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**WEST VIRGINIA EDUCATION  
EMPLOYEES GRIEVANCE BOARD**  
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LARRY BURLEY  
vs.  
WAYNE COUNTY BOARD OF EDUCATION

GRIEVANCE NO. 50-86-118-1

DECISION

In 1984 grievant, Larry Burley, was employed by the Wayne County Board of Education as a substitute electrician and signed an employment contract dated December 6, 1984. He was not called to work during the 1984-85 school year and on August 22, 1985 was reclassified as a substitute bus driver by the board.<sup>1</sup> On September 30, 1985, Superintendent Ferguson telephoned to advise him of an opening for a heating and air conditioning mechanic substitute and he reported to work on October 1, 1985.<sup>2</sup> At the time he was working for a pipe company.

On December 3, 1985, the position of heating and air conditioning mechanic II was posted and grievant and six other persons applied for the position. Grievant was not selected

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<sup>1</sup> Grievant was not aware that he had been reclassified as a substitute bus driver and would not have accepted the job if called. Mr. Ferguson stated that ex-superintendent Nolan had recommended to the board that grievant be reclassified as a substitute bus driver and it was admitted that the reclassification as bus driver substitute was without grievant's consent. If this is a policy of the board it is ostensibly violative of Code, 18A-4-8 and does not support the contentions raised herein. cf State ex rel. Hawkins v. Tyler Co. Bd. of Educ., 275 S.E.2d 908, 915 (W.Va. 1981).

<sup>2</sup> The October 9, 1985 minutes of the Board of Education reflect that grievant was transferred from substitute bus driver to substitute maintenance employee, effective October 1, 1985. Grievant was unaware of this also in that he states Superintendent Ferguson told him on the telephone that he had an opening for a heating and air conditioning repairman I substitute, told him

and filed a grievance asserting that under Code, 18A-4-8b, as a substitute employee with the most seniority and qualifications, he should have been awarded the position. A level one conference was conducted on January 10, 1986 between grievant and his supervisor, wherein it was concluded that based upon the comparison of qualifications required for the position and the information furnished by the grievant it appeared that grievant had met the qualifications. However, the supervisor later stated that he could not recommend grievant for the position.

A level two grievance hearing was conducted on January 16, 1986 at which the evidence of grievant consisted of a written narrative dated January 10, 1986 signed by grievant, setting forth his qualifications and a letter from Cletis Wallace, a heating and air conditioning repairman II with whom grievant worked, stating that grievant had performed all the assigned duties in a very capable and workman like manner and "...seemed to be very qualified for the job."

At that hearing, Superintendent Ferguson testified that on or about October 1, 1985 Stephen Pratt, a heating and air conditioning mechanic II resigned and grievant was called to work as a substitute in the maintenance department to "fill in" until a heating and air conditioning mechanic could be employed in accordance with Code, 18A-4-8b; that the reason grievant was called was due to his knowledge of electricity, there being no personnel on the substitute list classified as a heating and air conditioning mechanic. He stated that although grievant traveled with and served as a helper to a heating and air conditioning mechanic he was never at any time employed as a heating and air conditioning mechanic and was never classified as such. He testified further that grievant's qualifications

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(2 cont.)

the rate of pay, working hours, and the basics; that he (Ferguson) needed to have an answer on that day. Grievant states that "...being on the outside I knew nothing that was going on - I just took it."

did not equal those of the successful candidate and that grievant's supervisor, Mr. Fry, had not recommended grievant for the position. He did not believe that the time grievant served in an apprenticeship heating and air conditioning substitute position entitled grievant to the position of heating and air conditioning mechanic II, a journeyman position.<sup>3</sup>

The level two grievance was denied on January 23, 1986, the grievance evaluator concluding that grievant had no seniority as a heating and air conditioning mechanic and that since the grievant had never held the classification title category of heating and air conditioning mechanic, he did not meet the qualifications definition as per Code, 18A-4-8b. On February 6, 1986, the Wayne County Board of Education waived participation in the grievance at level three and referred the grievance to a hearing examiner; an evidentiary hearing was conducted on March 7, 1986.

At the level four hearing grievant testified that when he reported to work on October 1, 1985, Mr. Fry, his supervisor, informed the maintenance workers that he was Steve Pratt's replacement and that since Mr. Fry had never worked with the grievant he was in no position to evaluate grievant's skills.<sup>4</sup> He also introduced into evidence letters of recommendation from persons for whom he had worked along with a letter from Superintendent Ferguson dated January 3, 1985 thanking grievant for the work grievant had done for the board of education while

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<sup>3</sup> He testified that he recommended to the Wayne County Board of Education the person he believed to be the most qualified individual for the position. Other than the tests taken by the grievant and the successful applicant put into evidence at the level four hearing, the qualifications of the other applicants are not in the record.

<sup>4</sup> Grievant testified that he did not merely assist Cletis Wallace in the work but that Mr. Wallace divided up the work orders between them so that grievant was actually doing the work of a heating and air conditioning mechanic.

working as a "heating and air conditioning substitute."<sup>5</sup> Grievant also had a statement signed by five maintenance employees to the effect that when grievant was hired it was as a substitute heating and air conditioning repairman "...until the position was filled."

Superintendent Ferguson testified that Mr. Moore, the successful applicant, had much preferable technical experience than grievant, was self-employed and recognized in the county as a heating and air conditioning repairman of high standards. He tendered a computer print-out of the certified service personnel for fiscal year 1985-86 upon which grievant was classified in the "General Maintenance" category and stated that grievant was selected to work on heating and air conditioning because of his knowledge of electricity. He stated that ex-superintendent Nolan had told him to contact someone with the experience as close as possible to a heating and air conditioning mechanic on the register and Ferguson considered grievant's knowledge of electricity in following Nolan's directions.<sup>6</sup> Superintendent Ferguson acknowledged that it was logical for grievant to assume he was answering a call for a heating and air conditioning repairman when he reported for work.

Assistant Superintendent Oshel, who conducted the level two hearing and rendered the decision, testified that it was perhaps an oversight on his part as personnel director to not have executed a contract with grievant as a general maintenance employee but it was an emergency situation and he was transferred to the maintenance department to "fill in"; that there was

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<sup>5</sup> The letter also advised grievant that on January 2, 1986 the board had employed Mr. Bernie Moore for the position of heating and air conditioning mechanic II and that grievant's name would remain on the substitute list.

<sup>6</sup> Grievant states that Superintendent Ferguson never advised him that he was being offered the position on the basis of his electrical knowledge. Grievant does hold a Master Electrician license and a stationary engineer license as a boiler operator and his application submitted when he first applied for work with the board listed his experience as a heating and air conditioning mechanic.

a breakdown of communication and grievant had only assumed that he was a heating and air conditioning mechanic.

The employer concluded that grievant was accumulating seniority in maintenance and not as a heating and air conditioning mechanic even though it was uncontroverted that grievant did the work as a heating and air conditioning mechanic and was hired as such.<sup>7</sup>

Code, 18A-4-8 is, in pertinent part, as follows:

"'Heating and air conditioning mechanic I' means personnel employed at the apprentice level to install, repair and maintain heating and air conditioning plants and related electrical equipment,

'Heating and air conditioning mechanic II' means personnel employed at the journeyman level to install, repair and maintain heating and air conditioning plants and related electrical equipment,

'General Maintenance' means personnel employed as helpers to skilled maintenance employees and to perform minor repairs to equipment and buildings of a county school system."

Code, 18A-2-5 authorizes a board of education to employ service personnel, including substitutes, but requires that before entering upon their duties that such personnel shall execute with the board a written contract. Finally,

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<sup>7</sup> In Casto, et al v. Kanawha County Board of Education, Docket Nos. 20-86-014/015/016, decided February 25, 1986 it was held that where Custodians III were performing the duties of a Custodian IV they were entitled to be reclassified to that position and to be awarded back pay for the period they performed the duties thereof. It was also held that under Code, 18A-4-8 county boards were required to review annually these job classifications and reclassify where necessary.

Code 18A-4-8b states, in pertinent part, that:

"(b) A county board of education shall make decisions affecting promotion and filling of any service personnel positions of employment or jobs occurring throughout the school year... on the basis of seniority, qualifications and evaluation of past service.

Qualification shall mean that the applicant holds a classification title in his category of employment as provided in this section and must be given first opportunity for promotion and filling vacancies. Other employees then must be considered and shall qualify by meeting the definition of the job title as defined in Code, 18-A-4-8, that relates to the promotion or vacancy. If the employee so requests, the board must show valid cause why an employee with the most seniority is not promoted or employed in the position for which he applies. Applicants shall be considered in the following order:

- (1) Regularly employed service personnel.
- ...
- (4) Substitute service personnel; and
- (5) New service personnel." (emphasis added)

#### FINDINGS OF FACT

1. On September 30, 1985 grievant was called to work as a heating and air conditioning substitute and reported to work on October 1, 1985.

2. There was no contract executed and, unknown to grievant, he was classified as a substitute maintenance employee by the board of education on October 9, 1985.

3. Grievant worked as a heating and air conditioning mechanic under a heating and air conditioning repairman, Cletis Wallace, who stated that grievant was very qualified for the job.

4. At no time was grievant advised that he was classified as a maintenance employee and he did not know that he was so classified.

#### CONCLUSIONS OF LAW

1. Code, 18A-2-5 requires boards of education and service personnel, including substitutes, to execute a written contract before such employees enter upon their duties. This provision is mandatory and the obvious intent is to eliminate problems such as is involved in this grievance.

2. Code, 18A-4-8 prohibits the reclassification of any service employee without his written consent.

3. Code, 18A-4-8b requires a board of education to make decisions affecting promotion and filling of service personnel positions or jobs on the basis of seniority, qualifications and evaluation of past service.

4. School personnel laws are to be strictly construed in favor of the employee.

Wherefore, this grievance is remanded to the board of education to reconsider the application of grievant as though he had been properly classified as a heating and air conditioning mechanic substitute as of October 1, 1985 and to then make the selection to fill the position of heating and air conditioning mechanic II by using the formula set out in Code, 18A-4-8b. If the grievant is not selected and so requests, the board must show valid cause why he was not promoted or employed to fill the position for which he applied.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Wayne County and such appeal must be filed within thirty (30) days of receipt of this decision. (Code, 18-29-7) Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the Court.

A handwritten signature in cursive script, appearing to read "Leo Catsonis", is written above a horizontal line.

LEO CATSONIS  
HEARING EXAMINER