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EMPLOYEES GRIEVANCE BOARD**  
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**LUCILLE WISEMAN, PHYLLIS MORRIS  
and ELOUISE WOLFE**

**v.**

**Docket No. 20-86-275-1**

**KANAWHA COUNTY BOARD OF EDUCATION**

**DECISION**

Grievants are employed by the Kanawha County Board of Education as regular 200 day employees and during the summer as maintenance employees painting playground equipment, etc. In July, 1986, they filed a grievance alleging they should be reclassified as painters and a level two hearing was conducted on August 28, 1986. An appeal to level four was filed on September 30, 1986, and a level four evidentiary hearing was conducted on January 29, 1987.<sup>1</sup>

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<sup>1</sup> Originally the grievance was to be submitted on the transcript of evidence of the level two hearing but an evidentiary hearing was later requested. The grievance was ultimately submitted on the transcript of evidence of the level two hearing, (T. \_\_); the testimony of one additional witness, Frank Kemplin, who testified on January 29, 1987, and the findings of fact and conclusions of law submitted by grievants on February 19, 1987.

Phyllis Morris has been a regularly employed bus operator for ten years and for the past five summers has worked on a paint crew painting fences and playground equipment. Neither grievant nor other members of the paint crew execute a contract for this summer work and are classified as general maintenance employees, a pay grade C position. Grievants had not received any training or orientation prior to commencing their duties and in 1986 the crew was given a van and directed to paint roof-top air conditioning and heating units, metal pipes, etc.<sup>2</sup> Grievants used paint, paint brushes, scrapers and steel or wire brushes (T. 9), and acknowledged that they did not use sand blasting equipment, paint sprayers, scaffolding or paint stripping equipment in their work. (T. 14).

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<sup>2</sup> It was stipulated that the testimony of the two other grievants would be similar to that of Ms. Morris with the exception Ms. Wolfe began her employment in 1983 rather than 1982. (T. 15).

In 1986 there was a posting of vacancies for summer maintenance positions commencing July 1, 1986, for three workers for outside painting (playground equipment, fences) and for four workers for outside painting (buildings). (Grievant's Exhibit 1).

Mr. Garth Bostic is director of maintenance for Kanawha County Schools and was familiar with the duties performed by grievants. He testified that grievants were hired as helpers for painters but for some reason they "ended up on playground equipment each year." He acknowledged that in 1986 he had eliminated the fence painting and, instead, had the grievants do some work on the air conditioning, heating units and pipes on the roofs of school buildings. (T. 16). Mr. Bostic contrasted the work grievants perform with that of a painter and opined that the painting done by grievants in painting playground equipment required a far less skill level than that required of a painter; that there were no aesthetic considerations involved in the painting done by grievants, which was to prevent rust and increase the life of equipment. (T. 18).<sup>3</sup> He stated that grievants were not closely supervised but were under

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<sup>3</sup> Mr. Bostic stated that painters, in painting a room, remove all the furniture, tape the baseboards and door trim, chalkboards, etc., and erect scaffolding to either brush paint or spray paint the ceilings; that airless spray guns are used in spray painting and requires the use and knowledge of a compressor.

In the last four or five years Mr. Bostic had established a testing procedure whereby painters were required to pass a written and practical test.

Kanawha County Schools Job Description for painter is as follows:

Painter - means personnel employed to perform duties of painting, finishing and decorating of wood, metal and concrete surfaces of buildings, other structures, equipment, machinery and furnishings of a county school system. (Employer's Exhibit 1).

the supervision of the painting supervisor. (T. 21).<sup>4</sup>

Counsel for the grievants contends that W.Va. Code, 18A-4-8 places a duty upon boards of education to classify employees according to their duties and requires an annual review of the job classifications; that when an employee meets the requirements of a particular classification that classification must be given to the employee. It is further contended that grievants do not fit the definition of general maintenance employees because they work independently and do not assist painters.<sup>5</sup> Accordingly, counsel concludes that grievants are entitled to reclassification as painters and back pay to 1982. (T. 22).

Counsel for the board of education contends the important element is the level of skill involved in the work grievants perform and that required of a painter; that in relation to the work done by painters the grievants are performing what amounts to minor repair work. Counsel also contended that grievants were not entitled to back pay for a five year period due to the inaction of the grievants in asserting any claim. (T. 24).

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<sup>4</sup> Mr. Charles F. Kemplin testified at the level four hearing that he was a 261 day painter and knew that grievants worked on the paint crew in the summer of 1986; that he had not worked with grievants but was aware that grievants picked up their work orders at Crede from the foreman and proceeded to complete the work orders; that on the regular paint crews there are no classifications of painters such as Painter I or II.

<sup>5</sup> W.Va. Code, 18A-4-8 defines general maintenance employees as:  
...personnel employed as helpers to skilled maintenance employees and to perform minor repairs to equipment and buildings of a county school system.

In addition to the foregoing factual recitation the following specific findings of fact are appropriate.

FINDINGS OF FACT

1. Grievants are regular 200 day employees who also are employed in the summer as general maintenance employees to perform painting assignments.

2. Grievants initially were assigned to paint playground equipment but in 1986 were given their own transportation and assigned the job of painting roof-top air conditioning and heating units on school buildings.

3. Grievants performed their duties without direct supervision and picked up their work orders each morning from the paint foreman as did the regular paint crews; grievants were neither assigned as helpers to the regular painters nor did they function as such.

4. As of the summer of 1986 grievants performed the duties of "painters" as per Kanawha County Schools Job Description. Grievants did not, however, prove by a preponderance of the evidence their entitlement to back pay for previous years.

CONCLUSIONS OF LAW

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

2. Grievants were performing the duties of a painter in the summer of 1986 and are entitled to reclassification as "painter" and to back pay for that period.

Accordingly, the grievance is GRANTED and the Kanawha County Board of Education is Ordered to reclassify grievants as painters and award them back pay for the summer of 1986, less any appropriate set-off.

Either party may appeal this decision to the Circuit Court of Kanawha 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.



LEO CATSONIS

Chief Hearing Examiner

Dated: March 11, 1987