

CHRISTINE HARMON,

Grievant,

v.

Docket No. 95-29-447

MINGO COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Grievant, Christine Harmon, filed two grievances which were consolidated at Level II. Grievant stated Mingo County Board of Education ("MCBOE") violated W. Va. Code §18-5-18a by placing more than the allowed number of students in her afternoon art class. Grievant also argued: "assigned duties" in addition to Guidance Conselor [sic] duties violates WV Code 18-5-8b & 18-29-2, section "M"[,] less than 75% of grievant[']s time is spent in a counseling relationship with students.

At the Level II hearing, the Hearing Examiner allowed Grievant to add the lack of a planning period to her grievance over the objection of MCBOE's counsel, and granted the grievance in part and denied it in part. Grievant was granted a thirty minute planning period from 7:30 to 8:00 a.m., [\(See footnote 1\)](#) and the principal was directed to correct the class size to conform with the statute. The Hearing Examiner denied the grievance relating to counselor duties. This grievance was then waived at Level III and appealed to Level IV. A Level IV hearing was held on December 15, 1995, and this case became mature for decision on December 27, 1995.

Overages

The first issue to resolve is the matter of Grievant's overage in her sixth grade art class. At Level IV, Grievant stated one of her classes still had twenty-nine students in it. [\(See footnote 2\)](#) Principal Burma Hatfield stated all the overages had been corrected, this student's placement was an oversight, and this error would be corrected within twenty-four hours. At the Level IV hearing, Grievant asked why she had not been paid for the previous overages. Discussion between the parties revealed Grievant had never requested payment from either MCBOE or her principal, and

had not requested payment on her grievance form. Grievant was instructed, at hearing, on the proper method to request payment. As MCBOE agreed at both the Level II and Level IV hearings that Grievant had overages, this issue is not in dispute. Accordingly, Grievant is to be paid for these overages by calculating 1/25th of her daily salary, times the number of overage, times 3/7 (to represent the 1-1/2 hour time period), times the number of days overages occurred.

Assigned Duties

Grievant's next issue is that she, a counselor, is required to teach every day. Grievant teaches art to sixth graders for 1-1/2 hours each school day. She has three groups of students which rotate every two weeks. Thus, she teaches the same course content to three groups of students over a six week period. Grievant argues she was hired only as a counselor and should not be required to teach. The testimony on this issue is conflicting, thus, the undersigned is required to assess the credibility of the witnesses. Lanehart v. Logan County Bd. of Educ., Docket No. 95-23-235 (Dec. 29, 1995).

On May 24, 1995, Grievant's current position was posted as "Guidance/Multi-Subjects Teacher" at Gilbert Middle School ("GMS"). Assistant Superintendent Johnny Fullen testified the position was for a part-time counselor/part-time teacher. He also stated he discussed the posting with Grievant several times, and told her it included both teaching and counseling duties. He testified Grievant knew through these discussions "exactly what she was going into."

Principal Hatfield testified she had requested a full-time counselor as well as several full-time teachers, but was told by central office the best they could do was to hire a part- time counselor/teacher and another teacher. Principal Hatfield told Grievant the first day she talked to her that she would always have teaching duties [\(See footnote 3\)](#) and asked her whether she wished to teach art or music. Grievant never told Principal Hatfield that she was not suppose to teach and never indicated to Principal Hatfield, in any way, that she thought shewas to be a full-time counselor. Grievant's employment started on August 28, 1995, and she did not file this grievance until September 12, 1995.

Grievant's testimony is somewhat conflicting. She stated she applied for the position and remembers talking to Mr. Fullen about it. She stated Mr. Fullen never told her she would be expected to do both counseling and teaching. When asked specifically if she was told she would be teaching, she responded, "I was never told specifically how much time would be spent." Although it is unclear

what this response meant, apparently Grievant knew from the outset she would have some teaching responsibilities. She then stated no one ever told her she would be required to teach, and she never learned she would be teaching until Principal Hatfield told her. She thought the position was posted as a Multi-Subject teacher/counselor position because she might need to cover for an absent teacher. She also testified Mr. Fullen was in error when he testified he had discussed the position with her and told her it included teaching. When asked if she understood teaching art classes was part of the position at GMS she answered, "Yes, at the time." Under close questioning, Grievant clarified this statement to mean only that she would help out with teaching until the school was fully staffed.

Grievant also stated she believed she was a full-time counselor because MCBOE's minutes of its June 19, 1995 meeting, which approved her hiring, stated she was hired as a counselor at GMS. She never asked anyone why or how the position was changed. Mr. Fullen testified the minutes are in error, the position is and always has been as it was posted, and that MCBOE would do what it always does with errors in the minutes, correct it now that it was pointed out. Obviously, Grievant's credibility is at issue because much of her testimony contradicts the sworn testimony of both Principal Hatfield and Mr. Fullen. The undersigned observed the demeanor of the witnesses and found Principal Hatfield and Mr. Fullen to be sincere and straight-forward. The testimony of these two people was consistent and plausible. On the other hand, Grievant's responses were somewhat evasive and inconsistent and not supported by her subsequent behavior. Additionally, it must be noted the posting stated "the following vacancies" and then listed the "Guidance/Multi-subjects Teacher" at GMS was one position available. This posting did not say certifications were required in these areas, but indicated that a person with these certifications would fill a joint counselor/teaching position.

As to Grievant's reliance on MCBOE's minutes, this argument is without merit. First, board minutes, like every other written record, are subject to error. Second, a school board cannot change the duties of a position after it has been posted and an applicant chosen. The information contained in a posting must be "essentially" correct so applicants will know what is expected. Barker v. Kanawha County Bd. of Educ., Docket No. 90-20-505 (Feb. 22, 1991); Thomas v. Kanawha County Bd. of Educ., Docket No. 94-20-1123 (May 17, 1995). See also W. Va. Code §18A-4-7a, ¶10. Thus, MCBOE could not legally post a position for a counselor/teacher, and then hire the successful

applicant as a counselor only. Thomas, supra. Not only could MCBOE not do this, the testimony is clear they never intended to do so. Grievant's position is and has always been that of a part-time counselor/part-time teacher. Thus, Grievant's assigned duties are within the posted position.

The above discussion will be supplemented by the following Findings of Fact and Conclusions of Law.

Findings of Fact

1. Grievant, a former substitute teacher with no seniority, was hired to fill a position posted as a part-time counselor/part-time teacher at GMS for the 1995-96 school year.
2. Grievant had more than twenty-five students in some of her art classes. These overages have been corrected, but Grievant has not been paid because she had not filed a request.
3. MCBOE's minutes of June 28, 1995, are in error when they state Grievant was hired as a counselor only. Grievant was hired to fill the posted position of "Guidance/Multi- subject Teacher."
4. Grievant is properly employed at GMS as a part-time counselor/part-time teacher. The duties she is assigned to perform are within the scope of expected duties for an employee in her position.
5. Grievant knew at the time she accepted employment that the position was that of a part-time counselor/part-time teacher.

Conclusions of Law

1. Grievant must prove her grievance by a preponderance of the evidence. Napier v. Logan County Bd. of Educ., Docket No. 94-23-541 (Apr. 25, 1995).
2. Requiring Grievant to teach more than twenty-eight students in her art class is a violation of W. Va. Code §18-5-18a. All overages greater than twenty-eight must cease, and Grievant must be paid for any student over twenty-five.
3. As Grievant was hired as a part-time counselor/part-time teacher, her assigned duties violate no statute, rule, regulation, policy or written agreement. See Barker v. Kanawha County Bd. of Educ., Docket No. 90-20-505 (Feb. 22, 1991).

Accordingly, this grievance is **GRANTED** in part and **DENIED** in part. If, in the unlikely event the overages greater than twenty-eight have not ceased, MCBOE is **ORDERED** to stop this practice.

Grievant is directed to fill out the proper paper work for her overage pay, and MCBOE is directed to pay Grievant by the formula discussed on page 3. Grievant's complaint relating to her assigned duties is **DENIED**.

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

JANIS I. REYNOLDS

Administrative Law Judge

Dated: March 29, 1996

Footnote: 1 *Grievant argued, as a counselor she should have a planning period, even if she were relieved of all her teaching duties. W. Va. Code §18A-4-14 states "[e]very teacher who is regularly employed for a period of time more than one-half the class periods of the regular school day shall be provided at least one planning period . . .". (Emphasis added.) Clearly, Grievant's argument is without merit as only teachers employed in teaching over half of the school day are entitled to a planning period. Whether Grievant is entitled to a planning period in her current part-time counselor/part-time teacher position is not before the undersigned. Principal Hatfield increased Grievant's planning period to forty-five minutes, and, with Grievant's agreement, changed the time to mid- morning.*

Footnote: 2 *Since it was not raised as an issue between the parties, it is assumed MCBOE had the required permission from the State Department of Education for the three students over the twenty-five limit mandated in W. Va. Code §18-5-18a.*

Footnote: 3 *When school first started, Grievant was teaching art full-time because not all the positions had been filled.*