CURTIS NOTTINGHAM and CALVIN HUNT,

Grievants,

v v.

Docket No. 97-20-026

KANAWHA COUNTY BOARD of EDUCATION,

Respondent.

D E C I S I O N

Curtis Nottingham and Calvin Hunt, Grievants, are currently classified as Plumber I's with the Kanawha County Board of Education ("KCBOE") and seek to be reclassified as Plumber II's. Grievants believe KCBOE has violated W. Va. Code § 18A-4-8 by its failure to reclassify them. This grievance was denied at Levels I and II, and Level III was by-passed pursuant to W.Va. Code § 18A-29-4(c). A Level IV hearing was held on May 5, 1997, and this case became mature for decision on June 2, 1997, the deadline for the submission of proposed Findings of Fact and Conclusions of Law.

The material facts of this case are not in dispute and will be set out below.

Findings of Fact

1. Grievant Nottingham has been working as Plumber I for KCBOE for seven years, and Grievant Hunt has been employed as a Plumber I with KCBOE for thirteen years.

2. Grievant Nottingham works under the direction of Jesse Randolph and Grievant Hunt works under the direction of Berry Jackson. Both Mr. Randolph and Mr. Jackson are classified as Plumber II's. 3. All KCBOE Plumber I's work as apprentices or helpers under the direction of a Plumber II. This means the Plumber II assigns and checks the work of his assistant. The work assigned to a Plumber I includes minor plumbing and mechanical work These minor repairs can be completed outside the direct sight of the Plumber II, but the Plumber II later checks this work for accuracy.

4. Much of the work performed by these two-man teams is completed together. Approximately ten percent of the time, the Plumber I works outside the direct sight of the Plumber II; thus, ninety percent of the time their work is performed under the direct supervision of a Plumber II. Both Grievants and Mr. Randolph and Mr. Jackson clearly testified that the Plumber II is in charge, and the apprentice or helper does only what he is told to do by the Plumber II.

5. The type of work Grievants typically do by themselves is unclogging toilets, replacing pea traps, and installing new faucets.

6. When Grievants requested to be reclassified as Plumber II's, KCBOE offered to reclassify them as Plumber II's on a flexible shift schedule. All the recent postings for Plumbers have been for a flexible shift schedule. Grievants declined this offer and elected to proceed with this grievance and, in essence, seek to be reclassified as Plumber II's on the day shift.

7. Occasionally, Grievants have worked alone without the presence of a Plumber II. At times, they have been paid as a Plumber II's for this non-supervised work. When Grievants work alone, Mr. Norton Bashler, KCBOE's Plumbing/HVAC Supervisor, is careful to assign work that he believes is within their capabilities.

Discussion

Because a misclassification grievance is non-disciplinary in nature, Grievants have the burden of proving their case by a preponderance of the evidence. Perdue v. Mercer County Bd. of Educ., Docket No. 92-27-280 (Mar. 29, 1993). “In order to prevail in a misclassification grievance an employee must establish, by a preponderance of the evidence, that his duties more closely match those of another W.Va. Code §18A-4-8 classification than that under which [his] position is categorized.” Porter v. Hancock County Bd. of Educ., Docket No. 93-15-493 (May 24, 1994). Hamilton v. Jackson County Bd. of Educ., Docket No. 91-18-264 (Mar. 31, 1992). Conversely, simply being required to undertake some responsibilities normally associated with a higher classification, even regularly, does not render a grievant misclassified, per se. Hamilton v. Mingo County Bd. of Educ., Docket No. 91-29-077 (Apr. 15, 1991). Additionally, when a statutory definition is very generally worded, as here, it must be broadly applied. Sites and Murphy v. Pendleton County Bd. of Educ., Docket No. 94-36-1112 (May 31, 1995). This case turns on the issue of whether Grievants are currently misclassified as Plumber I's, not whether they are qualified to be Plumber II's.

W.Va. Code § 18A-4-8 defines a Plumber I as "personnel employed as an apprentice plumber and helper." This same Code Section defines a Plumber II as "personnel employed as a journeyman plumber." KCBOE's job description (See footnote 1) for a Plumber I states the position "provides assistance to the plumbing craftsman [a Plumber II] in the repair, maintenance and installation of plumbing equipment and systems and performs such tasks as necessary that the craftsman can be effective and efficientin his work." (Level II Exh. No. 1). The Plumber I job duties include minor plumbing and mechanical tasks and assisting the Plumber II in repairs, replacements, and new installations. (Id.). The job description further indicates that this position is not a decision-making one. (Id.).

KCBOE's job description states a Plumber II "provides general repair, maintenance, and installation of utility lines and systems necessary for heat, water, and sewage disposal in school systems facilities for the efficient maintenance and preventive maintenance of school systems plants." (Level II Exh. No. 2.). Duties include "performing maintenance and installation of utility lines," "planning and carrying out preventive maintenance schedule as related to school plant plumbing systems," and "plann[ing] job assignments as delegated by the plumbing supervisor and maintain[ing] records of materials and time on the job." (Id.). This position has the ability to make decisions relative to the written assignments given by the plumbing supervisor. (Id.).

The key aspect of a Plumber I position is that he follows the direction of a Plumber II and acts as an apprentice or a person who is learning a trade. The Plumber II is then the journeyman in this situation, and is the one who assigns and assesses the work of the Plumber I. Given these definitions and duties, it is clear that Grievants currently function as Plumber I's. They work under the direction of a Plumber II, have no independent decision-making ability, perform only minor repairs alone, and assist the Plumber II to complete his assigned duties. (See footnote 2)

The above-discussion will be supplemented by the following Conclusions of Law.

Conclusions of Law

1. Because a misclassification grievance is non-disciplinary in nature, Grievants have the burden of proving their case by a preponderance of the evidence. Perdue v. Mercer County Bd. of Educ., Docket No. 92-27-280 (Mar. 29, 1993).

2. "In order to prevail in a misclassification grievance an employee must establish, by a

preponderance of the evidence, that his duties more closely match those of another W.Va. Code §18A-4-8 classification than that under which [his] position is categorized." Porter v. Hancock County Bd. of Educ., Docket No. 93-15-493 (May 24, 1994). Hamilton v. Jackson County Bd. of Educ., Docket No. 91-18-264 (Mar. 31, 1992).

3. Simply being required to undertake some responsibilities normally associated with a higher classification, even regularly, does not render a grievant misclassified, per se. Hamilton v. Mingo County Bd. of Educ., Docket No. 91-29-077 (Apr. 15, 1991).

4. When a statutory definition is very generally worded, as here, it must be broadly applied. Sites and Murphy v. Pendleton County Bd. of Educ., Docket No. 94-36-1112 (May 31, 1995).

5. The key aspect of a Plumber I position is that he follows the direction of a Plumber II and acts as an apprentice or a person who is learning a trade. The Plumber II is then the journeyman in this situation, and is the one who assigns and assesses the work of the Plumber I.

6. Grievants have failed to meet their burden of proof and demonstrate that they function as Plumber II's, and that they are currently misclassified.

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: January 28, 1998

Footnote: 1

A county board of education cannot override a statutory definition, but it can clarify and specify duties in keeping with the statutory language.

Footnote: 2

The limited definition of Plumber I as an individual who only "hand[s] the Plumber II tools and perform[s] menial tasks" suggested by Grievants' counsel is too limiting and does not comport with the statutory definition or the job description.