THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

GREGORY KEITH BROCK,
Grievant,

v. **DOCKET NO. 2010-0771-MonED**

MONONGALIA COUNTY BOARD OF EDUCATION,
Respondent.

DECISION

Grievant, Gregory Keith Brock, filed a grievance against his employer, the Monongalia County Board of Education, on December 9, 2009. The statement of grievance reads: "Grievant contends that he should be reclassified by addition of the Inventory Supervisor and Warehouse Clerk classification titles to his contract of employment. Grievant alleges a violation of W. Va. Code 18A-4-8." As relief Grievant sought, "reclassification by addition by addition [sic] of the Inventory Supervisor and Warehouse clerk classification titles to his contract with back pay. Grievant also seeks an award of interest on all sums to which he is entitled." At the level three hearing Respondent agreed that Grievant should be multi-classified as a Truck Driver/Inventory Supervisor, and Grievant acknowledged that his claim that the classification of Inventory Supervisor be added to his title need not be addressed by the undersigned.

A hearing was held at level one on March 12, 2010, and a decision denying the grievance was issued on April 8, 2010. Grievant appealed to level two on April 22, 2010, and a mediation session was held on July 23, 2010. Grievant appealed to level three on August 3, 2010, and a level three hearing was held before the undersigned Administrative

Law Judge on October 27, 2010, at the Grievance Board's Westover, West Virginia, office. Grievant was represented by John Everett Roush, Esquire, West Virginia School Service Personnel Association, and Respondent was represented by Jason S. Long, Esquire, Dinsmore & Shohl, LLP. This matter became mature for decision on November 29, 2010, upon receipt of the last of the parties' Proposed Findings of Fact and Conclusions of Law.

Synopsis

Grievant is employed by Respondent as a Truck Driver. Respondent agreed that Grievant should be multi-classified as a Truck Driver/Inventory Supervisor. The duties of the Inventory Supervisor, Warehouse Clerk, and Truck Driver are somewhat overlapping. However, the Warehouse Clerk is the person with responsibility for receiving, storing and shipping goods, while Grievant performs the duties assigned to him with regard to receiving, storing, and delivering goods. Grievant does not plan and direct any activities. Grievant did not demonstrate he should be classified as a Warehouse Clerk.

The following Findings of Fact are properly made from the record developed at levels one and three.

Findings of Fact

1. Grievant has been employed by the Monongalia County Board of Education ("MBOE") for about 12 years, and has been employed in the Truck Driver classification since August 2009. Prior to becoming employed as a Truck Driver, Grievant was a Bus Operator for MBOE. Grievant works 6:00 a.m. to 2:00 p.m., Monday through Friday during the school year.

2. Grievant holds a Commercial Drivers License and he drives a one-ton pickup truck in performing his driver duties. As a Truck Driver, Grievant makes daily deliveries of food, cups, plastic forks, chemicals and other supplies to schools throughout Monongalia County, following a set daily schedule. Grievant does not determine the delivery schedule. Grievant assists in loading the supplies onto the truck, and he unloads them for delivery. Grievant spends 60% of his time performing these Truck Driver duties.

3. A receiving slip accompanies each delivery, which details the supplies being delivered. Grievant checks off on the slip that each listed item has been delivered, as does the recipient of the supplies. Grievant returns the receiving slip to the warehouse.

4. There are two warehouses. One is approximately 30 feet by 40 feet, and consists of an area where canned foods are stored. The second warehouse is a freezer warehouse, and is approximately 20 feet by 20 feet. There are also three refrigerated coolers in Grievant's office for storing cheese. Grievant checks the expiration dates on food, and the cooler temperature everyday. Grievant is responsible for keeping the warehouses clean.

5. Grievant receives an inventory sheet from the board office each week listing the inventory that should be in the warehouse, and he then takes a physical inventory at the warehouse checking it against the inventory sheet. He then completes an inventory form and faxes it to the board office.

6. Generally, there is one delivery a month to the warehouses by the supplier of goods for MBOE, although there may be a second or third delivery some months of produce. Grievant verifies that the goods being delivered to the warehouse are listed on the bill of lading, and signs for deliveries.

7. Grievant's role in determining the inventory is to advise his supervisor when the warehouse is running low on certain supplies. He does not decide what items will be ordered, nor does he plan or direct any warehouse activities or the preparation of reports. He performs the tasks which his supervisor determines should be performed, when his supervisor decides they should be performed. His role is to provide valuable input.

8. Grievant does not construct price lists, assist school custodians in organizing storage, or evaluate complaints. He is assigned to handle some complaints.

9. The job duties of an Inventory Supervisor, Warehouse Clerk, and Truck Driver overlap somewhat.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). *See also 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). "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

Grievant argued his duties encompassed both the Inventory Supervisor and Warehouse Clerk classifications. Respondent acknowledged Grievant does indeed perform Inventory Supervisor duties, and agreed to see that Grievant was so multi-

classified. However, Respondent pointed out that Grievant's role is not that of directing and scheduling activities, but rather performing tasks as determined by his supervisor.

Typically, "[i]n order to prevail in a misclassification grievance, an employee must establish that her duties more closely match those of another classification than that under which her position is categorized. *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*." *Carver v. Kanawha County Bd. of Educ.*, Docket No. 01-20-057 (Apr. 13, 2001). A brief and impermanent undertaking of some of the duties of a position. . . does not equate to an assignment to 'direct a department or division.'" *O'Neal v. Fayette County Bd. of Educ.,* Docket No. 02-10-369 (Mar. 6, 2003). Further, "because of similarities in the nature of certain jobs, two or more definitions may encompass the same duties. Performance of such crossover duties does not necessarily mandate reclassification. *Graham v. Nicholas*

County Bd. of Educ., Docket No. 93-34-224 (Jan. 6, 1994)." *Gillespie v. Monongalia County Bd. of Educ.*, Docket No. 00-30-041 (June 29, 2000).

Inventory Supervisor is defined as "a person employed to supervise or maintain operations in the receipt, storage, inventory and issuance of materials and supplies." W. VA. CODE § 18A-4-8(h)(51). Warehouse Clerk is defined as "a person employed to be responsible for receiving, storing, packing and shipping goods." W. VA. CODE § 18A-4-8(h)(83). It is difficult to draw a distinction between these two classifications, and it would be expected then that these two classifications would have some overlapping duties. However, it is clear that the Inventory Supervisor classification is supervising and maintaining operations, while the Warehouse Clerk is the person with actual responsibility for receiving, storing, packing and shipping goods. An individual may perform all the tasks performed by Grievant with regard to inventory, yet not have any level of responsibility beyond the requirement that he perform the duties assigned in a competent manner and as directed.

MBOE has developed Job Descriptions which outline the duties of these two classifications in more detail. The Job Description for the Inventory Supervisor lists the Essential Job Functions as:

1. Unpack items received and inspect for damage or defects.
2. Verify accuracy of shipment by counting or measuring items and comparing size, weight, description and code numbers with information on invoices or packing slips and purchase orders and record any discrepancies or damages
3. Marks identifying information on items; post quantity received on perpetual inventory computer
4. Stores items according to established procedures
5. Takes items from stock to fill school requisitions and delivers them to appropriate destination and obtains authorized signatures for supplies

6. Maintain storeroom in orderly manner
7. Perform basic keyboard operations
8. Loads and unloads merchandise when needed
9. Conduct facility and materials inspections and advise supervisor of needs
10. Assist with the performance of duties of Warehouse Clerk

The MBOE Job Description for the Warehouse Clerk lists the Essential Job Functions as:

1. Inventory stock and requisition supplies, materials and equipment.
2. Receive all incoming merchandise, supplies and equipment.
3. Keep records of requisitions and materials distribution.
4. Schedule deliveries of materials/mail to schools/offices.
5. Operate light vehicles and make deliveries to schools/offices.
6. Construct price list as a guide for school requisitions.
7. Assist school custodians to organize building storage.
8. Load, haul and unload moderately heavy materials.
9. Maintain clean and orderly work area.
10. Work alone or with truck drivers to distribute food products.
11. Plans and directs the inventory and stock control program for equipment and supplies.
12. Plans and directs the inventory and stock control program for equipment and supplies.
13. Directs the preparation of reports on the activities of the department.
14. Evaluates complaints received on equipment and supplies and takes appropriate action.

There is obviously some overlap in the job duties of the Inventory Supervisor and the Warehouse Clerk, and in the job duties of the Warehouse Clerk and Truck Driver classifications. Looking specifically at the duties listed for Warehouse Clerk, Grievant does conduct inventory and he receives all merchandise coming to the warehouses. However, it is clear that Grievant has not been delegated *responsibility for* inventory, maintaining records, or planning or directing any activities. Grievant does not plan and direct any activities. He performs the tasks assigned to him by the person responsible for seeing that

these tasks are carried out. Grievant has not demonstrated that he should be classified as a Warehouse Clerk.

The following Conclusions of Law support the Decision reached.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). *See also 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). "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

2. Typically, "[i]n 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 her position is categorized. *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).

3. 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*." *Carver v. Kanawha County Bd. of Educ.*, Docket No. 01-20-057 (Apr. 13, 2001). A brief and impermanent undertaking of some of the duties of a position. . . does not equate to an assignment to 'direct a department or division.'" *O'Neal v. Fayette County Bd. of Educ.,* Docket No. 02-10-369 (Mar. 6, 2003). Further, "because of similarities in the nature of certain jobs, two or more definitions may encompass the same duties. Performance of such crossover duties does not necessarily mandate reclassification. *Graham v. Nicholas County Bd. of Educ.*, Docket No. 93-34-224 (Jan. 6, 1994)." *Gillespie v. Monongalia County Bd. of Educ.*, Docket No. 00-30-041 (June 29, 2000).

3. Grievant has not been delegated responsibility for inventory, maintaining records, or planning or directing any activities. Grievant has not demonstrated that he should be classified as a Warehouse Clerk.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. *See* W. VA. CODE § 6C-2-5. Neither the West Virginia Public 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 certified record can be prepared and properly transmitted to the Circuit Court of Kanawha County. *See also* 156 C.S.R. 1 § 6.20 (2008).

BRENDA L. GOULD
Administrative Law Judge

Date: May 3, 2011