

VIRGINIA CHILDS,

Grievant,

v. DOCKET NO. 96-02-025

BERKELEY COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Grievant, Virginia Childs, filed this grievance against the Berkeley County Board of Education, Respondent, alleging "that the Respondent has violated West Virginia Code §18A-4-8b in failing to post a newly-created Secretary position at the Respondent's central office." Grievant seeks posting of the position.

The grievance was denied at Levels I and II on October 23, 1995, and January 16, 1996, respectively. Grievant bypassed Level III, pursuant to W. Va. Code § 18-29-4(c), and appealed directly to Level IV. A Level IV evidentiary hearing was held on May 31, 1996, at the Berkeley County Board of Education Administration Office, Martinsburg, West Virginia. [\(See footnote 1\)](#) This case became mature on July 2, 1996, with receipt of the Level IV transcript.

The following findings of fact were derived from the record.

FINDINGS OF FACT

1. Grievant is employed by the Berkeley County Board of Education, Respondent, as a Secretary III at the James Rumsey Technical Institute (JRTI), a multi-county vocational school. Her "Continuing Contract of Employment" with Respondent is dated July 1, 1973.

2. On July 27, 1988, Christina Coffinberger, the employee whose current position is being grieved, was reclassified from Secretary III, pay grade F, to Executive Secretary I, pay grade G. She was assigned to work with Dr. Janice Christopher, Assistant Superintendent for Instruction. In October 1989, Mrs. Coffinberger was additionally assigned the secretarial duties of the new Director

of Research, Dr. Nancy Kilmon.

3. In July, 1990, Dr. Christopher left the Berkeley County School System, and her responsibilities were distributed among other administrators in the central office. Some of those duties were assumed by Dr. Kilmon. Upon Dr. Christopher's departure, Mrs. Coffinberger was directed to report to the Superintendent of Schools. However, Mrs. Coffinberger retained several administrative duties she had performed under Dr. Christopher's supervision. She also performed some administrative duties previously assigned to Dr. Christopher.

4. In July 1994, Mr. Manny Arvon ([See footnote 2](#)) was promoted to Assistant Superintendent for Instruction, the position which had been held by Mrs. Coffinberger's former supervisor, Dr. Christopher. Initially, Mr. Arvon's secretarial requirements were performed by various secretaries, including Mrs. Coffinberger. In October of 1995, Mrs. Coffinberger resumed the Executive Secretary responsibilities associated with the Assistant Superintendent for Instruction position. However, the location of Mrs. Coffinberger's desk changed because the location of Mr. Arvon's office changed.

5. Mrs. Coffinberger's compensation and terms of employment have not changed.

DISCUSSION

Grievant did not prove by a preponderance of the evidence that Respondent violated W. Va. Code §18A-4-8b. It provides, in pertinent part:

Boards shall be required to post and date notices of all job vacancies of established existing or newly created positions in conspicuous working places for all school service employees to observe for at least five working days. The notice of such 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 employees to understand the particulars of the job. After the five day minimum posting period all vacancies shall be filled within twenty working days from the posting date notice of any job vacancies of established existing or newly created positions.

Grievant's reliance on Newhouse, et al. v. Marion County Bd. of Educ., Docket No. 95-24-344 (Jan. 16, 1996), is misplaced. In Newhouse, the grievant proved that she was improperly RIF'd, and the Board was ordered to instate her and RIF the secretary with the least seniority, Ms. Corwin. The Board decided to retain Ms. Corwin, in an "excess" "floater" position, because it knew that another secretary in the central office, Mrs. Chase, was retiring. Respondent placed Ms. Corwin into Mrs. Chase's position after she retired. The facts in this case are easily distinguishable. Mrs. Coffinberger was not an "excess" employee, being retained so Respondent could "slide" her into an

Executive Secretary position upon the retirement of another employee. The record reveals that upon the departure of Dr. Christopher, Mrs. Coffinberger retained some, if not all of her prior duties, but was also delegated some of Dr. Christopher's duties. She was not a "floater." Her duties were defined. The position of Executive Secretary held by Mrs. Coffinberger was not vacated upon the departure of Dr. Christopher.

In this case, Respondent has merely changed Mrs. Coffinberger's duties through office realignment, and she voluntarily agreed to the modifications of her position. Furthermore, Mrs. Coffinberger was not the only employee whose duties were altered. The reassignment of duties to Mrs. Coffinberger did not create a new position, as defined by W. Va. Code §18A-4-8b.

County Superintendents have the authority to make organizational changes in their administrative staff when the personnel involved accept the changes. Napier v. Logan County Bd. of Educ., Docket No. 94-23-541 (Apr. 25, 1995). County Superintendents may reassign duties among employees without posting a new position, so long as no new position is created. Payne v. Fayette County Bd. of Educ., Docket No. 94-10-144 (Sept. 28, 1994). A case by case analysis is required to determine when a new position is created.

In Napier, after an assistant superintendent resigned, the duties of that position were realigned to bring it more in line with the delineation of assistant superintendent duties in other counties. In the process, five duties of that position were voluntarily distributed among three other administrators, the resulting position was posted, and a new assistant superintendent was hired for this newly-aligned position. While in Payne, after the retirement of a crew leader, the duties of that position were split between two existing foremen and the crew leader position was abolished. In neither Napier or Payne did additional duties create a new position within the meaning of W. Va. Code §18A-4-8b.

Previous bus operator cases are also consistent with this decision. For example, in Mullins v. Logan County Bd. of Educ., Docket No. 94-23-283 (Sept. 25, 1995), five bus operators filed a grievance after the school board had reorganized some bus runs and had failed to post the alleged "newly created" bus runs. In denying the grievance, the Administrative Law Judge emphasized that "no positions of employment or newly created job opportunities were created by the Board's reconfiguration," Id. at 10; and that "[t]he Board has the same number of employment positions after the reconfiguration as it had before, with the only difference being that some employees have been transferred from one job site to another." Id.

More recently, in Zirkle v. Hancock County Bd. of Educ., Docket No. 95-15-585A (July 18, 1996), this Grievance Board noted that an increase in compensation is a factor that merits consideration in determining whether a "vacancy," as defined by W. Va. Code §18A-4-8b, has been created. In Zirkle, the compensation for the position in question increased substantially. However, in this case, Mrs. Coffinberger's compensation did not increase.

In addition to the foregoing formal findings of fact and narration, it is appropriate to make the following conclusions of law.

CONCLUSIONS OF LAW

1. In a nondisciplinary action, Grievant has the burden of proving his case by a preponderance of the evidence. Gwilliam v. Preston County Bd. of Educ., Docket No. 95-39-255 (Dec. 22, 1995). 2.

The posting provision of W. Va. Code §18A-4-8b provides:

Boards shall be required to post and date notices of all job vacancies of established existing or newly created positions in conspicuous working places for all school service employees to observe for at least five working days. The notice of such 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 employees to understand the particulars of the job. After the five day minimum posting period all vacancies shall be filled within twenty working days from the posting date notice of any job vacancies of established existing or newly created positions.

3. County Superintendents have the authority to make organizational changes in their administrative staff when the personnel involved accept these changes. Napier v. Logan County Bd. of Educ., Docket No. 94-23-541 (Apr. 25, 1995).

4. County Superintendents may reassign duties among employees without posting a new position, so long as no new position is created. Payne v. Fayette County Bd. of Educ., Docket No. 94-10- 144 (Sept. 28, 1994).

5. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer and promotion of school personnel; nevertheless, this discretion must be exercised reasonably, in the best interests of the schools, in a manner which is not arbitrary and capricious. Webster County Bd. of Educ. v. Johns, 447 S.E.2d 599 (W.Va. 1994); Dillon v. Bd. of Educ. of County of Wyoming, 351 S.E.2d 58 (W.Va. 1986).

6. Grievant failed to prove a new position was created which had to be posted by a preponderance of the evidence.

7. Grievant failed to show a violation, misapplication or misinterpretation of any statute, policy, rule, or regulation.

Accordingly, the grievance is **DENIED**.

Any party may appeal this DECISION to the Circuit of Kanawha County or to the Circuit Court of Berkeley 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.

DATED: 10/29/96

JEFFREY N. WEATHERHOLT
ADMINISTRATIVE LAW JUDGE

Footnote: 1 This case was originally set for hearing on March 15, 1996, and April 11, 1996, but was continued on both occasions for good cause.

Footnote: 2 The record does not contain Mr. Arvon's prior position.