NEVA LACY, (See footnote 1)

Grievant,

v. **Docket No. 98-20-181**

KANAWHA COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Neva Lacy (Douglas), states:

> Grievant, a substitute cook, applied for a vacant manager position. Grievant was the most senior candidate within the substitute cook classification category. Respondent filled the position with a substitute custodian in violation of West Virginia Code §18A-4-8b and §18A-4-8g. Grievant requests instatement to the position, compensation for lost wages and all benefits retroactive to the filling of the position and interest on all monetary sums.

This grievance was denied at Levels I and II, and Level III was by-passed. This grievance was then filed at Level IV, and a Level IV hearing was held on July 21, 1998. This case became mature for decision on August 14, 1998, the deadline for the parties' proposed findings of fact and conclusions of law. (See footnote 2)

After a detailed review of the record in its entirety, the undersigned Administrative Law Judge makes the following Findings of Fact.

Findings of Fact

1. During the 1995-1996 school year, Tammy Clevenger, the successful applicant, was hired as a substitute Custodian at St. Albans High School ("SAHS"). 2. In the Spring of 1996, SAHS needed a substitute Cook to fill in for an employee, Mary Pauley, who was off on sick leave. The Cook substitute list was depleted as all the substitutes were either in other long-term substitute positions or had worked all the days they were allowed to work by the rules of their retirement.

3. After searching and not finding a substitute replacement for Ms. Pauley, Alvin Anderson, the principal at SAHS, received permission from the Central Office to hire Ms. Clevenger for the

substitute Cook position.

4. Ms. Clevenger passed the Cook's competency test on May 8, 1997, and began receiving seniority in the Cook classification from that date.

5. The SAHS Cafeteria Manager died, and KCBOE posted this position in December 1997 or January 1998.

6. Ms. Clevenger worked in the SAHS long-term substitute cook position (See footnote 3) until she was hired as the Cafeteria Manager at SAHS on January 20, 1998.

7. Grievant was first employed as a substitute Cook on September 9, 1997, and that is her seniority date in the classification.

8. Although prior to July 1, 1998, the Kanawha County computer system was unable to list substitutes in more than one category, many substitute employees have multiple classifications and seniority dates for these classifications.

9. Ms. Clevenger was classified as a Cook at the time of her placement into the Cafeteria Manager position, and had greater substitute Cook seniority than Grievant.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving each element of her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.19 (1996); 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.

Whether the decision to hire Ms. Clevenger is correct can be resolved by an examination of the relevant Code Sections. First, W. Va. Code §§ 18A-4-8 and 18A-4-8e require county boards of education to reclassify employees when they pass the competency tests identified for the class title. Pursuant to W. Va. Code § 18A-4-8b, "an employee's seniority [within the classification] begins on the date he or she enters into his assigned duties." Finally, W. Va. Code § 18A-4-8b mandates that decisions to fill service personnel positions be based on seniority, qualifications, and evaluations. Candidates are deemed qualified if they possess the class title. If multiple candidates are qualified and have satisfactory evaluations, the applicant with the greatest seniority receives the position.

After reviewing the above-cited Code Sections, it is clear KCBOE made the correct decision in

selecting Ms. Clevenger for the Cook Manager position as she was the most senior applicant. Grievant's contention that Ms. Clevenger was not classified as a Cook because she was listed only as a custodian on KCBOE's computer rolls is without merit. KCBOE's computer system was unable to identify all the classifications held by any employee. This fact does not mean, as Grievant suggests, that an employee does not possess these classifications. It only means that they were not listed by an imperfectcomputer system. Thus, Grievant's argument that employees were only allowed to possess one classification at a time is incorrect, and Ms. Clevenger was classified both as a Cook and a Custodian as of May 1997. There are multiple employees, who, like Ms. Clevenger, have several classifications, but they are not reflected by the KCBOE computer system.

Grievant also cites Henry v. Mason County Board. of Education, Docket No. 91-206- 195 (Sept. 4, 1991), to support the proposition that employees do not begin to accumulate seniority within a classification until they enter into a position and have a contract specific to the employment. Henry is inapplicable to this situation as that grievance dealt with a regular employee in a reduction-in-force situation. However, it is interesting to note that Henry does indicate that seniority cannot begin through an "informal" arrangement. Thus, KCBOE's decision to not grant Ms. Clevenger seniority as a Cook until she passed the test, even though she was employed as a substitute Cook for a substantial period of time before that, was correct.

The above-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 each element of her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.19 (1996); 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. 2. Grievant has failed to prove that KCBOE violated any statutes in the selection of Ms. Clevenger for the position of Cook Manager.

3. As Ms. Clevenger was more senior in the Cook classification than Grievant, she was entitled to the position at issue.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha 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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JANIS I. REYNOLDS

Administrative Law Judge

Dated: August 28, 1998

Footnote: 1

Grievant was married during the time span of this grievance, and now goes by the name of Neva Douglas.

Footnote: 2

Grievant was represented by Attorney John Roush from the West Virginia School Service Personnel Association, and Respondent was represented by KCBOE's General Counsel, Greg Bailey.

Footnote: 3

Although discussed in Grievant's proposed findings of fact and conclusions of law, the failure to post this long-term substitute position in 1996 was not an issue in this grievance. If this position had been posted in 1996, when the position was originally vacant, Grievant would not have been an employee at that time.