NANCY BOWEN,

Grievant,

v. Docket No. 99-20-039A

KANAWHA COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Nancy Bowen, (See footnote 1) an employee of the Kanawha County Board of Education ("KCBOE"), filed two separate grievances. As these two grievances related to two different issues and were heard separately below, they were separated for decisional purposes. Grievant alleged she had previously taken and passed the clerk's competency test, and she had not received credit for this testing although she had served as a clerk every summer since 1994. The relief sought was to be given the class title and to not be required to retake the clerk exam. (See footnote 2) This grievance was granted, in part, at Level II, and Grievant was considered to be classified as a clerk and granted the right to be considered for future summer clerical positions without having to retake and pass the clerk exam. However, the Level II Grievance Evaluator also ruled that although Grievant possessed both the classifications of a bus operator and of a clerk, she was not entitled to be considered for any regular bus operator/clerk positions that may become vacant, because her clerk classification was for summers only and was considered "separate." The parties agreed to submit this case on the record developed below, and the scheduled Level IVhearing was canceled. This case became mature for decision on March 23, 1999, after receipt of the parties' proposed findings of fact and conclusions of law. (See footnote 3)

Issues and Arguments

The exact issues are somewhat unclear from the parties' pleadings and arguments, and the record developed below. Grievant appears to argue that since she is now officially classified

as a clerk, she should be eligible to apply for bus operator/clerk positions as she holds both class titles. Respondent appears to argue that Grievant is classified for clerk positions for summer employment only. Respondent did not speak to the Grievance Evaluator's decision to grant Grievant's relief; to be classified as a clerk.

The facts in this case, as revealed by the lower level records, are somewhat sparse. However, 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. Grievant has been employed as a bus operator with the Kanawha County Board of Education ("KCBOE") for eighteen years.

2. Grievant has worked in the summer as a clerk at Capitol High School since 1994. She became classified as a clerk when she made her own arrangements with a vocational teacher to give her the competency test shortly after she was initially hired to be a summer clerk. This practice of arranging for individual testing was acceptable at the time Grievant took the test. 3. Grievant applied for a bus operator/clerk position and was told she would have to take the clerk competency exam as there was no record of her score; thus, there was considered to be no proof that she was ever classified as a clerk.

4. Grievant refused to retake the exam and filed this grievance.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving 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.

Grievant's claim that she should be classified as a clerk, will be considered as resolved by the Level II decision. The issues to be resolved by this Decision are whether Grievant possesses the classification of clerk only as a summer employee, and whether she can apply for regular (non-summer) bus operator/clerk positions in the future.

W. Va. Code § 18A-4-8e discusses competency testing and classification, and notes how a person becomes classified within a particular classification. This Code Section states:

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

The aboved-stated Code Section does not differentiate between summer and regular school year classifications, and it is clear that once an employee passes the competency exam she/he is considered to "be fully qualified to fill vacancies in that classification category of employment" whether the position is for the summer or for the regular school year. Thus, KCBOE's argument that Grievant is only qualified to apply for a summer clerk position is without merit and is incorrect. Once Grievant passed the clerk's exam she was entitled to all the rights and privileges afforded any other clerk, whether her prior employment was during the regular school year or during the summer.

KCBOE's argument that Grievant is not entitled to be considered for any bus operator/clerk positions that become vacant during the school year must also fail. Grievant is entitled to apply for and be considered for these positions. She is qualified because she possesses both of the class titles at issue. Respondent's holding in this Level II decision would, in essence, forever prevent Grievant, who holds both the class titles, from applying for the multi-classified bus operator/clerk position for which she is qualified. This would be incorrect. See Vanooyen v. Harrison County Bd. of Educ., Docket No. 96-17-209 (July 25, 1997), aff'd Kanawha County Cir. Court, Civil Action No. 97-AA-115 (May 22, 1998); Gandee v. Mason County Bd. of Educ., Docket No. 93-26-476 (Sept. 30, 1994); Wilson v. Marion County Bd. of Educ., Docket No. 93-24-084 (July 27, 1993). (See footnote 4) **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 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. "Achieving a passing score shall conclusively demonstrate the qualification 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 . . . ." W. Va. Code § 18A-4-8e.

2. By taking and passing a self-arranged competency test for the clerk position, administered by a qualified vocational teacher, Grievant became qualified as a clerk.

3. Grievant is currently classified as a clerk and a bus operator, and as such she is qualified to apply for regular positions either as a clerk or as a bus operator/clerk.

Accordingly, this grievance is GRANTED, and KCBOE is ORDERED to accept Grievant as a qualified candidate for any clerk or bus operator/clerk position for which she may apply, whether it be a summer or a regular school year position.

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.

JANIS I. REYNOLDS

Administrative Law Judge

Dated: March 31,1999

Footnote: 1

At times in correspondence from Grievant's representative, Ms. Bowen was referred to as Ms. Brown.

Footnote: 2

Apparently, Grievant applied for a bus operator/clerk position and was seen as not qualified for the position because there was no record of her taking the competency test. She did not ask, as relief, to be placed in the position.

Footnote: 3

Grievant was represented by Representative Steve Angel from the West Virginia Federation of Teachers, and Respondent was represented by KCBOE's General Counsel James Withrow.

Footnote: 4

Thus, Grievant can apply for these bus operator/clerk positions, but she would not have any regular seniority in the clerk or multi-classified position pursuant to W. Va. Code§ 18-5-39. All her prior clerk positions were in the summer. However, if Grievant applied for a position, and the other applicant was a bus operator with greater seniority, but did not possess the clerk classification, Grievant should be awarded the position. See Vanooyen, supra.