

NOEL R. NAPIER, .

Grievant, .

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V. . DOCKET NUMBER: 95-23-392

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LOGAN COUNTY BOARD OF EDUCATION, .

Employer. .

DECISION

Grievant, Noel Napier, filed this grievance on December 7, 1994, against his employer, the Logan County Board of Education (Board), pursuant to the provisions of West Virginia Code §§18-29- 1, et seq., claiming as follows:

Dean's position at Ralph R. Willis Vo-Tech Center should have been filled with full time employee and with the most qualified as per 18A-4-7a. Relief = Dean's position to be full time employment and award me the position as I am the more qualified applicant.

The grievance was denied at levels one and two and bypassed level three. Appeal to level four was made on September 6, 1995. An evidentiary hearing was held at the Grievance Board's Charleston, West Virginia office on December 7, 1995. Post-hearing briefs were due on January 8, 1995, and the case became mature for decision on that date.

The material facts are not in dispute and shall be set forth below as the Undersigned's appropriately made findings:

Findings of Fact

1. Grievant is employed by the Board as a teacher at the Ralph R. Willis Vocational-Technical Center (Vo-Tech).
2. Sandra Carroll, Vocational Director/Principal of the Vo- Tech, was injured in an automobile accident prior to the beginning of the 1994-1995 school year and was unable to work until the beginning of the 1995-1996 school year.
3. Dean of Students John Hale was asked to assume the role of acting principal, on a one-half time basis (in the morning) during Ms. Carroll's absence.
4. Upon the request of Mr. Hale, teacher Raymond Adkins was asked to assume the role of one-half time acting Dean of Students at the Vo-Tech during the morning.
5. Grievant had requested that he serve as full-time Dean of Students during Ms. Carroll's absence.
6. Assistant Superintendent Brenda Skibo accepted the responsibility of working one-half time (in the afternoon) as Director at the Vo-Tech when Mr. Hale returned to his duties as Dean of Students. Ms. Skibo had previously served as principal at the Vo-Tech.
7. The Board used a substitute teacher to fill-in for Mr. Adkins when he was acting as Dean of Students.

Discussion

Grievant contends that the Board abused its discretion in not maintaining the Dean's position at the Vo-Tech position as a full- time position during Ms. Carroll's absence. He argues that as the most qualified employee, he should have been asked to assume the duties of the Dean of Students' position, pursuant to W. Va. Code §18A-4-7a, instead of Mr. Adkins. Grievant does not deny that the Board should be allowed to assign professional employees substitute duties for absent colleagues; however, he does contend that such decisions must be based upon the most qualified standard established for the hiring of professional personnel for vacant or newly created positions pursuant to Code §18A-4-7a. The Board contends that it has the discretionary authority to make duty assignments to professional employees during periods of regular employees' absences.

It is well-settled that county boards of education have substantial discretion in matters relating to the hiring, assignment, transfer and promotion of school personnel and they must exercise that

discretion only within the best interests of the schools and in a way that is neither arbitrary nor capricious. Cahill v. Mercer County Bd. Of Educ., 463 S.E.2d 910 (W. Va. 1995); Hyre v. Upshur County. Bd. of Educ., 412 S.E.2d 265 (W. Va. 1991); Dillon v. Board of Education, 351 S.E.2d 5 (W. Va. 1986). At issue in this case is the assignment of duties to professional and/or administrative employees during the absence of a regular, full-time professional employee. Contrary to Grievant's argument, this case does not involve the hiring of professional personnel for an employment position governed by Code §18A-4-7a.

As explained by Ms. Skibo during her testimony, Ms. Carroll's position involved two distinct aspects; she functioned as the Director of the Vo-Tech and as the principal. Also, the Vo-Tech has been assigned a full-time Dean of Students. She stated because of the arrangements made by the Board, the same duties were performed with the same amount of personnel hours expended. She assumed Ms. Carroll's director's duties, while Mr. Hale assumed her principal's duties. Then, as Mr. Hale acted as principal, Mr. Adkins assumed the duties of the Dean of Students position. Ms. Skibo concluded that if an employee had been assigned the duties of a full-time Dean of Students during Mr. Hale's assumption of one-half of Ms. Carroll's duties, the Vo-Tech would have been staffed more heavily than before Ms. Carroll's absence.

In conclusion, boards of education have substantial discretion in making duty assignments during periods of absence of administrative personnel. An administrator's temporary absence from his position does not result in a vacant position which must be filled by the hiring of additional professional personnel pursuant to Code §18A-4-7a. Here, Grievant has failed to prove by a preponderance of the evidence that the Board abused its discretion in making the assignments it made during Sandra Carroll's absence. The following conclusions of law are properly derived from the discussion of the facts above:

Conclusions of Law

1. County boards of education have substantial discretion in matters relating to the assignment of duties to professional personnel and they must exercise that discretion only within the best interests of the schools and in a way that is neither arbitrary nor capricious. Cahill v. Mercer County Bd. Of Educ., 463 S.E.2d 910 (W.Va. 1995).

2. An administrator's temporary absence from his position due to accident or illness does not

create a vacancy in his position that must be filled by the hiring of additional professional personnel or the transfer of existing personnel pursuant to W. Va. Code §18A-4-7a.

3. County Boards of Education are not required by West Virginia Code to assign substitute duties to professional, administrative personnel based upon an analysis of the employees' qualifications to determine who would be the most qualified.

4. Grievant has failed to prove by a preponderance of the evidence that the Board abused its discretion in this matter.

Therefore, this grievance is **DENIED**.

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

ALBERT C. DUNN, JR.

Administrative Law Judge

April 16, 1996