RICHARD GOSNELL

v. Docket No. 94-41-112

RALEIGH COUNTY BOARD OF EDUCATION

DECISION

The grievant, Richard Gosnell, is employed by the Raleigh County Board of Education (Board) as a bus operator. He filed a grievance at Level I November 17, 1993, alleging that he "was done wrong in the bidding process of the Assistant Transportation Director's job." The grievant's immediate supervisor was without authority to grant relief and the grievance was denied at Level II following a hearing held February 28, 1994. The Board, at Level III, waived consideration of the matter and appeal to Level IV was made March 31, 1994. A hearing was held June 1, 1994, and the parties submitted proposed findings of fact and conclusions of law by July 14, 1994.

I.

The events which precipitated the complaint are not in dispute. Prior to September 1993, the Board employed three administrators who oversaw its transportation system. (See footnote 1) All werehoused in the Board's central bus garage. Richard Mann was considered the head of the system and was officially classified as Supervisor of Transportation under a 261-day contract. Second in authority was Arnold Ryan who was classified as School Bus Supervisor and was also working under a 261-day contract. Both positions are recognized in W.Va. Code §18A-4-8, which lists and defines various school service personnel positions. (See footnote 2)

The remaining administrator, Daris Wills, was classified as Coordinator of Vehicle Maintenance. While Director/Coordinator of Services is a position recognized and defined in Code §18A-4-8, the specific title Coordinator of Vehicle Maintenance is not listed therein. The record does not reveal whether Mr. Wills' contract also called for a 261-day employment term.

Mr. Mann and Mr. Ryan were often referred to unofficially by other employees as Director and Assistant Director of Transportation and they occasionally used those titles themselves. Mr. Wills was referred to, at least occasionally, as the shopforeman. (See footnote 3) They were aware, however, that these were not their "true" classifications.

In September 1993, Mr. Mann was transferred to the Raleigh County Vocational Center. The vacancy created was posted as Director of Transportation with a 261-day contract term and Mr. Ryan made application. The Board ultimately appointed him to the position but, in response to an opinion rendered by Ken Legg, Executive Director of the West Virginia School Service Personnel Association, required him to take a competency test developed by the West Virginia Department of Education for the position of Supervisor of Transportation. (See footnote 4) He successfully completed the test.

Mr. Ryan's contract of employment for his new position references the job as "Director of Transportation" in an area designated for the title of the position covered by the contract, but asterisks in that area direct attention to the bottom of the form where the notation, "Supervisor of Transportation (18A-4-8)" is made. The record otherwise supports that this position is a Supervisor of Transportation position.

On October 11, 1993, the Board posted Mr. Ryan's former School Bus Supervisor position as "Assistant Director of Transportation" with a 220-day contract term. The following requirements were listed in the posting as "minimum qualifications" for the job.

A.

Preference given to applicants with a minimum of 6 years experience in Public School transportation administration

B.

Demonstrated communication and organizational skills necessary to work with school personnel, parents, students, law enforcement and other governmental agencies

C.

Must be knowledgeable of Special Education Regulations as such relate to the transportation of special needs students

D.

Must be capable and available for consultations for decisions and oversight of operations related to: vehicle safety, operator training, route selection(s), winter operations (adjustments due to inclement weather or other hazardous road

conditions), route suspensions, delays and cancellations and all other matters related to the operation of the transportation program

E.

Must be willing to learn and use new technology skills including, but not limited to, word processing, data bases, and spread sheets

The posting advised applicants that a complete job description for the position was on file at the Board's Personnel Office. That description "subtitles" the position as Director/Coordinator of Services and refers the reader to W.Va. Code §18A-4-8. The job description also provides that the incumbent "will assist the Director" with specific duties listed therein.

Twenty-one persons, including the grievant, made timely applications for the position. Mr. Wills was the only applicant then classified as a Director/Coordinator of Services. Under W.Va. Code §18A-4-8b, he was entitled to the position by virtue of holding that classification. The grievant, who has eighteen years seniority with the Board filed this complaint shortly after learning that Mr. Wills, a sixteen-year employee, had been awarded the position.

Mr. Wills' former position was not filled. Significantly, there is no evidence of record that prior to the time the Director (Supervisor of Transportation) and Assistant Director (Director/Coordinator of Services) positions were posted, the Board implemented any reorganization or realignment of the duties of the positions formerly held by Mr. Mann, Mr. Ryan and Mr. Wills. Mr. Ryan's testimony at Level IV supports that some realignment of duties occurred after he and Mr. Wills were awarded their new positions but that these changes were the result of the elimination of Mr. Wills' former position. Indeed, it appears that the Board merely reduced the employment term for Mr. Ryan's former School Bus Supervisor position and "redesignated" it Director/Coordinator ofServices, a "redesignation" that required that the paygrade for the position be raised from E to H. Whether the Board could change the name and paygrade of the position without making corresponding changes in the nature of the position, i.e., in its duties and responsibilities, is the focus of the inquiry.

II.

___The grievant concedes that if the position in issue and Mr. Wills were properly classified,

Mr. Wills' appointment to the Assistant Director post was in accordance with W.Va. Code §18A-4-8b. He maintains, however, that the position is misclassified and suggests that the duties assigned to the job are more in keeping with the definition for Supervisor of Transportation found in W.Va. Code §18A-4-8. (See footnote 5) **According to the grievant, Mr. Wills was, therefore, not entitled to any preference for the position by virtue of his Director/Coordinator of Services title.**

The grievant also asserts that Mr. Wills was not properly classified as a Director/Coordinator of Services at the time the position was posted. He asserts or at least implies that Mechanics Foreman was the proper classification for his duties.

Finally, the grievant asserts, apparently in the alternative, that W.Va. Code §§18A-4-8 and 18A-4-8b do not contemplate that any Director/Coordinator of Services be given preference for all suchpositions as they become vacant. He opines that a finding that a Director/Coordinator in charge of a county board's payroll department is entitled to preference for a Director/Coordinator of Transportation, for example, "would loose all manner of mischief relating to the filling of such positions." The grievant seeks as relief that the position be vacated; that it be properly classified and reposted; that competency tests be administered to all applicants; and that he be appointed to the position if he achieves the highest score on the test.

The Board maintains Mr. Wills and the position in issue were classified properly and that Code §18A-4-8b mandated the outcome reached. For the reasons discussed below, the undersigned concludes that the grievant must prevail in the case.

III.

The undersigned finds no merit in the grievant's claim that the provisions of W.Va. Code §18A-4-8b which grant preference to applicants holding the classification of a posted service personnel position should be interpreted to mean that directors or coordinators of services should only be granted that preference when the position posted is one in their particular "area of service." Rather, the undersigned finds the language of Code §18A-4-8 which grants the preference to be clear and unambiguous and, therefore, must give it that effect. Lavender v. McDowell County Bd. of Educ., 327 S.E.2d 691 (W.Va. 1984). There is no language in the

statute to support the exception urged by the grievant.

This is not to say that the grievant's practical concerns over a coordinator of one area of support services being given priority in hiring for a totally different area of services are unfounded. It must be assumed, however, that the Legislature was aware of such concerns when it declined to provide an exception to the mandate in Code §18A-4-8b that persons properly holding a particular classification identified in Code §18A-4-8 "must be given first opportunity for promotion and filling vacancies." As was noted in Seabolt v. Kanawha County Bd. of Educ., Docket No. 91-20-041 (Nov. 8, 1991), "Qualifications is defined in the statute as holding or obtaining the pertinent classification, and not as being the best-suited individual for a specific position." Essentially, the Legislature has seen fit to make the process by which service personnel appointments are made a very "mechanical" one with little leeway to consider factors other than seniority and the "official" classifications of those persons making applications. (See footnote 6) **Accordingly, if Mr. Wills was properly classified as a Director/Coordinator of Services and the position in issue was properly classified as such, he was statutorily entitled to the position.**

The evidence of record is insufficient to show that Mr. Wills was not properly classified as a Director/Coordinator of Servicesas that term is defined in W.Va. Code §18A-4-8, at the time the position in issue was posted. Rather, it appears from the limited evidence of record on the nature of his day-to-day duties while serving as Coordinator of Vehicle Maintenance that he was directing a "department or division" within the central bus garage.

It is clear from Mr. Ryan's testimony and the contract of employment for his new position that despite the "Director of Transportation" title attached to the position, it was a Supervisor of Transportation post. The undersigned agrees with the grievant that it is at least curious that the Board would designate Supervisor of Transportation as the proper classification for the chief administrative position in its transportation system but find that Director or Coordinator of Services was the appropriate classification for the position directly below it. It is more supportive of the grievant's assertions, however, that the position previously held by Mr. Ryan was classified as School Bus Supervisor and, as previously noted, there is no evidence that the position was redefined prior to the time it was posted. (See footnote 7) **The undersigned must assume that had there been such a plan, the Board would have presented evidence**

thereon.

The change was one of substance. The position of Director/Coordinator of Services is distinctly different from school bus supervisor. The former is a rather broadly defined administrative position per Code §18A-4-8 and delegated to paygradeH per Code §18A-4-8a, while the latter is given a more specific transportation-oriented definition and assigned to paygrade E. The two positions are certainly not interchangeable.

The Grievance Board has consistently held that W.Va. Code §18A-4-8 places a burden on county boards of education to see that the duties of a particular service position coincide with the classification and paygrade to which it is assigned. See, e.g., Robinson v. Nicholas County Bd. of Educ., Docket No. 93-34-197 (March 25, 1994). Simply stated, the statute requires a board to call the position what it is. Here, the record will only support that the Board took a position which was properly classified as School Bus Supervisor and simply renamed it Director/Coordinator of Services.

The Grievance Board has also consistently held that W.Va. Code §18A-4-8 or other portions of W.Va. Code §§18A-1-1 et seq., do not prohibit a board from redefining the duties of a school service personnel position; combining them with the duties of another position; or eliminating the position entirely. Hambrick v. Mercer County Bd. of Educ., Docket No. 94-27-293 (Sept. 20, 1994); Cox v. Bd. of Education, 351 S.E.2d 58 (W.Va. 1986). Such actions are typically taken when an employee vacates a post and the board sees a need to impose additional duties on the position. The newly-defined position is then identified per Code §18A-4-8 and posted. It is an abuse of a board's discretion, however, to reclassify a position for reasons unrelated to the duties of the position.

The undersigned stresses that there is no evidence in the present case that the redesignation of the School Bus Supervisor position to Director/Coordinator of Services was based on a need to redefine the duties of the position or that any such redefinition occurred before it was so designated and posted. It should also be emphasized that the two positions are not on the same pay plane and have been given significantly different definitions per Code §18A-4-8. It is the absence of evidence and substantive differences in the positions which creates at least the appearance that the position was simply renamed in order that Mr. Wills would be afforded a preference in hiring under Code §18A-4-8b. Accordingly, the undersigned

finds that the action was violative of Code §18A-4-8 and was an abuse of the Board's discretion.

In addition to the foregoing discussion, the undersigned makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1) Prior to September 1993, Arnold Ryan held the position of School Bus Supervisor in the Board's central bus garage. He was one of three administrators assigned to the garage.

2) In September 1993, Mr. Ryan was promoted to a position which was designated by the Board as Director of Transportation but, for the purposes of W.Va. Code §§18A-4-8 and 18A-4-8a, was classified as Supervisor of Transportation.

3) Mr. Ryan's former School Bus Supervisor position was redesignated Assistant Director of Transportation but, for the purposes of W.Va. Code §§18A-4-8 and 18A-4-8a, was classified asDirector/Coordinator of Services. This position was posted October 11, 1993, and the grievant herein and Daris Wills made applications.

4) At the time of the posting, Mr. Wills was classified as a Director/Coordinator of Services in charge of vehicle maintenance. He was awarded the position by virtue of his holding that classification.

CONCLUSIONS OF LAW

1) Service employees must be selected on the basis of "seniority, qualifications and evaluations of past service" as those terms are defined in W.Va. Code §18A-4-8b. "Qualifications" is defined in the statute as holding or obtaining the pertinent classification. Seabolt v. Kanawha County Bd. of Educ., Docket No. 91-20-041 (Nov. 8, 1991).

2) W.Va. Code §18A-4-8b is clear in its mandate that applicants for a school service personnel position who hold the pertinent classification must be given preference in the selection process by which the position is filled. A Director/Coordinator of Services must be afforded the preference regardless of the area of "Services" in which he is or she is then engaged.

3) A county board of education has a duty to properly classify its school service

personnel positions. That is, it must ensure that the duties of a particular position conform to the W.Va. Code §18A-4-8 classification to which the position is assigned. A service employee has standing to grieve the classification of a position when his interests are affectedthereby. Bays v. Fayette County Bd. of Educ., Docket No. 93-10-439 (Aug. 23, 1994).

4) W.Va. Code §§18A-1-1 et seq, do not prohibit a county board of education from redefining the duties of a school service position; combining them with the duties of another position; or eliminating the position entirely. Hambrick v. Mercer County Bd. of Educ., Docket No. 94-27-293 (Sept. 20, 1994); Cox v. Bd. of Education, 355 S.E.2d 365 (W.Va. 1987). The county board is, however, required to exercise its discretion in such matters in a manner which is not arbitrary or capricious. Dillon v. Wyoming County Bd. of Educ., 351 S.E.2d 58 (W.Va. 1986). It is an abuse of a county board's discretion to reclassify a position for reasons unrelated to the duties of the position or when those duties do not conform to the new classification.

5) A grievant must substantiate his or her claims by a preponderance of the evidence. Black v. Cabell County Bd. of Educ., Docket No. 89-06-707 (March 23, 1990). A preponderance of the evidence in the present case establishes that the Board reclassified a School Bus Supervisor position to Director/Coordinator of Services for no apparent reason. This action ensured that persons holding the classification title Director/Coordinator of Services would be given preference for the new post and effectively excluded the grievant from consideration.

Accordingly, the grievance is GRANTED to the extent that the Raleigh County Board of Education is hereby ORDERED to repost the position of Assistant Director of Transportation as a School BusSupervisor position and fill it in accordance with W.Va. Code §18A-4-8b. In the event the grievant is determined to be the applicant entitled to the position, his appointment thereto is to be considered an original one and he is to be awarded any loss of pay or benefits he may have incurred.

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

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JERRY A. WRIGHT

CHIEF ADMINISTRATIVE LAW JUDGE

Dated: April 21, 1995

Footnote: 1*It appears that Lester Vaught, Assistant Superintendent of Schools,has oversight responsibility for the transportation system. It does not appear, however, that this is his sole area ofresponsibility. It is the more "hands-on" administrative positions based in the central bus garage which are at issue herein.*

Footnote: 2*The statute defines School Bus Supervisor as "qualified personnel employed to assist in selecting school bus operators and routing and scheduling of school buses, operate a bus when needed, relay instructions to bus operators, plan emergency routing of buses and promoting good relationships with parents, pupils bus operators and other employees. It defines Supervisor of Transportation as "qualified personnel employed to direct school transportation activities, properly and safely, and to supervise the maintenance and repair of vehicles, buses, and other mechanical and mobile equipment used by the county school system." The first is in paygrade E and the latter is in paygrade H per W.Va. Code §18A-4-8a.*

Footnote: 3*Mr. Wills was promoted from Chief Mechanic to the Coordinator of Vehicle Maintenance position on February 16, 1989. The grievant testified credibly at Level II that he had always considered Mr. Wills to be a shop foreman and did not learn that he held the title Director/Coordinator until he initiated grievance proceedings.*

Footnote: 4*Mr. Legg was responding to the following question submitted to him by Superintendent Dials:*

> ***An employee holds a service personnel title of "School Bus Supervisor."***
>
> ***A position of "Supervisor of Transportation" is posted for bidding.***
>
> ***Would the person who holds the classification title of "School Bus Supervisor" have to take and pass the competency test for "Supervisor of Transportation" to be qualified for the job?***

Mr. Legg responded in the affirmative, noting that under W.Va. Code §18A-4-8, the two positions were "separate, distinct, and different categories of employment." It is not necessary to address whether the opinion was correct or whether Mr. Ryan's appointment to the position was otherwise in accordance with W.Va. Code §18A-4-8b. The

question posed and response received are set forth here only because they tend to support the conclusion that the position to which Mr. Ryan was appointed was a Supervisor of Transportationposition despite that it was called a Director/Coordinator post in the job announcement.

Footnote: 5The parties do not seem to dispute that a school service employee may contest the classification of another employee or the classification of a vacant position when it appears that he has been directly affected thereby, and the Grievance Board has made holdings to that effect. See, e.g., Stevens v. Wayne County Bd. of Educ., Docket No. 50-86-294-1 (May 22, 1987).

Footnote: 6Arguably, it could also be assumed that by enacting W.Va. Code §18A-4-8e, which provides that a service employee, regardless of his then-current classification, can "qualify" for any other service personnel classification by simply completing one day of in-service training and a competency test, the Legislature did not deem the problems associated with the transition from one area of service to another to be a major concern.

Footnote: 7The undersigned does not find the reduction in the position's employment term to be a change in the nature of the duties of the post.