendance records; student discipline records; student class schedules; and school lunch records. Since Ms. Britton was considered an expert or at least very knowledgeable in the computer field, she was asked to assist.

In 1988, apparently after much discussion, Mr. Thompson decided that "STARS", a computer software program used at other schools for the purposes of managing attendance, school lunch and student discipline records was insufficient for WWHS because of the size of its student population. With input from Ms. Britton and other teachers in the school's computer education department, he chose "Columbia" software. It appears that this software permitted greater record storage and was capable of generating "student profiles" which contained attendance and discipline and class schedule records for all students.

Ms. Britton modified the software to suit the needs of WWHS and developed what was referred to

as the Student-Centered Management Program. It appears that the primary goal of the program was to provide Mr. Thompson, WWHS teachers and secretaries a method of "tracking" student records and accessing information on the school's lunch program. Ms. Britton's modifications also broadened the program to include the generation of certain statistical reports required by the Board's central office and perhaps federal and state authorities.

At some point, Ms. Britton's teaching schedule was adjusted so that she could spend three hours per day on such tasks as entering information into the program; generating attendance and other reports; tracking the school lunch program; creating and retrieving student profiles and other record-keeping and retrieval tasks for which the Columbia software had been purchased. The record suggests that this move was made as a result of Ms. Britton's considerable work originating the program.

The grievant complains that the "computer" duties performed by Ms. Britton are those of a Secretary II. That position is defined in W.Va. Code §18A-4-8 as,

> [P]ersonnel "Secretary II" means personnel employed in any elementary, secondary, kindergarten, nursery, special education, vocational or any other school as a secretary. The duties may include performing general clerical tasks, transcribing from notes or stenotype or mechanical equipment or a sound-producing machine, preparing reports, receiving callers and referring them to proper persons, operating office machines, keeping records and handling routine correspondence. There is nothing implied herein that would prevent such employees from holding or being elevated to a higher classification.

She seeks as relief that the duties be posted as a school service personnel position pursuant to W.Va. Code §18A-4-8b. (See footnote 1)

The Board responds that the grievant has failed to show that she has been affected by the assignment of duties to Ms. Britton and the complaint, therefore, does not fall within the definitionof grievance set forth in W.Va. Code §18-29-2(a). (See footnote 2) The Board also asserts that the grievant has failed to show that the duties in question are not professional in nature.

It is not necessary to make definitive rulings on whether the duties performed by Ms. Britton are those of a Secretary II. The record generally supports that they could readily and accurately be characterized as either secretarial, clerical or "quasi-professional." The record conclusively establishes that if the duties were posted as a school service personnel position, it would be no more than a half-time post. The grievant conceded, through counsel, at Level IV that if the position were so

posted, she would not make application.

The Grievance Board has consistently refused to issue decisions where it appears the grievant has suffered no real injury on the basis that such decisions would be merely advisory. See, e.g., Lyons v. Wood County Bd. of Educ., Docket No. 89-54-601 (Feb. 28, 1990). Here, the only conceivable harm suffered by the grievant was a denial of the opportunity to seek instatement to ahalf-time position. By representing that she would not relinquish her present full-time position at BJHS to make such application, she has conceded that she was not an "affected" employee within the meaning of Code §18-29-2.

Accordingly, the grievance is **DENIED**.

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

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JERRY A. WRIGHT

CHIEF ADMINISTRATIVE LAW JUDGE

Dated: April 27, 1995

Footnote: 1"A county board of education shall make decisions affecting promotion and filling of any service personnel positions of employment or jobs occurring throughout the school year that are to be performed by service personnel as provided in section eight [§ 18A-4-8], article four of this chapter, on the basis of seniority, qualifications and evaluation of past service."

Footnote: 2"Grievance" means any claim by one or more affected employees of the governing boards of higher education, state board of education, county boards of education, regional educational service agencies and multi-county vocational centers alleging a violation, a misapplication or a misinterpretation of the statutes, policies, rules, regulations or written agreements under which such employees work, including any violation, misapplication or misinterpretation regarding compensation, hours, terms and conditions of employment, employment status or discrimination; any discriminatory or otherwise aggrieved application of unwritten policies or practices of the board; any specifically identified incident of harassment or favoritism; or any action, policy or practice constituting substantial detriment to or interference with effective

classroom instruction, job performance or the health and safety of students or employees.