

**ROSEMARY RAINES,**

**Grievant,**

**v. Docket No. 96-22-013**

**LINCOLN COUNTY BOARD OF EDUCATION,**

**Respondent,**

**and**

**EVELYN CARTWRIGHT, ET AL.,**

**Intervenors.**

## **DECISION**

\_\_\_Grievant, Rosemary Raines, alleges the Lincoln County Board of Education ("LCBOE") violated W. Va. Code §18A-4-8b when it did not post the positions of bus aides put on transfer, thus, preventing her from bidding on these positions. She seeks as relief that these positions be posted ([See footnote 1](#)), and she be allowed to bid on them. Intervenors, Evelyn Cartwright, Orpha Mumma, Trettie Roberts, and Debra Skeens, are bus aides and are currently in the positions Grievant could seek. This grievance was denied at Levels I and II, and waived at Level III. It was appealed to Level IV, and a hearing was held on March 23, 1996. This case became mature for decision on that day, as the parties declined to submit additional argument.

The material facts in this case are not in dispute and will be set out below as formal findings of fact. The issue to be resolved is one of law. ([See footnote 2](#))

### **Findings of Fact**\_\_\_

\_\_\_1. \_\_\_Grievant has been employed by LCBOE as a school aide for approximately 22 years. She has worked the past five summers as a bus aide.

\_\_\_2. \_\_\_In the Spring of 1995, LCBOE placed all of its bus operators and bus aides on the transfer list to reconfigure their routes. This has been LCBOE's practice for several years when numerous routes need to be adjusted within the system.

\_\_\_3. \_\_\_No additional positions were created by this process, and the positions were not posted. The

number of bus aide positions was the same both before and after the transfers and reconfigurations. 4. The week before school started, the bus operators and the bus aides met, and the reconfigured routes were assigned based on seniority.

5. Grievant is a supervisory school aide at Hamlin High School. Her position for the 1995-1996 school year had not been changed.

6. Grievant asked Transportation Director Johnny Adkins, by phone the day before the meeting, if she could attend and bid on a bus aide position.

7. Grievant received a variety of answers from Mr. Adkins. During the initial phone call, Mr. Adkins stated Grievant could attend the meeting and bid on a position. On the day of the meeting, Mr. Adkins told Grievant: 1) he did not know if she could bid on a position; 2) no, she could not bid on a position; and 3) the session was closed and she could not attend.

#### Discussion

W. Va Code §18A-4-8b states in pertinent part:

Boards shall be required to post and date notices of all vacancies of established existing or newly created positions . . . .

The recent Grievance Board case of Mullins v. Logan County Board of Education, Docket No. 94-23-283 (Sept. 25, 1995), discussed this issue, and is dispositive of this case. In Mullins the issue was whether a board of education could reconfigure its bus routes prior to the beginning of the school year, and then assign those routes to its drivers without being required to post them for competitive bid. The Administrative Law Judge in Mullins held that because no positions were either newly created or vacant; there were no positions which required posting as a result of the reconfiguration. Mullins determined that W. Va. Code §18A-4-8b did not mandate that particular duty assignments within a job classification be posted each time an assignment of duties was changed or reconfigured.

Here, as in Mullins, no positions of employment or newly created job opportunities were created by LCBOE's reconfiguration of the aides' assignments. Mullins, supra. LCBOE had the same number of bus aides, filling the same number of positions, as it had prior to placing the aides on the transfer list; thus, these positions did not have to be posted and filled under W. Va. Code

§18A-4-8b.

The above-discussion will be supplemented by the following Conclusions of Law.

Conclusions of law

1. Grievant, in this non-disciplinary action, has the burden of proving her case by a preponderance of the evidence. Napier v. Logan County Bd. of Educ., Docket No. 94-23-541 (Apr. 25, 1995).

2. A county board of education has the discretion to make job assignments and transfers pursuant to W. Va. Code §18A-2-7. See Mullins v. Logan County Bd. of Educ., Docket No. 94-23-283 (Sept. 25, 1995).

3. County boards of education are required to fill service personnel positions competitively under W. Va. Code §18A-4-8b. To notify potential applicants of these positions, county boards of education must post notices of all such vacancies of established or newly created positions. Mullins, supra.

4. A school board may place a bus aide on the transfer list, reconfigure her route, and replace her in the position without creating a new position which must be posted and filled pursuant to W. Va. Code 18A-4-8b. Mullins, supra.

5. Grievant failed to establish by a preponderance of the evidence that LCBOE violated W. Va. Code 18A-4-8b.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Lincoln 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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**JANIS I. REYNOLDS**

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**ADMINISTRATIVE LAW JUDGE**

**DATE: June 28, 1996**

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[Footnote: 1](#)

Although Grievant indicates she wants the position "reposted", at Level IV it became clear the positions had never been posted, and the relief sought is posting.

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[Footnote: 2](#)

At the Level IV hearing, Grievant testified that Superintendent Dallas Kelly had ordered the court reporter to delete certain of Grievant's statements from the record regarding the meeting when the bus aide positions at issue were filled. Prior to her testimony, the parties had accepted, as a true and accurate record, the Level II Transcript submitted by Grievant. Although not germane to the issue before this Administrative Law Judge, the undersigned notes that the statements Grievant said were deleted from the record are recorded at page 8 in the lower level transcript.