EVELYN DOLIN,

Grievant,

v.

DOCKET NO. 97-13-095

GREENBRIER COUNTY BOARD OF EDUCATION,

Respondent,

and

JENNIFER YOUNG,

Intervenor.

D E C I S I O N

Grievant, Evelyn Dolin, filed the following grievance against Respondent Greenbrier County Board of Education on January 2, 1997:

> The B.O.E. violated WV Code 18A-4-15 by failing to properly rotate service personnel assignments. This violation affected my seniority calculation under provisions of WV Code 18A-4-8g and limited subsequent hiring opportunities as a regular employee.
>
> To dissolve (sic) this dispute, I request my seniority date be amended to date when I should have rightfully assumed my assigned duties. In addition, I request in statement (sic) to the aides position at W.S.S.E.S. and any back pay which I am intitled (sic). (See footnote 1)

Following denial of the grievance at level one, a level two hearing was held on January 15, 1997, and a decision denying the grievance was rendered on January 28, 1997. IntervenorJennifer Young was granted intervenor status on or about February 19, 1997. Level three was by-passed and this matter was appealed to level four on February 19, 1997. Hearing was held in the Grievance Board's Beckley, West Virginia office on May 7, 1997, and the grievance became mature for decision on or

about June 9, 1997, the deadline for the parties' submission of proposed findings of fact and conclusions of law. This matter was reassigned to the undersigned Administrative Law Judge on October 23, 1997, for administrative reasons.

SUMMARY OF EVIDENCE

Level II Joint Exhibits

Ex. 1 - Grievance documents

Level II Respondent's Exhibits

Ex. 1 -

Payroll Attendance Form, 12/2/95 - 1/2/96.

Ex. 2 -

Confirmation of First Day of Work Form

Ex. 3 -

Posting for Supervisory Aide position, White Sulphur Elementary School, dated November 7, 1996.

Level IV Joint Exhibits

Ex. 1 -

Random Selection List dated February 15, 1994.

Ex. 2 -

Substitute Aide Seniority List, revised February 15, 1994.

Ex. 3 -

Substitute Aide Seniority List, revised November 4, 1996.

Level IV Grievant's Exhibits

Ex. 1 -

Printout indicating name, date, location, position, and earnings of Robin Palmer and Geraldine Dalton for 1993-94 school year.

Ex. 2 -

Printout indicating name, date, location, position, and earnings of Cathy Loomis, Robin Palmer, Rita Wood, Judy Whitt, Jennifer Young and Geraldine Dalton for 1994-95 school year.

Level IV Respondent's Exhibits

Ex. 1 -

December 15, 1995 letter from Evelyn Dolin confirming her first day of work as substitute aide was December 14, 1995.Ex. 2 -
Substitute Aides Log 1995-96

Ex. 3 -

Payroll records for Evelyn Dolin and Cathy Loomis

Testimony

Grievant testified in her own behalf and presented the testimony of Ellsworth Buck. Intervenor testified in her own behalf.

ISSUE

The issue is whether Grievant has proven by a preponderance of the evidence that Respondent violated any statute, policy, rule or regulation in the manner in which it contacted substitute service personnel on the substitute service personnel roster. I conclude that she has not.

FINDINGS OF FACT

I find, by a preponderance of the evidence, the following facts.

1. Grievant, a substitute aide, was hired and placed on the approved substitute list by Respondent on February 8, 1994. LII Jt. Ex. 1.

2. Grievant's first day of work was December 15, 1995. LIV R. Ex. 1.

3. Intervenor was also hired and placed on the approved substitute list by Respondent on February 8, 1994. LII Jt. Ex. 1.

4. Intervenor's first day of work was March 7, 1994. LII Jt. Ex. 1.

5. Numerous substitute aides were approved for addition to the substitute list on February 8, 1994. Therefore, on February 15, 1994, a random drawing was conducted to determine the order of rotation for calling those on the substitute lists. LIV Jt. Ex. 1.

6. From a placement of 23 substitute personnel, Grievant was number 12 and Intervenor was number 14. LIV Jt. Ex. 1. 7. The order of rotation does not determine a substitute service personnel's seniority date for purposes of hiring. The first day a substitute enters into his or her actual duties becomes his or her seniority date.

8. Individual schools in Greenbrier County are responsible for calling substitutes, as opposed to the calls being made from the Central Office.

9. Each school keeps a log of calls made to substitutes, indicating how many times they were called, whether they accepted, declined, were unavailable, or did not answer. These logs are turned into the Central Office in the Spring of each year.

10. Substitutes in Greenbrier County are required to work at least half the time they are called, or they are subject to termination. When the Central Office gets the logs from the schools in the Spring, it makes determinations regarding retention or termination of substitutes. After these determinations are made and notices sent, the logs are thrown away.

11. Grievant listed two phone numbers on the substitute roster, one of which was her sister's phone. That phone had standard caller I.D. service as of July 15, 1993, which was upgraded to deluxe caller I.D. service on December 4, 1995.

12. Grievant spoke with Ellsworth Buck, Director of Personnel, in the Fall of 1995, inquiring about how calls were made off the substitute service roster, complaining that she had not been called yet.

13. During the first semester of the 1996-97 school year, Grievant accepted a long-term substitute assignment as a special education aide at White Sulphur Springs Elementary School. 14. The special education aide position was subsequently posted and filled according to the provisions of W. Va. Code § 18A-4-8b. Grievant, Intervenor, and at least four others applied for

the position. Intervenor was the successful applicant for the position, based upon her seniority date of March 7, 1994.

15. The other four unsuccessful applicants had earlier seniority dates than Grievant, but later than Intervenor.

DISCUSSION

Grievant alleges that Respondent did not properly call her off of the substitute service personnel rotation roster during the 1993-94 and 1994-95 school years. (See footnote 2) The result was that her seniority date, or the date she actually entered upon her duties as a substitute aide, fell behind the other substitutes, thus rendering her ineligible for a subsequent vacant regular aide position. Respondent denies it violated any statute, policy, rule or regulation in the manner in which it called substitutes off of the substitute service personnel rotation roster for the school years in question.

W. Va. Code § 18A-4-8g, "determination of seniority for service personnel", provides in pertinent part:

> The seniority for service personnel shall be determined in the following manner: seniority accumulation for a substitute employee shall begin on the date the employee enters upon the duties of a substitute . . . The seniority of a substitute employee, once established, shall continue until such employee enters into the duties of a regular employment contract. . . (Emphasis added).

W. Va. Code § 18A-4-15 provides, in pertinent part:

> To establish a uniform system of providing a fair and equitable opportunity for substitutes to enter upon their duties for the first time, the following method shall be used: The initial order of assigning newly employed substitutes shall be determined by random selection system established by the affected substitute employees and approved by the County Board. The initial priority order shall be in effect only until the substitute service personnel have entered upon their duties for the first time. . . .

It is clear that Respondent complied with the applicable Code Sections as far as establishing an initial substitute service roster based upon a random drawing, as well as revising that substitute service roster once substitutes entered upon their duties, thus establishing a seniority date for purposes of hiring.

What Grievant argues is that Respondent must have skipped her when contacting substitutes from the substitute roster, because Intervenor, as well as others, ended up being employed first and

receiving earlier seniority dates than she. Grievant testified that one of the numbers she listed on the substitute roster was her sister's phone, which had caller I.D. service. She testified that no Greenbrier County school numbers were identified on that service until December 1995, although the substitute list was developed in February 1994. Grievant did admit that if the number from which the call originated was outside the service area, it would not show up on the I.D. service, but would only be noted as “out of area”. Grievant also denied receiving a call on November 2, 1995, stating it did not show up on the I.D. service. Respondent's calling logs clearly indicate that Grievant was called by Frankford Elementary School on that date, and there was no answer. LIV R. Ex. 2.

Grievant has failed to prove by a preponderance of the evidence that her first day of work was not properly established in accordance with the provisions of the applicablestatutes. Nor has she proven by a preponderance of the evidence that the selection of Intervenor for the position of Supervisory Aide at White Sulphur Springs Elementary School was violative of any statute, rule, regulation or policy. Further, it is mere speculation that Grievant, even if called earlier, would have accepted the assignment or otherwise been available.

CONCLUSIONS OF LAW

1. It is incumbent upon the Grievant to prove her case by a preponderance of the evidence.
2. Grievant failed to prove Respondent violated any statute, rule, regulation or policy with regard to her placement on the substitute service personnel roster, or with regard to assignment of her seniority date based upon the date she entered into her duties as a substitute.

Accordingly, this grievance is **DENIED**.

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

MARY JO SWARTZ

Administrative Law Judge

Dated: November 5, 1997

Footnote: 1 *The wording of the grievance has changed since the level one filing, but the essence of the grievance is accurately reflected in the level four appeal version above.*

Footnote: 2 *No timeliness issue was raised by Respondent.*