SCOTT ARNOLD,

Grievant,

v. **Docket No. 01-30-505**

MONONGALIA COUNTY BOARD OF EDUCATION,

Respondent,

LARRY COOPER,

Intervenor.

D E C I S I O N

Grievant, Scott Arnold, employed by the Monongalia County Board of Education (MCBE) as an Electrician II, filed a level one grievance on July 30, 2001, in which he alleged violations of W. Va. Code §§ 18A-4-8b, 18A-4-8e and 18A-4-8g, when Intervenor was promoted to Electrician II/Foreman. Grievant requested that the position be posted and filled in compliance with statutory guidelines, instatement into the position, back pay and benefits, and interest on all monetary sums. The record does not include a level one decision. A level two hearing was conducted on September 6, 2001, although neither Grievant nor his representative attended the proceedings. A decision was issued on September 13, 2001, and Grievant advanced his appeal to level four on September 19, 2001. An evidentiary hearing was conducted in the Grievance Board's Westover office on November 7, 2001, at which time Grievant was represented by John E. Roush, Esq., of WVSSPA, MCBE was represented by Kelly J. Kimble, Esq., of Kay Casto and Chaney, and Intervenor appeared pro se. The matter became mature for decision upon receipt of proposed findings of fact and conclusions of law on or before December 14, 2001.

The following facts are derived from the record in its entirety.

Findings of Fact

1. Respondent employs four individuals in the Electrician classification. They are assigned work in teams of two, although they may assist each other as needed.

2. Grievant has been employed by MCBE for approximately seven years and has been classified as an Electrician II at all times pertinent to this decision.

3. Intervenor has been employed by MCBE for approximately four years and was classified as an Electrician II until July 1, 2001, when he was reclassified as Electrician II/Foreman. The advanced classification provides an additional $130 dollars per month, use of a van and cell phone.

4. Grievant holds a journeyman's license, has twelve years of overall experience as an electrician and holds High Voltage Certification with the State Fire Marshall. Additionally, Grievant has approximately 57 hours of college credit with various institutions. Grievant is a military veteran and during his service completed a year of training as an Electronic Technician at the University of the Air Force, earned certification for multiplex/communication with the U.S. Army Signal Corps., and received various medals of commendation. Grievant has at least one negative evaluation in his personnel file reflecting a problem with absenteeism.

5. Intervenor holds a master electrician's license, has twenty-five years of overall experience as an electrician, and has no negative evaluations.

6. Intervenor's duties exceed those of the remaining Electricians in that he is assigned to plan the complex electrical jobs undertaken by the Maintenance Department, determines what supplies are needed for such jobs and orders them, acts as the contact person between the power company and MCBE, and troubleshoots for all the otherElectricians when they experience problems beyond their knowledge and/or abilities. Intervenor does not assign work to or supervise the other Electricians

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving each element of his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §4.21 (2000); 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 argues that the change in Intervenor's classification was a promotion, and Respondent is bound to make promotions using the same criteria as in filling vacancies. Because both employees are qualified by holding the Electrician II classification, and have acceptable evaluations, Grievant argues that he was entitled to the position based on his seniority. (See footnote 1) Conversely, if the change was a reclassification, Grievant argues that he is entitled to the same multiclassification title, supplement, and benefits as Intervenor since he performs the same function for his team as

Intervenor.

MCBE asserts that Intervenor's reclassification was in compliance with applicable law, and not violative of any statute, regulation, rule or policy, nor otherwise arbitrary and capricious. MCBE further argues that no vacancy or position existed which required aposting, but even if Electrician II/Foreman is deemed a new position, Grievant would not be entitled to it.

W. Va. Code §18A-4-8b(d) defines “promotion” as “any change in his employment that the employee deems improves his working circumstance within his classification category of employment and shall include a transfer to another classification category or place of employment if the position is not filled by an employee who holds a title within that classification category. . . .” At level four, Richard Williams, MCBE Human Resources Manager, testified that Intervenor was not promoted, but that his classification changed as the result of the annual review of service personnel positions required by W. Va. Code §18A-4-8(l). This statement was supported by the testimony of Maintenance Supervisor Kermit Hess who stated that he recommended, and the review committee approved, Intervenor's reclassification based upon the fact that his position had evolved over the years, with his expertise, initiative, and cooperation.

Having determined there was no new position which required posting and placement consistent with statutory guidelines, Grievant's claim that he is entitled to the Electrician II/Foreman multiclassification will next be addressed. Grievant asserts that he orders parts, sets up jobs, and acts as the contact person with various outside entities. Grievant also cites his year of training as an Electronic Technician and college credits in support of his claim.

In order to prevail in a misclassification grievance, an employee must establish that his duties more closely match those of another classification than that under which his position is categorized. Carver v. Kanawha County Bd. of Educ., Docket No. 01-20-057 (Apr. 13, 2001); Sammons/Varney v. Mingo County Bd. of Educ., Docket No. 96-29-356(Dec. 30, 1996); Savilla v. Putnam County Bd. of Educ., Docket No. 89-40-546 (Dec. 21, 1989). A school service employee who establishes, by a preponderance of the evidence, that he is performing the duties of a higher W. Va. Code §18A-4-8 classification than that under which he is officially categorized, is entitled to reclassification. Gregory v. Mingo County Bd. of Educ., Docket No. 95-29-006 (July 19, 1995); Hatfield v. Mingo County Bd. of Educ., Docket No. 91-29-077 (Apr. 15, 1991); Holliday v. Marshall County Bd. of Educ., Docket No. 89-25-376 (Nov. 30, 1989); Scarberry v. Logan County Bd. of Educ., Docket No. 89-23-63 (Oct.

30,1989). However, simply because an employee is required to undertake some responsibilities normally associated with a higher classification, even regularly, does not render him misclassified per se. Hatfield, supra.

W. Va. Code § 18A-4-8 defines “Electrician II” as “personnel employed as an electrician journeyman or who holds a journeyman electrician license issued by the state fire marshal”; and defines "Foremen" as “skilled persons employed for supervision of personnel who work in the areas of repair and maintenance of school property and equipment”. Because Grievant is not employed to supervise personnel in the areas of repair and maintenance of school property and equipment, Electrician II is the best fit for the duties Grievant performs. (See footnote 2)

In addition to the foregoing findings of fact and discussion, it is appropriate to make the following formal 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 his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §4.21 (2000); 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. County boards of education are required by W. Va. Code §18A-4-8(l) to “review each service personnel employee job classification annually and shall reclassify all service employees as required by the job classifications.”

3. Grievant has failed to prove that Respondent created a new position of Electrician II/Foreman which required posting and filling pursuant to W. Va. Code § 18A-4- 8b.

4. In order to prevail in a misclassification grievance, an employee must establish that his duties more closely match those of another classification than that under which his position is categorized. Carver v. Kanawha County Bd. of Educ., Docket No. 01- 20-057 (Apr. 13, 2001); Sammons/Varney v. Mingo County Bd. of Educ., Docket No. 96-29-356 (Dec. 30, 1996); Savilla v. Putnam County Bd. of Educ., Docket No. 89-40-546 (Dec. 21, 1989).

5. W. Va. Code § 18A-4-8 defines "Foremen" as “skilled persons employed for supervision of personnel who work in the areas of repair and maintenance of school property and equipment”.

6. Grievant failed to prove that he supervises employees, or otherwise meets the definition of

Foreman. Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Monongalia 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. However, the appealing party is required by W. Va. Code §29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

Date: January 10, 2002 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

W. Va. Code §18A-4-8b requires that county boards of education make decisions affecting promotions and the filling of service personnel positions on the basis of seniority, qualifications, and evaluation of past service.

Footnote: 2

It appears that Intervenor may be misclassified as he does not supervise employees; however, the misclassification of one employee does not require that another employee be improperly classified. Bender v. Dep't of Health and Human Resources, Docket No. 00-HHR-305 (June 1, 2001).