JAMES THORNBURG,

Grievant,

v v.

Docket No. 04-50-170

WAYNE COUNTY BOARD OF EDUCATION,

Respondent,

D E C I S I O N

Grievant, James Thornburg, an Assistant Principal, filed this grievance on or about February 23, 2004, against his employer, the Wayne County Board of Education ("WCBOE" or "Board"). His Statement of Grievance states:

> Violation of WV Code 18-29-2(a) with regard to terms and conditions of employment and a practice constituting a substantial detriment and interference with effective job performance by assigning grievant vacant assistant principal's job duties and responsibilities.
>
> Relief sought: Relief sought is to be returned to his job responsibilities of athletic director and teacher coverage/building maintenance.

This grievance was denied at the lower levels. Grievant appealed to Level IV on May 4, 2004, and a Level IV hearing was held on June 1, 2004, at WCBOE's Board office, at the request of the parties. This case became mature for decision on July 1, 2004, after receipt of the parties' proposed findings of fact and conclusions of law. (See footnote 1)

Issues and Arguments

Grievant asserts he is performing the duties of a full-time Assistant Principal as well as a half-time Athletic Director. Grievant maintains WCBOE violated W. Va. Code §18-29- 2(a) when it increased the duties of his half-time position, and he asserts the currentnumber of tasks he is expected to

perform prevent him from effectively performing his duties.

Respondent maintains the principal of Grievant's school has the right to assign Grievant duties as needed, as long as they are within the Assistant Principal and/or Athletic Director Job Descriptions. Respondent maintains the responsibilities assigned to Grievant to not rise to the level of substantial detriment or interference with his job performance. WCBOE also notes that since it is unclear what administrators will be at Spring Valley High School this next school year and Grievant's duties might change again, there is no real issue to decide. (See footnote 2)

Findings of Fact

1. For the 2002-2003 school year, Grievant was employed as an Assistant Principal at Spring Valley High School. Grievant had been an Assistant Principal for approximately five years at the time this grievance was filed.

2. During the Summer of 2003, the long-term, full-time Athletic Director retired. 3. On August 7, 2003, WCBOE posted a position for half-time Assistant Principal and half-time Athletic Director for Spring Valley High School.

4. On August 13, 2003, Grievant applied for this position, and on August 19, 2003, he received it.

5. As the Athletic Director at Spring Valley High School, Grievant is to evaluate all forty-two coaches employed in 17 sports. He is to attend many of the athletic events,take care of the money after ball games, assess eligibility, resolve scheduling conflicts, see that the sports facilities are ready for use, resolve problems between students, coaches and/or parents, and work with boosters.

6. Grievant received a contract for his new positions, but did not sign it because the salaries were incorrect. This problem was worked out, but WCBOE never sent Grievant another contract to sign.

7. Grievant applied for this position to decrease the number of assistant principal administrative duties he had to perform. Grievant also believed he was qualified for the position because he had been a coach and Athletic Director previously.

8. In August of the 2003-2004 school year, the principal, Barry Scragg, was ill, and Assistant Principal John Waugaman assumed Principal Scragg's duties. The other Assistant Principals were Grievant, William Brubeck, and Kim Bailey, a Spring Valley High School teacher who had no

administrative experience.

9. Mr. Waugaman asked Grievant to assume the duties of teacher coverage and building maintenance for his half-time, Assistant Principal duties, and Grievant agreed to accept these tasks. (See footnote 3)

10. The teacher coverage position is time-consuming and requires Grievant to provide coverage for all absent teachers, both for full and part days. There are approximately 10 to 12 teachers absent each school day. These duties begin around 5:30 a.m. each day, continue throughout the day, and then start for the next day around 8:30p.m. the evening before. With absent service personnel, he does not call for a substitute as with teachers, but reports the need for a substitute to the Central Office.

11. Shortly after Principal Scragg returned to work, Mr. Waugaman left Spring Valley High School to fill a position at another school. Grievant's duties remained the same.

12. In February 2004, Mr. Brubeck left Spring Valley High School to fill a position at another school.

13. Principal Scragg asked Grievant to assume extra duties including covering the tenth grade until another Assistant Principal could be hired. (See footnote 4) Grievant agreed to assist in this manner. The coverage of a grade level encompasses checking on all attendance discrepancies, at least 20 a day, by calling students and parents, and determining if the absences are legitimate or if the student should be assigned to in-school suspension. The grade level duties also include resolving curricular and/or transfer problems, dealing with parents, teachers and/or student problems, and assessing and meting out discipline. 14. Mr. Brubeck's duties were assumed by Ms. Chadwick, a Spring Valley High School teacher who had no administrative experience. (See footnote 5)

15. After Ms. Chadwick had been in her position for a couple of weeks, Grievant asked Principal Scragg when his new duties would be removed.

16. Principal Scragg told Grievant these duties would now be permanent. 17. There were subsequent talks and memos, and although there is some confusion in the record, Grievant ended up with responsibilities for the eleventh grade, <u>including</u> attendance discrepancies, and teacher coverage as his Assistant Principal duties. Building maintenance was removed.

18. During the 2002-2003 school year, Grievant, as a full-time Assistant Principal, was

responsible for the tenth grade, excluding attendance discrepancies, teacher coverage, a 45 minute hall duty and building maintenance.

Discussion

W. Va. Code § 18-29-2(a) defines a grievance and states:

> (a) "Grievance" means any claim by one or more affected employees of the governing boards of higher education, state board of education, county boards of education, regional educational service agencies and multi-county vocational centers alleging a violation, a misapplication or a misinterpretation of the statutes, policies, rules, regulations or written agreements under which such employees work, including any violation, misapplication or misinterpretation regarding compensation, hours, terms and conditions of employment, employment status or discrimination; any discriminatory or otherwise aggrieved application of unwritten policies or practices of the board; any specifically identified incident of harassment or favoritism; or any action, policy or practice constituting a substantial detriment to or interference with effective classroom instruction, job performance or the health and safety of students or employees.

(Emphasis added).

While the undersigned Administrative Law Judge agrees with WCBOE that Principal Scragg may assign Grievant any duties listed within the Assistant Principal Job Description, that authority does not give Principal Scragg the right to assign essentially full-time duties to a half-time employee. This is especially true when the employee has two-half time positions. Such an increase in responsibilities would clearly interfere with an employee's ability to successfully carry out the duties of both of the positions. The undersigned Administrative Law Judge also notes that W. Va. Code §18A-4-7a requires school boards to post notices of all openings, and these notices "shall include the job description." A posting is expected to inform the applicant about the position and to give them at least an idea of the type of work to be performed. Accord Weaver v. Mason County Bd. of Educ., Docket No. 94-26-129 (Nov. 22, 1994).

This Grievance Board has previously ruled in Barker v. Kanawha County Board of Education, Docket No. 90-20-505 (Feb. 22, 1991), that if the information contained in the posting is "essentially" correct, a grievant cannot complain he was misled. This Board has also recognized a principal has the authority to adjust an employee's schedule as long as the employee continues to perform duties within the area of his/her Job Description. This authority does not extend to changing an employee's entire assignment. See Midkiff v. Wayne County Bd. of Educ., Docket No. 90-50-406 (Mar. 13, 1991).

In this case, the position was posted as a half-time Assistant Principal and half-time Athletic Director for Spring Valley High School. On the basis of the posting alone Grievant could not have expected to be assigned almost the same amount of duties as he had the year before as a full-time Assistant Principal. The assignment of this amount of duties is not in accord with the posting requirement. See Thomas v. Kanawha County Bd. of Educ., Docket No. 94-20-1123 (May 17, 1995).

Grievant's unrebutted testimony reveals he is working many hours, and his day starts at 5:30 a.m. and does not end until the evening hours. One of the reasons Grievant accepted the position was to decrease the amount of Assistant Principal duties he performed. While WCBOE and Principal Scragg must have some flexibility and must be allowed to adjust an employee's schedule and assignments to some degree, to allow themto post a position as half-time, and then once an applicant is in the position, change it to almost full-time cannot be allowed. Turner, supra. While the undersigned Administrative Law Judge realizes all boards of education are trying to do more with less because of funding problems, a board of education still cannot pile on obligations until the employee has difficulty completing his/her assigned duties.

The foregoing discussion will be supplemented by the following conclusions of law.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code § 18-29-6. "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." Leichliter v. W. Va. Dep't of Health & Human Res., Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the employer has not met its burden. Id.

2. A board of education violates W. Va. Code § 18-29-2(a) when by its actions, policies or practices it brings about a "substantial detriment to or interference with effective . . . job performance" or the health and safety of an employee.

3. A job posting is to provide information helpful to the employee in understanding the duties and responsibilities of the position. See W. Va. Code §18A-4-7a. Accord Weaver v. Mason County

Bd. of Educ., Docket No. 94-26-129 (Nov. 22, 1994). 4. An Assistant Principal in a half-time position cannot be assigned full-time duties and responsibilities.

Accordingly, this grievance is **GRANTED**. WCBOE is directed to assign duties to Grievant that reflect the half-time nature of his Assistant Principal position for the 2004 - 2005 school year. These duties are to be within the Assistant Principal's Job Description.

Any party may appeal this decision to the Circuit Court of Kanawha or Wayne 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, andshould 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 Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

JANIS I. REYNOLDS

ADMINISTRATIVE LAW JUDGE

Dated: August 30, 2004

Footnote: 1

Grievant was represented by Susan Hubbard of the West Virginia Education Association, and WCBOE was represented by Attorney David Lycan.

Footnote: 2

The undersigned Administrative Law Judge finds there is nothing to prevent Grievant's assignment from remaining the same, as his unrebutted testimony was that typically an Assistant Principal retains the duties he had the year before.

Footnote: 3

Although not described in any detail, it appears this duty consisted of checking the school and reporting the need for maintenance.

Footnote: 4

Grievant's grade level coverage was later switched to the eleventh grade.

Footnote: 5

Ms. Chadwick is not identified by her full name in the record.