

**WANDA DOTSON, .**

**Grievant .**

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**v. . Docket Number: 95-03-348**

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**BOONE COUNTY BOARD OF EDUCATION, .**

**Employer. .**

## **DECISION**

Grievant, Wanda Dotson, filed this grievance on July 24, 1995, pursuant to the provisions of the Grievance Procedure for education employees, West Virginia Code §§18- 29-1, et seq., contending that the Boone County Board of Education violated W. Va. Code §§18A-2-7, 18A-2-2, 18A-2-1 and 18A-4-7a, when it did not post as vacant a math teaching position at Sherman Junior and Senior High School to be filled for the 1995-1996 school year. ([See footnote 1](#)) She requests that this position be posted. The grievance was denied at level two andbypassed level three pursuant to W. Va. Code §18-29-4(c). Appeal was made to this Grievance Board on August 3, 1995. An evidentiary hearing was held on October 10, 1995, at this Board's Charleston, West Virginia office. The case became mature for decision on that date. The evidentiary record consists only of the evidence presented at level four because the recorded testimony from level two could not be transcribed.

The material facts are not in dispute and shall be set forth below as appropriately made findings of fact.

### **Finding of Fact**

1. Grievant is a teacher employed by the Boone County Board of Education (BCBE) certified to teach math and general science.
2. For the 1995-1996 school year, she is assigned to teach at Sherman Junior High School.
3. David Lee Johnson is employed as a math teacher for the BCBE. For the 1994- 1995 school year, he taught one math skills class, one trigonometry class and one algebra class at Sherman High School. He also taught two computer classes and one algebra class at the Junior High School.
4. For the 1995-1996 school year, Mr. Johnson teaches one algebra II class and one applied math I class for each of two semesters at the High School and two algebra classes and one computer skills class at the Junior High.
5. Sherman High School currently uses "block scheduling" during the school year that is similar to the semester concept used by most colleges. During the 1994-1995 school year, the High School used the typical seven period schedule.

### Discussion

Grievant contends that Mr. Johnson is teaching in a "new position" for the 1995-1996 school year as compared to his "old position" for the 1994-1995 school year. She claims that this "new position" should have been posted for competitive bid and filled pursuant to W. Va. Code §18A-4-7a. The BCBE argues that Mr. Johnson does not hold a different position from the one he held last year. It contends that the factors which make-up a position are the teacher's certification level and the physical location where he/she teaches. It avers that no new position was created to post and fill. The BCBE is correct in its application of the law to the facts of this case.

Boards of education have the authority to hire teachers, under a contract of employment, pursuant to W. Va. Code §18A-2-1. This contract must set forth the necessary terms of employment such as salary and length of employment but they need not detail every duty expected of a teacher. See, Hawkins v. Tyler County Bd. of Educ., 275 S.E.2d 908 (W. Va. 1980). After a teacher is hired by a board, the superintendent has the authority, subject only to approval by the board, to assign duties to him/her and to transfer him/her. Code §18A-2-7a. Once hired, a teacher does not have the right to teach any particular class or even to teach at a particular school. Id.

W. Va. Code §18A-4-7a requires that boards post and date notices of all openings in established,

existing or newly created positions. A position is synonymous with the term job. See, Mullins et. al. v. Logan Co. Bd. of Educ., Docket No. 94-23-283 (Sep. 25, 1995). Here, Mr. Johnson is employed as a math teacher by the BCBE. He is not employed solely as an algebra teacher, trigonometry teacher, etc. His class schedule and class times may be changed by the BCBE when it is within the best interests of the school system to do so. Just because his course schedule for the 1995-1996 school year is changed to include more or fewer classes than he had last year at the same schools where he taught, and within his area of certification, does not mean that his job has evolved into a new position to be posted. Mr. Johnson's class assignment has been changed and not the nature of his job as a math teacher. No more nor no fewer employment opportunities have been created.

To conclude that the subject matter of classes taught in a specific area of certification, or the periods during the day when the classes are taught, determines whether a position is newly created, would be the same as concluding that boards cannot make assignments under 7a. This would create an unworkable situation at the end and beginning of every new school year. Boards would accomplish nothing more than to post and fill assignments for almost every position within their schools because students' needs and student populations are always changing. It must be remembered that posted positions require applications, interviews, board votes and hiring decisions, not simply transfers based upon seniority. Grievant's argument is not persuasive and no other violations of law have been raised at level four.

The discussion of the case is now supplemented by the following appropriately made conclusion of law.

#### Conclusion of Law

Grievant has failed to establish her claims by a preponderance of the evidence. W. Va. Code §18-29-6. No violation, misinterpretation or misapplication or W. Va. Code §18A-4-7a has been shown. Therefore, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Boone 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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**ALBERT C. DUNN, JR.**

**Administrative Law Judge**

**January 24, 1996**

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[Footnote: 1](#)

*Another Grievant, John Griffith, was a party at level two but has withdrawn from the case.*