DEBRA SKEENS,

Grievant,

v. **Docket No. 02-22-070**

LINCOLN COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

This grievance was filed by Grievant Debra Skeens against Respondent Lincoln County Board of Education ("LBOE"), on or about September 18, 2001. The statement of grievance reads:

> Lincoln BOE has violated WV Code 18A-4-8 by hiring a bus operator to perform Aide's duties.

As relief she seeks “back pay, plus benefits, 10% interest and the position.” (See footnote 1)

The following Findings of Fact necessary to the Decision reached, are made based upon the evidence presented at the Level II hearing, and the exhibits submitted by Respondent at Level IV.

Findings of Fact

1. Grievant has been employed by LBOE as an aide since 1974.

2. On August 30, 2001, LBOE posted a “Supplemental Service Position” for a “Bus Aide or Bus Operator.” The work hours were1:00 to 1:30 p.m. daily, as needed. The posting states, “Aide would board bus at Harts Parent Center and accompany identified students to their individual homes.” The job involved only one student, who is handicapped. Grievant had worked in this position for the three previous years.

3. Grievant and a bus operator were the only applicants for the posted position. Sometime between September 7 and 18, 2001, the bus operator was awarded the position.

4. At the time she bid on this position, Grievant was already employed by LBOE full-time as a bus aide/classroom aide. By letter dated August 21, 2001, Superintendent William Grizzell notified

Grievant that she was to report to Harts High School to work as an aide after she completed her duties on the morning bus run; and that she should plan to remain at the school until the evening run began. Grievant chose not to report to her Harts High School assignment until September 11, 2001, about two and a half weeks after school had started, (See footnote 2) and her work hours were not established prior to that time. Grievant had voiced to LBOE personnel that she did not want to work more than eight hours a day, and Superintendent Grizzell did not intend for her to work more than eight hours a day. Nonetheless, in her full-time position she works over eight hours a day, and has worked eleven hours a day in that position.

5. When she began working in the classroom at Harts High School, Grievant was scheduled to take a half hour lunch break and two fifteen minute breaks from 1:00 to 2:00 p.m. When Bill Linville became Principal of Harts High School in October 2001, he decided that Grievant's schedule should be changed to accommodate the needs of school, and her afternoon break and lunch were changed to begin at 1:30 p.m., and end at 2:15 p.m. Her other break was changed so that she was to take it in the morning, although she has not been doing so.

6. Grievant was not awarded the posted mid-day position because LBOE believed it was impossible for her to perform the duties of the position in the middle of the day, given the responsibilities of her full-time position, and because Grievant had asked not to work more than eight hours a day.

Discussion

Grievant bears the burden of proving the allegations of her grievance by a preponderance of the evidence. Conner v. Mingo County Bd. of Educ., Docket No. 95-29- 476 (Mar. 28, 1996). Grievant argued that the posted position was an aide position, and since she was the only aide to apply, she was entitled to the position. Respondent argued it could fill the position with a bus operator, and Grievant was not available to fill the position, as she was refusing to report to work, her regular work schedule was not established, and she did not want to work more than eight hours a day.

W. Va. Code § 18A-4-8b ¶ 1 provides:

> A county board shall make decisions affecting promotions and the filling of any service personnel positions of employment or jobs occurring throughout the school year that are to be performed by service personnel as provided in section eight [§18A-4-8] of this article, on the basis of seniority, qualifications and evaluation of past service.

It certainly appears that the posted job is not a bus operator job; however, this issue need not be addressed. "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). As of the time she applied for the position, Grievant had not yet reported for work as a classroom aide, and her schedule had not been established. Superintendent Grizzell testified that initial schedules with special education students are tentative, so even once she had a scheduled break from 1:00 to 2:00 p.m., this was not necessarily what her final schedule would be. Superintendent Grizzell also pointed out that Grievant had just told LBOE she did not want to work more than eight hours a day in her full-time position, and placing her in the posted position would result in her working more than eight hours a day. Grievant did not speak to this issue. Grievant has not demonstrated she was available to perform this job from 1:00 to 1:30 p.m.

The following Conclusions of Law support the Decision reached.

Conclusions of Law

1. The burden of proof is upon 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. "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).

3. Grievant has not demonstrated she was available to perform this job from 1:00 to 1:30 p.m. daily, as needed.

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. Any 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. However, the appealing party is required by W. Va. Code § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Grievance Board with the civil action number so that the record can be prepared and transmitted to the circuit court.

BRENDA L. GOULD

Administrative Law Judge

Dated: June 19, 2002

Footnote: 1

The record does not reflect what occurred at Level I. Grievant appealed to Level II, where a hearing was held on January 29, 2002. The grievance was denied at Level II on March 11, 2002. Grievant appealed to Level IV on March 20, 2002. After a Level IV hearing was scheduled, the parties agreed to submit this grievance for decision based upon the Level II record, supplemented by three exhibits submitted by Respondent, and written argument. As there was no objection to their admission into evidence, Respondent's Exhibits 1, 2, and 3 are Ordered admitted into evidence. This grievance became mature for decision on May 31, 2002, upon receipt of Respondent's written argument. Grievant declined to submit written argument. Grievant was represented by Gary Archer, and Respondent was represented by James W. Gabehart, Esquire.

Footnote: 2

There was testimony that Grievant has a back problem, and was concerned that she would be required to do some lifting in the classroom position. Apparently she did not report for her classroom assignment until she felt certain that she would not be required to do any lifting.