REVA WADE,

Grievant,

v. DOCKET NO. 97-22-551

LINCOLN COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Grievant Reva Wade filed this grievance against Respondent Lincoln County Board of Education on or about October 13, 1997. This grievance arose when Grievant was not selected for the posted position of Parent Coordinator at Hamlin K-12 School. Grievant alleged a violation of W. Va. Code § 18A-4-8b, and sought as relief instatement into the position, and any benefits.

The following Findings of Fact are made based upon the evidence presented at Levels II and IV. (See footnote 1)

Findings of Fact

1. Grievant is employed as a Cafeteria Aide, a supplemental contract, and as a substitute, by the Lincoln County Board of Education ("LBOE"). Her work hours are from 10:30 a.m. to 1:30p.m. daily.

2. On August 5, 1997, LBOE posted the position of Parent Coordinator at Hamlin K-12 School. The duties of the Parent Coordinator are to organize parents and to work with teachers to organize activities. This includes calling and training parents. The posting stated the position would be 15 hours a week, but did not list specific hours. The job description required that the successful candidate be flexible concerning work hours.

3. Grievant, Rinda Lisa Stowers, and Lisa McCoy applied for the vacancy. Ms. Stowers was not an employee of LBOE. Ms. McCoy was employed by LBOE as a substitute.

4. Dwight Coburn, Principal of Hamlin K-12 School, interviewed the three applicants. During the interviews Mr. Coburn advised the applicants that he wanted the successful applicant to work a

three hour block of time, five days a week.

5. Principal Coburn recommended either Grievant or Ms. Stowers for the position. Ms. Stowers was his first choice because of the hours she could work. Principal Coburn wanted the Parent Coordinator to work from 9:00 a.m. to 12:00 noon each day, and be able to stay to complete a project, or work different hours when necessary, as he determined. He believed it was important that the three hours each day be worked in a block, rather than splitting the hours between a few in the morning and a few in the afternoon, so that a project could be completed.

6. Grievant did not wish to give up her Cafeteria Aide position.

7. Ms. Stowers was selected for the position of Parent Coordinator. During the period from September 22 through October 17, 1997, Ms. Stowers worked from 9:00 a.m. to 12:00 noon on two days, September 22 and October 1. During that time her hours varied as follows: 8:35 to 11:35 a.m. one day; 8:00 to 11:00 a.m. seven days; 9:30 a.m. to 2:30 p.m. one day; 10:00 a.m. to1:00 p.m. six days; 10:30 a.m. to 1:30 p.m. one day; 11:00 a.m. to 2:00 p.m. one day; and 12:00 noon to 3:00 p.m. one day. After October 17, 1997, she worked during the hours from 9:00 a.m. to 12:00 noon everyday, and some days worked more than three hours, either beginning work earlier than 9:00 a.m., or working past 12:00 noon, or both.

8. At the beginning of the year extenuating circumstances required a varied work schedule to accomplish the work which needed to be completed.

Discussion

The burden of proof is upon the grievant to prove the elements of her grievance by a preponderance of the evidence. Conner v. Mingo County Bd. of Educ., Docket No. 95-29-476 (Mar. 28, 1996). The sole issue in this case is whether Grievant was available to perform the duties of the position. "Implicit in the provisions of W. Va. Code § 18A-4-8b governing the appointment of school service employees is the premise that an employee making application must be available to assume the duties of a position at the times designated by the Board. See Barber v. McDowell County Bd. of Educ., Docket No. 94-33-405 (Apr. 21, 1995)." Teter v. Randolph County Bd. of Educ., Docket No. 95-42-535 (May 9, 1996), Conclusion of Law Number 3. This same principle applies to professional positions. Blume v. Fayette County Bd. of Educ., Docket No. 95-10-560 (Apr. 29, 1996). See Walls v. Wyoming County Bd. of Educ., Docket No. 95-55-157 (Aug. 29, 1995). Thus, while the parties took

different positions on whether the Parent Coordinator position was a service personnel position or a professional position, that issue need not be addressed.

As in the case of Blume, supra, LBOE established that the Parent Coordinator duties were to be performed, subject to change, between 9:00 a.m. and 12:00 noon, as determined by the principal of the school. Principal Coburn wanted the Parent Coordinator to be readily accessible toparents during the morning hours, in a three hour block of time, as parents more often come in to volunteer in the morning. Grievant argued that because parents come in before 8:00 a.m. when they drop their children at school, the Parent Coordinator could just as easily perform her duties from 8:00 a.m., or earlier. While the essential duties of the Parent Coordinator can be scheduled at hours other than 9:00 a.m. to 12:00 noon, Grievant has not shown that LBOE was obligated to modify the hours of the position to accommodate her work schedule in another half-time position. The job description says the qualifications include "someone flexible concerning work hours." This means the employee is to be able to work different hours as determined by her supervisor, not that the employee can decide what hours she wants to work. Thus, although both Grievant and Ms. Stowers were otherwise "qualified" for this position, Ms. Stowers' schedule allowed her to work the desired hours, while Grievant's did not, and LBOE could properly select Ms. Stowers for this reason.

Grievant pointed to the varying work hours of Ms. Stowers at the beginning of the school year in support of her argument that the employee need not work from 9:00 a.m. to 12:00 noon. She also pointed out that only after this grievance was filed, did Ms. Stowers start working from 9:00 a.m. to 12:00 noon. While this is suspicious, it does not demonstrate that LBOE's determination that the Parent Coordinator position could best be filled by someone whose work schedule allowed her to work a continuous, flexible block of time in the morning was either arbitrary and capricious, or a pretext to select Ms. Stowers for the position rather than Grievant. While Grievant insinuated that Ms. Stowers was allowed to come and go as she pleased, there was no evidence that Ms. Stowers set her own hours. The fact that she at first worked varying hours supports Principal Coburn's decision, as it demonstrates a need for the employee to be available to work different hours, as determined by Principal Coburn, which Grievant could not do. The following Conclusions of Law support the Decision reached.

Conclusions of Law

1. The burden of proof is upon the grievant to prove the elements of her grievance by a preponderance of the evidence. Conner v. Mingo County Bd. of Educ., Docket No. 95-29-476 (Mar. 28, 1996).

2. "County boards of education have broad discretion in personnel matters, including transfers, but must exercise that discretion in a manner which is not arbitrary or capricious." Dodson v. McDowell County Bd. of Educ., Docket No. 93-33-243 (Feb. 15, 1994). See Dillon v. Bd. of Educ. of County of Wyoming, 351 S.E.2d 58 (W. Va. 1986).

3. "Implicit in the provisions of W. Va. Code § 18A-4-8b governing the appointment of school service employees is the premise that an employee making application must be available to assume the duties of a position at the times designated by the Board. See Barber v. McDowell County Bd. of Educ., Docket No. 94-33-405 (Apr. 21, 1995)." Teter v. Randolph County Bd. of Educ., Docket No. 95-42-535 (May 9, 1996), Conclusion of Law Number 3. This same principle applies to professional positions. Blume v. Fayette County Bd. of Educ., Docket No. 95-10-560 (Apr. 29, 1996). See Walls v. Wyoming County Bd. of Educ., Docket No. 95-55-157 (Aug. 29, 1995).

4. Grievant failed to establish that she was available to perform the duties of the position at issue at the times designated by the supervisor, or otherwise demonstrate that Respondent either abused its discretion, acted in an arbitrary or capricious manner.

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.

BRENDA L. GOULD

Administrative Law Judge

Dated: May 28, 1998

Footnote: 1

Grievant's supervisor responded to the grievance on October 13, 1997, stating he was unable to grant the requested relief. On that same date, Grievant appealed to Level II, where a hearing was held on October 28, 1997. A Level II decision denying the grievance was issued on December 8, 1997. On December 19, 1997, Grievant appealed the Level II decision to Level IV, bypassing Level III. A Level IV hearing was held on February 17, 1998. Grievant was represented by Anita Mitter, and Respondent was represented by Charles H. Damron, Esq. This matter became mature for decision upon the receipt of the last of the parties' post-hearing written submissions on March 12, 1998.