LINDA EDMONDS,

Grievant,

v. Docket No. 99-20-023

KANAWHA COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Linda Edmonds, alleges she was discriminated against when she was not hired for the bus operator/clerk position at the St. Albans Terminal. As relief, she seeks instatement into the position. This grievance was denied at all lower levels, and the parties agreed to submit this case on the record developed below. This case became mature for decision on February 26, 1999, after receipt of the parties' proposed findings of fact and conclusions of law. (See footnote 1)

Issues and Arguments

Grievant argues she should be awarded the position because she has the greater seniority in the multi-class title of bus operator/clerk. Respondent argues it was correct to award the position to the successful applicant, Jimmy Lacy, because he has greater seniority than Grievant in one of the class titles: that of bus operator. Although Respondent states this result was not required by the statute, it argues W. Va. Code §§ 18A-4-8b and 18A-4-8g do not provide clear guidance in this situation, and its action of awarding the position to Mr. Lacy was not arbitrary and capricious. 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/clerk for Respondent since December

10, 1996. Prior to that time, she was employed as a substitute bus operator. 2. The successful applicant, Jimmy Lacy, became a bus operator/clerk on September 29, 1998, one day prior to the posting of this position. **(See footnote 2)**

3. Mr. Lacy would not have been hired for the position over Grievant if he had not held both class titles at the time of the selection. Level II Test. of Beckett.

4. Mr. Lacy had been employed prior to that time as a multi-classified bus operator and had held that title since August 27,1992. **(See footnote 3)**

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. LoganCounty Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Haunch v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code § 18-29-6.

The issue before this Board is a legal one and one in which the statutes do not clearly delineate the outcome. W. Va. Code § 18A-4-8 lists "multi-classification" as a separate class title. W. Va. Code § 18A-4-8g [1993] discusses multi-classification titles, and clarifies how they are to be treated in a reduction in force situation. It states:

> **[s]chool service personnel who hold multi-classification titles shall accrue seniority in each classification category of employment which said employee holds and shall be considered an employee of each classification category contained within his multi-classification title. Multi-classified employees shall be subject to reduction in force in any category of employment contained within their multi-classification title based on the seniority accumulated within said category of employment: Provided, That if a multi-classified employee is reduced in force in one classification category, said employee shall retain employment in any of the other classification categories that he holds within his multi-classification title.**

Further, W. Va. Code § 18A-4-8g states " [s]ervice personnel who are employed in a classification category of employment at the time when a vacancy is posted in the same classification category of employment shall be given first opportunity to fill such vacancy." W. Va. Code § 18A-4-8b contains a similar sentence and says "[q]ualifications shall mean that the applicant holds a classification title in his category of employment . . . and must be given first

opportunity for promotion and filling vacancies." Employees who otherwise meet the job qualifications are considered next. Id.

W. Va. Code § 18A-4-8b also states service personnel positions shall be filled on the basis "of seniority, qualifications, and evaluations of past service." A preference for hiring the employee with the most seniority is indicated by the statement that if the mostsenior employee is not hired a board "must show valid cause." Id. This emphasis on seniority was discussed in Harrison County Bd. of Educ. v. Coffman, 189 W. Va. 273, 430 S.E.2d 331 (1993). The West Virginia Supreme Court stated "the legislative intention to emphasize seniority as the determinative factor in decisions affecting the promotion and filling of school service personnel positions is . . . clear." Id. at 274.

The issue of filling multi-classified positions was raised in Wilson v. Marion County Board of Education, Docket No. 93-44-084 (July 27, 1993). Although this case was decided on other grounds, Administrative Law Judge Keller stated "[i]t is likely that an individual would be required to hold all of the class titles included in a multi-classified position to be qualified." Id. at n. 2. Judge Keller also noted that since "multi-classification is listed as a separate class title in W. Va. Code § 18A-4-8, it should not be viewed fractionally."

Given the above-stated statutes and case law, it would appear that KCBOE improperly filled the bus operator/clerk multi-classified position. This reasoning flows from the fact that multi-classification is listed as a separate title, and the Code Sections which grant the current employee priority refer to being "in the same classification category of employment" or holding "a classification title in his category of employment." Thus, if multi-classification is a separate class title, possessing only a portion of the class title would not grant a preference. 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). Grievant was statutorily entitled to hiring priority because she held the classification title of the category of employment designated in the posting, and she had greater seniority in the position than the successful applicant by approximately two years. Accordingly, KCBOE's action was not in conformance with the hiring mandates of W. Va. Code § 18A-4-8b. See Metz v. Wood County Bd. of Educ., Docket No. 92-54-388 (July 30, 1993).

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

Conclusions of Law

1. In filling a service personnel position, a county board of education must consider seniority, qualifications, and evaluation of past service. W. Va. Code § 18A-4-8b.

2. "Qualifications shall mean that the applicant holds a classification title in his category of employment . . . and must be given first opportunity for promotion and filling of vacancies." Id.

3. "'Multi-classification' means personnel employed to perform tasks that involve the combination of two or more class titles in this section. . . ." W. Va. Code § 18A-4-8.

4. Since "multi-classification" is listed as a separate classification in W. Va. Code § 18A-4-8, an employer may not consider an applicant's possession of one of the required classifications as granting that applicant priority over another applicant who is qualified in the posted multi-classified position. Vanooyen v. Harrison County Bd. of Educ., Docket No. 96-17-209 (July 25, 1997), aff'd Kanawha County Cir. Court CivilAction No. 97-AA-115 (May 22, 1998); Gandee v. Mason County Bd. of Educ., Docket No. 93-26-476 (Sept. 30, 1994).

4. Grievant, who held the multi-classification title of bus operator/clerk, was entitled to the position in question because she had greater seniority as a bus operator/clerk than the successful applicant.

Accordingly, this grievance is GRANTED, and KCBOE is ORDERED to place Grievant Edmonds in the St. Albans Terminal bus operator/clerk 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 providethe 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

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: 2

It is unclear from the record how the successful applicant became multi-classified. Mr. Lacy was working as a bus operator at the St. Albans Terminal prior to the posting, and the position was not posted until after Mr. Lacy became multi-classified. The date seniority begins to run for any position is the first day worked, not the date of the competency testing. W. Va. Code § 18A-4-8b. Additionally, Henry v. Mason County Board of Education, Docket No. 91-206-195 (Sept. 4, 1991), notes seniority cannot begin through an "informal" arrangement and is granted through selection and contract. See Lacy v. Kanawha County Bd. of Educ., Docket No. 98-20-181 (Aug. 28, 1998).

Footnote: 3

It was unclear from the record what multi-class title the successful applicant held, but it was not the multi-classified title of bus operator/clerk.