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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**
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DALE G. STEVENS

v.

Docket No. 50-86-294-1

WAYNE COUNTY BOARD OF EDUCATION

DECISION

Grievant, Dale Stevens, is employed by the Wayne County Board of Education as a Clerk II assigned to the special education department. On September 8, 1986, he filed a grievance alleging that the school board had reclassified a handyman/aide employee to a 261 day Clerk II in the special education department without first posting the position in violation of W.Va. Code, 18A-4-8b. A level two evidentiary hearing was held on September 25 and appealed to the Education Employees Grievance Board on October 17, 1986; a level four evidentiary hearing was conducted on March 30, 1987.¹

¹ The hearing had been continued on motion of Superintendent Ferguson due to a conflict of schedule and without objection by counsel for grievant.

On March 30, 1987, the parties adduced the testimony of grievant and Superintendent Ferguson and filed the transcript of the level two evidence. (T.____).

Grievant was employed in 1978 as a Clerk I in the special education department as a 200 day employee; he has been a Clerk II for approximately four years. As a Clerk II he visits each of the schools in Wayne County and performs vision screening, tests kindergarten and third grade students and makes doctor appointments for and sometimes transports students to doctors' offices. When he was hired initially he did vision and hearing screening but as a Clerk II does only the vision screening (T.5,6).

On August 18, 1986, he attended a board of education meeting and learned that Tannis Adkins, a 240 day employee classified as a handyman/aide, had been reclassified as a Clerk II, a 261 day position, in the special education department. Counsel for grievant does not question the reclassification of Ms. Adkins but contends that W.Va. Code, 18A-4-8b applies to the twenty one day extension of the contract because it created a vacancy for that period; that, accordingly, it was necessary to post the position as required by law.²

² As an alternative, counsel suggests that the hearing examiner extend grievant's employment term to 261 days in his present position in special ed and that would resolve the grievance. Counsel agrees, however, that there is no legal predicate upon which such a resolution could rest.

Superintendent Ferguson testified that the director of special education initially informed him that Ms. Adkins was misclassified as a handyman/aide and should be reclassified.³ Prior to reclassification Ms. Adkins worked in the special education department feeding information into a computer on special ed students and because of the nature of the work in that department she was required to work full time to keep abreast of the volume of work. Accordingly, Superintendent Ferguson recommended to the school board that she be reclassified and this was done on August 11, 1986 (Joint Exhibit 2). Ms. Adkins continued to perform the same duties after reclassification that she had performed previously.

Counsel for the board of education contends that the reclassification was required by law and since there was no vacancy there was no requirement to post as per W.Va. Code, 18A-4-8b; that State Superintendent of Schools McNeel issued an opinion upholding the

³ Superintendent Ferguson stated that two handyman/aide positions had been created about four years ago before he became superintendent to permit two ladies to assist in the warehouse in the receiving department and also work as aides in the special education department.

As a new superintendent he was also attempting to follow the law requiring county boards to review each service personnel employee job classification annually and to reclassify all employees working out of classification. See, Burley v. Wayne County Board of Education, Docket No. 50-86-118-1.

procedure employed in the instant grievance.⁴

In addition to the foregoing factual recitation, the following specific findings of fact and conclusions of law are appropriate.

FINDINGS OF FACT

1. Grievant is employed as a Clerk II in the special education department of Wayne County Schools as a 200 day employee.

2. On August 11, 1986, upon the recommendation of Superintendent of Schools Ferguson, the school board reclassified Tannis Adkins, a 240 day handyman/aide to Clerk II, a 261 day position, in the special education department. Prior to the reclassification Ms. Adkins worked in the special education department feeding information into a computer; subsequent to the reclassification she performed the same duties on a full time basis.

⁴ The opinion, dated November 26, 1986, involved the proposed reclassification of a chief mechanic to foreman/mechanic and the necessity to post the proposed position. The pivotal question was whether the mechanic was already doing the work of a foreman; if so, posting was not required.

Counsel for the board contends that if grievant's view were accepted a posting would be required in every reclassification since a salary increase would be involved.

3. Grievant does not question the reclassification of Ms. Adkins but contends the twenty one day extension to her employment contract amounted to a new position or vacancy which should have been posted as required by W.Va. Code, 18A-4-8b.

4. There is no allegation or evidence that the reclassification was done arbitrarily or that favoritism or discrimination was involved in the instant grievance.

CONCLUSIONS OF LAW

1. W.Va. Code, 18A-4-8 requires a county board of education to annually review service personnel job classifications and to reclassify where necessary. Connie Casto v. Kanawha County Board of Education, Docket No. 20-86-014.

2. A county board of education may reclassify an employee without posting when the reclassified employee had been previously performing the duties of the reclassified position.

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha County or Wayne County and such appeal must be filed within thirty days of receipt of this decision. (W.Va. 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 over a horizontal line.

LEO CATSONIS

Chief Hearing Examiner

Dated: May 22, 1987