SHARON LOUISE COOK

v. Docket No. 95-42-238

RANDOLPH COUNTY BOARD OF EDUCATION

DECISION

Grievant, Sharon Louise Cook, employed by the Randolph County Board of Education (Board) as a computer operator, initiated the present grievance in May 1995, alleging violations of W.Va. Code §§18A-4-8b and 18A-4-8. Grievant requested reclassification to Computer Operator/Accountant III, with seniority in the Accountant classification retroactive to September 7, 1994.

Apparently because Grievant is assigned to the central office, level one was bypassed. Reclassification, but not retroactive seniority, was granted following a level two hearing. Level three was bypassed, and appeal made to level four on June 13, 1995. A hearing was conducted on September 13, 1995, for the purpose of supplementing the lower-level record. The matter became mature for decision with the submission of proposed findings of fact and conclusions of law by both parties on or before October 22, 1995.

Certain facts of this matter are undisputed. Grievant was classified as a Computer Operator on September 7, 1994, when, atthe request of her supervisor, Kenneth Rodeheaver, and then-Superintendent Tony Marchio, she assumed accounting duties in the areas of accounts receivable and revenue. These duties had previously been performed by an Accountant III. During an office realignment Grievant was asked, and agreed, to accept the additional duties which she has performed since that time.

Grievant asserts that there was a clear understanding between herself and the administrators that her acceptance of the additional duties would result in her reclassification. When the revision was not forthcoming, Grievant stated that she began to informally make inquiries. Finally, when she was advised on or about April 7, 1995, that the reclassification was uncertain, she began grievance proceedings.

Grievant claims that she performs the vast majority of job duties and meets all of the qualifications listed on the Accountant III job description with the exception of a college degree in an accounting-related field. She notes that other employees classified as Accountant III do not hold a college degree and that none of these employees perform all of the duties on the job description. Grievant argues that the Board must classify its employees according to the duties performed, and that her failure to successfully complete a competency test cannot be used as an obstacle to reclassification when she already meets the statutory definition of the classification title and has not been given the opportunity to take the exam.

The Board attempts to disclaim the level two decision, asserting that Associate Superintendent, Dr. Larry Parsons, failed to notify the Board of his decision, denying it the opportunity to timely file an appeal. Addressing the merits of the complaint, the Board asserts that Grievant does not meet the posted requirements for Accountant III in that she does not possess the relevant college degree. Grievant does meet the minimum qualifications for Accountant II, the classification deemed appropriate by the Board. In reference to the request for retroactive seniority, the Board argues that no employee is entitled to reclassification prior to the successful completion of a competency test. In support of this position the Board cites Dieffenbauch v. Wetzel County Bd. of Educ., Docket No. 52-86-123-2, (August 25, 1987), which held that on the job training leading to job advancement does not trigger the requirement to reclassify until the employee meets all of the qualifications of the position.

It is well-established that a board of education or its superintendent may appeal a grievance decision made by the superintendent's designee at level two. Triggs v. Berkeley County Bd. of Educ., 420 S.E.2d 260 (W.Va. 1992). Clearly, the Board was empowered to appeal the decision issued by Associate Superintendent Parsons, granting Grievant's reclassification to Accountant III. While it is unfortunate that the Board was not apprised of the holding in the level two decision, the lack of internal communica tion does not serve to waive the timelines for appeal. Even after Grievant filed an appeal to level four in June, the Board made noeffort to protest the level two decision. Disagreement was first raised at the level four hearing by which time the appeal was untimely. Accordingly, the determination that Grievant is entitled to the Accountant III classification requires no further consider ation.

The effective date of Grievant's reclassification remains to be determined. Throughout the

grievance process, the Board has argued that reclassification cannot occur prior to the successful completion of a competency test. This position is based upon an interpretation of the State Superintendent of Schools, issued April 30, 1993, and an advisory letter, dated September 7, 1994, from John E. Roush, Esq., of the West Virginia School Service Personnel Association.

The Superintendent's interpretation was based upon a factual situation in which secretaries had requested reclassification as Secretary/Accountant. The request was approved by the board of education in November 1992, contingent upon the successful completion of the state competency test. The test was not administered until January 1993. In response to inquiries as to the effective dates of reclassification for seniority and salary purposes, the Superintendent cited W.Va. Code §18A-4-8e which addresses competency tests in pertinent part:

The purpose of these tests shall be to provide county boards of education a uniform means of determining whether school service personnel employees who do not hold a classification title in a particular category of employment can meet the definition of the class title in another category of employment as defined in section eight of this article. . . .

Achieving a passing score shall conclusively demonstrate the qualifications of an applicant for a classification title. Once an employee passes the competency test of a classification title, said applicant shall be fully qualified to fill vacancies in that classification category of employment as provided in subsection (b), section eight-b [§18A-4-8b(b)] of this article and shall not be required to take the competency test again.

The Superintendent found that the "clear implication is that the employee is not fully qualified until the competency test is passed." Based upon this language, together with the board's explicit provision that the reclassifications were contingent upon the passage of the tests, he concluded that the seniority and salary changes were to be effective on the date of passage.

The Board also relies upon a letter issued by Mr. Roush in which he stated:

This letter is to verify that a school service personnel may be reclassified to a higher classification if:

(a) The employee consents,

(b) The employee is already performing the duties of the new classification, and

(c) The employee passes the appropriate state competency test. . . .

W.Va. Code §18A-4-8e ordered the state board of education to "develop and cause to be made available competency tests for all of the classification titles defined in section eight [§18A-4-8] and listed in section eight-a [§18A-4-8a] . . . for service personnel." The statute continues, stating that the purpose of these tests "shall be to provide county boards of education a uniform means of determining whether school service personnelemployees who do not hold a classification title in a particular category of employment can meet the definition of the classification title in another category of employment . . . " or to "determine the qualifications of new applicants seeking initial employment in a particular classification title as either a regular or substitute employee."

Competency tests provide a mechanism by which individuals currently employed by a board of education as service personnel may demonstrate their qualifications to hold another classification and provides the board with a tool by which to measure the ability of new applicants. There is no statutory requirement that employees whose duties evolve over a period of time, or change by agreement, must also successfully complete a competency test to obtain the proper classification. Further, competency testing does not relieve a board of the duty to "review each service personnel employee job classification annually and . . . reclassify all service employees as required by such job classifications." W.Va. Code §18A-4-8.

In the present matter, the change in Grievant's assignment was at the instigation of the central office administrators. By memorandum to Dr. Shannon Bennett, dated September 8, 1994, Mr. Rodeheaver requested reclassification for Grievant based upon specifically identified duties. Mr. Marchio testified that he recommended the reclassification of thirty to forty employees to the Board in Spring 1995, and that all were approved with theexception of Grievant and one other employee. (See footnote 1) Clearly, the Board has been aware that Grievant is performing duties outside the classification of Computer Operator.

The Board's requirement that Grievant pass a competency test prior to reclassification is not prohibited; however, such test should have been administered to Grievant in September 1994, or soon thereafter. By not administering the test, the Board has essentially abused the classification system by reaping the benefits of Grievant's work without providing her with the benefits of proper classification.

Unlike the factual situation in Dieffenbaugh, there is no evidence whatsoever that Grievant was to complete a period of on the job training. This situation is also distinguishable from that cited in the

Superintendent's interpretation in that the present issue involves a question of delay in offering the employee the opportunity to complete the competency test. Grievant has proven the Board knew that she was performing the duties of an Accountant and failed to administer the competency test which it requires for classification. Knowingly retaining an employee in an incorrect classification is a violation of W.Va. Code §18A-4-8.

In addition to the foregoing narration it is appropriate to make the following formal findings of fact and conclusions of law.

FINDINGS OF FACT

1. Grievant was employed by the Randolph County Board of Education, classified as a Computer Operator, when she assumed accounting duties at her supervisors' request effective September 7, 1994.

2. The Board declined to approve Superintendent Tony Marchio's recommendation that Grievant be reclassified to Computer Operator/Accountant III.

3. Grievant was granted reclassification, subject to passing a competency test, to Computer Operator/Accountant III in the level two decision issued on June 2, 1995.

4. The Board had not administered a test to Grievant prior to the level four hearing held in this matter on September 13, 1995.

CONCLUSIONS OF LAW

1. It is incumbent upon a grievant to prove the elements of the complaint by a preponderance of the evidence. Weaver v. Mason County Bd. of Educ., Docket No. 94-26-028 (Oct. 25, 1994).

2. Grievant has proven that the Board has failed to reclassify her consistent with the duties of her position, a violation of W.Va. Code §18A-4-8.

3. A board of education may require an employee pass a competency test as a prerequisite for reclassification; however, a board may not change an employee's duties and then withhold or delay reclassification by failing to promptly administer the test.

Accordingly, the grievance is **GRANTED** and the Board is Ordered to administer the competency

test for Accountant III to Grievant within thirty days. Upon her successful completion of the test, Grievant shall be reclassified effective September 7, 1994, for seniority purposes only.

DATED: December 27, 1995 _____

Sue Keller

Senior Administrative Law Judge

Footnote: 1

Mr. Marchio indicated that there had been some controversy as to whether Grievant should be classified as an Accountant III. Apparently, the personnel review committee was not inclined to support that classification; however, it also appears that the information reviewed by the members may have been inadequate or incorrect. Dr. Bennett testified at level four that it had been her initial understanding that Grievant would pick up routine duties to assist the Accountant IIIs, and was not aware that she would actually assume portions of their work. It is not clear if, or to what extent, this affected the Board's action.