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DANIEL CORNELL

v.

Docket No. 40-87-232-1

PUTNAM COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Daniel Cornell, is employed by the Putnam County Board of Education as a service personnel employee and was formerly classified as a warehouse clerk/truck driver. In April 1987, he filed a level one grievance seeking reclassification to buyer and payment of back wages. Grievant prevailed on the level one grievance with respect to the reclassification issue, however, the grievance was denied in its entirety at level two and waived by the board at level three; a level four appeal was filed in September 1987. The grievance was heard by Leo Catsonis in Charleston on December 3, 1987 and January 11, 1988 and subsequently transferred to the undersigned examiner in February 1988.¹ As the testimony and documentary evidence was complicated and lengthy, a transcript was prepared and reference thereto shall be cited as (T.____).

¹At the onset of the hearing, grievant was granted leave to amend the grievance and modify his request for relief to payment of back wages only as subsequent to the filing of the grievance he transferred to another maintenance position (November 1987) and the reclassification issue was moot.

Grievant's initial employment with the board began in November 1982 when he was hired for a newly created, multiclassified position of warehouse clerk/driver, paygrade C/D. The purpose and function of the position was to institute and implement an in-house warehouse system to stock, disburse and maintain maintenance materials, supplies, tools and equipment and bring about a more economical and efficient operation of the countywide school maintenance department. Prior to 1982, maintenance workers on the job in various locations would go to the nearest designated store or supplier and purchase needed parts and supplies which would be billed to the board.

William Stone, Warehouse Supervisor, was grievant's immediate supervisor during the assignment. He initially worked with grievant and trained him with basic inventory classification. (T.9). However, he stated, shortly after grievant began working, his own duties were drastically increased following the death of another supervisory-type employee whose position was not filled, thus, his involvement with grievant diminished and grievant assumed more of the operation and helped with specification writing. (T.10,11). Mr. Stone stated that grievant eventually had to make independent decisions regarding the purchase of the materials needed for the daily, ongoing warehouse inventory and operation. (T.15,16).

Mr. Stone stated that he felt that grievant had been doing duties other than "C/D classification" for some time and the matter had been discussed with grievant and others at various times but he could not recall the dates.² (T.18,49,50). He felt grievant's duties "expanded" to that of a buyer, F paygrade, and on April 7, 1987 he made a formal written request to Mr. Robert Smith that grievant's job classification be reviewed "in regards to actual duties performed." (Joint Exhibit No. 1).

Robert Smith, Coordinator of Purchasing, was Mr. Stone's supervisor. He testified on grievant's behalf and stated that his function since 1981 was to maintain the inventory and purchasing for the board and to examine and approve purchase recommendations. While he prepares bids or asks quotations from suppliers for most of the school system's purchase needs, he does not function in that capacity for either the transportation or maintenance departments. He stated that he and Mr. Stone set up the purchase system for maintenance after grievant's employ in 1982 and although Mr. Stone was supposed to supervise grievant, when Stone's own duties were increased, he (Mr. Smith) worked directly with grievant. (T.61-63).

²On November 29, 1984 Mr. Stone wrote on grievant's evaluation that, "...great strides have been made in establishing a stable warehousing operation." In November 1985 he noted that grievant maintained the inventory and timely submitted reports and another evaluator commented upon the warehouse/maintenance operation and that, "[R]elations have improved greatly." (Joint Exhibit No. 2). The contents of the evaluations were insufficient to support Mr. Stone's testimony that they were documentations of requests that grievant be reclassified as buyer.

Mr. Stone testified that grievant would obtain price quotes from suppliers and salespersons and within certain guidelines make independent decisions with respect to the purchase of inventory and ongoing maintenance job materials; grievant was only to obtain prior approval to expand the inventory, stock a new item or purchase large equipment such as an air conditioner. (T.65). Mr. Smith stated that grievant assisted him in some of the specification writing, for the RESA program especially, and also wrote specifications independently for such items as welding materials, lighting fixtures and fire rated doors. (T.67,68). He supports grievant's contention that grievant assumed the purchasing duties for maintenance and those duties evolved as time went by although Mr. Smith could not remember the exact point in time. (T.69). He stated that he drafted a written request that grievant be reclassified as a buyer but he could not remember when he submitted it to Robert Graham, his own supervisor, but it was prior to the time of Mr. Stephen Baldwin's tenure as superintendent (Baldwin's employment commenced June 1986).³ Mr. Smith steadfastly declared that he believed grievant's duties to be that of a buyer as defined by law (T.71) but upon cross-examination he admitted that he did not examine other job descriptions relating to inventory management because they did not involve a higher pay grade. (T.73).

³ A textual copy of the original document, unsigned and undated, was admitted into evidence over the objections of the board's counsel. (Grievant Exhibit No. 3). A close scrutiny of Mr. Smith's testimony indicates that the original document/request was written and submitted in approximately April 1985. (See, T.80-83).

Subsequent to the level one grievance decision issued May 6, 1987, Superintendent Stephen Baldwin contacted grievant by letter dated May 13, 1987. He wrote that in response to the information given him by Messrs. Smith and Stone, he would recommend to the board that grievant be reclassified as buyer with a monthly county supplement of \$214.00. Although the record is silent as to what transpired next, the board apparently refused to reconsider the reclassification, even though grievant's reply to the superintendent, also dated May 13, 1987, indicated he would be satisfied with reclassification and made no mention of back wages. Mr. Baldwin then acted as hearing examiner for the grievance at level two on July 21, 1987 and denied the grievance in its entirety on August 4, 1987.

Mr. Baldwin testified for the board at level four and recanted his written recommendation of May 13, 1987. He stated that he had not thoroughly investigated the matter at that time and after doing so came to believe that grievant did not act as a buyer but was instead performing the duties of an inventory supervisor and maintenance clerk and neither of those classifications took grievant beyond his C/D paygrade. The latter position conflicts with the superintendent's July 9, 1987 letter to grievant in which he orders grievant to "function only" as a clerk/driver and to channel all duties "associated with buying" through Mr. Smith's office. (Joint Exhibit No. 1).

The testimony of William Duncan, the board's financial officer was enlightening with respect to the county supplement accorded various service employees. He stated that one group of F employees received a supplement that differed from another. Office-type workers with F paygrades such as secretaries, accountants and computer operators received one standard amount while skilled, labor intensive employees such as mechanics received a higher supplement at the F paygrade. In compliance with grievant's request for data regarding back wages, Mr. Duncan calculated two different sets of wages from 1983 until 1987 using each of the supplemental amounts.

Grievant asks for back wages from January 1983 through July 1987 in the amount of \$11,822.00 and he relies on W.Va. Code, 18A-4-8 which requires that a county board of education annually review service personnel job classifications and reclassify when necessary. He states that he is entitled to the mechanic's rate of county salary supplement since he does not have an "office job" but is associated with maintenance operations. Grievant's counsel made no response to the board's charges that the grievance was untimely filed.⁴

⁴ Grievant cited Hurt v. Raleigh County Board of Education, Docket No. 41-86-166-1 in support of his position. However, the grievant who prevailed for back wages in Hurt timely filed a grievance for backwages for improper classification during a three year employment period after she left the position and she discovered her former job was subsequently posted with the higher classification level she had originally requested and which was also the pay rate accorded her predecessor.

The board's position was that Mr. Robert Smith was the properly designated buyer for maintenance materials. It contends that grievant's employment did not encompass buyer duties but rather that he performed various duties with respect to stocking and distributing maintenance materials from a central warehouse within paygrades C and D; that grievant failed to prove his duties were that of a buyer; and that grievant's alleged classification and salary disparity was not administratively recognized until April 1985 and pursued by him thereafter and it is incumbent upon all employees to timely pursue their rights through the grievance procedure.

Relevant portions of W.Va. Code, 18A-4-8a are as follows:

"Director or coordinator of services" means personnel not defined as professional personnel or professional educators in section one [§ 18A-1-1], article one of this chapter, who are assigned to direct a department or division. (Paygrade H)

"Buyer" means personnel employed to review and write specifications, negotiate purchase bids and recommend purchase agreements for materials and services that meet predetermined specifications at the lowest available costs. (Paygrade F)

"Maintenance clerk" means personnel employed to maintain and control a stocking facility to keep adequate tools and supplies on hand for daily withdrawal for all school maintenance crafts. (Paygrade D)

"Inventory supervisor" means personnel who are employed to supervise or maintain operations in the receipt, storage, inventory and issuance of materials and supplies. (Paygrade D)

"Warehouse clerk" means personnel employed to be responsible for receiving, storing, packing and shipping goods. (Paygrade D)

"Truck driver" means personnel employed to operate light or heavy duty gasoline and diesel-powered vehicles. (Paygrade C)

While grievant may not have written complex specifications or negotiated complicated or extensive purchase bids, the evidence clearly indicates that grievant's past employment included duties whereby he reviewed and listed specifications for various materials, compared vendor prices and recommended purchase agreements for maintenance materials that met predetermined specifications at the lowest available costs while under the direct supervision of the Coordinator of Purchasing, Robert Smith. (Grievant Exhibit Nos. 4-25). The board's position that because it already had a Coordinator of Purchasing, Mr. Smith, grievant did not function as a buyer is without merit as the structure of the service personnel classifications demonstrates that the positions are not mutually exclusive and Mr. Smith could direct grievant's buyer operations. The board's timeliness argument, however, must be addressed.

The West Virginia Education Employees Grievance Board has consistently held that when timeliness is questioned a grievant must show cause for delay in asserting his or her rights through the grievance process, Badgley v. Parkersburg Community College, Docket No. 54-86-064; Scarberry v. Mason County Board of Education, Docket No. 26-86-291, and failure to do so can act as a bar to the issue and recovery of alleged back wages, Maynard v. Wayne County Board of Education, 357 S.E.2d 246 (W.Va. 1987); Turner v. McDowell County Board of Education, Docket No. 33-86-049;

Hysell v. Mason County Board of Education, Docket No. 26-86-159-1;
Miller v. Ohio County Board of Education, Docket No. 15-88-013-3.⁵

There is no dispute that an effort was made by grievant in approximately April of 1985 to work through his supervisors to obtain reclassification to buyer (T.119,120) and grievant is entitled to back wages from that time until July 1987 as he relied on his superiors who then determined he was entitled to reclassification to remedy the situation through administrative channels and pursued the present grievance when the board denied the reclassification.⁶ Steele v. Wayne County Board of Education, Docket No. 50-87-062-1.

⁵ Back wages were denied to grievants in Turner, Hysell, and Miller although they prevailed on other issues. In Turner, the grievant knew for seventeen years he had been underpaid and had an opportunity three years prior to the filing of the grievance to begin an action; in Hysell, the grievant voluntarily performed work for more days than his contract stated and waited nine years to notify the proper authorities and begin a grievance action; and in Miller, the grievant waited ten years to file a grievance claiming back wages for work experience credit and proved only that another employee was so credited the previous year.

⁶ Both Messers. Stone and Smith stated that the matter of reclassification came up in discussions with grievant but they could not fix a date when this occurred. Grievant testified that after two years on the job he wondered about his classification but did not speak to anyone. (T.119). Only one document exists which fixes a point in time when grievant actively pursued the matter. Written by grievant, it is dated April 6, 1987; therein he wrote that the matter was discussed with his superiors at various times, the earliest he wrote of being "2 yrs. ago." He agreed that "it would be fair to say" that he first discussed the matter with Stone and Smith in April 1985. (T.120).

Grievant's contention that he was entitled to the county supplement for F paygrade mechanics rather than the amount accorded to office bound F employees is without merit as his extensive description of his purchasing duties (T.91-114) demonstrates that he functioned as an office worker using the telephone, writing orders and filing reports rather than using tools in a skilled, labor intensive manner of a mechanic and the school board is compelled to follow the uniformity provisions of W.Va. Code, 18A-4-5b on matters of compensation and county salary supplements.

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

FINDINGS OF FACT

1. In 1982 grievant applied for and was hired for the newly created position of warehouse clerk/truck driver, paygrade C/D, to institute and implement a warehouse system for the maintenance department involving the stocking and disbursement of materials for countywide maintenance operations.

2. Grievant's immediate supervisor was William Stone, Warehouse Supervisor, whose work was supervised by the Coordinator of Purchasing, Robert Smith; Mr. Stone undertook the initial training of grievant in inventory classification. Grievant wrote specifications for various small hardware items and obtained prices from several appropriate vendors. He also worked with RESA officials who maintained a buying operation to offer and supply various goods to several surrounding county boards of education at reduced costs.

3. At some point in 1983 Mr. Stone assumed some additional duties when a job vacancy was not filled and he gave less and less time to the maintenance warehouse operation. Grievant, in turn, assumed more independent action with regard to the acquisition of ongoing, routine stock items as well as unanticipated, emergency materials and he obtained and analyzed price quotes from suppliers, prepared requisitions and signed purchase orders to be acted upon by the Coordinator of Purchasing. Telephone calls and letters to the maintenance "buyer" were addressed to and routed to grievant.

4. Grievant's immediate supervisors, Messers. Stone and Smith believed that grievant gradually became a buyer for the maintenance department but could not identify a point in time when this occurred for reclassification purposes. Grievant was dissatisfied with his classification and paygrade after two years of employment but did not act on the matter until he initiated discussions with his supervisors in approximately April 1985.

5. In April 1985 school officials were on notice that in the opinion of grievant's immediate supervisors grievant was performing the duties of a buyer. From that time on he relied on his superiors and the proper officials to remedy the situation and reclassify him to buyer, paygrade F. His supervisors formally and informally acted on his behalf but were frustrated in all of their attempts and grievant was not ordered to cease his buying function.

6. Grievant filed a grievance for reclassification and back wages in late April 1987 and prevailed at level one wherein a recommendation was made that he be reclassified to buyer. In early May 1987 the school superintendent relied on the recommendations of school personnel who supervised grievant and notified grievant he would recommend to the board that grievant be reclassified to buyer with the mechanic's county supplement.

7. The board refused to reclassify grievant to buyer on the basis that it already had a coordinator of purchasing in its employ. The superintendent, in turn, notified grievant to cease all of his buying functions and grievant complied as of July 9, 1987 and pursued the grievance to levels three and four thereafter.

8. In November 1987 grievant bid on and received another position in the maintenance department and dropped his request for reclassification to buyer at the level four hearing.

9. The evidence preponderates that grievant's duties in maintenance as a clerk/driver expanded over a period of time from 1983 until after several years when his duties included nearly of all of the selection and buying of tools, materials and supplies for the department's needs. Grievant's duties with respect to purchasing materials for the maintenance department involved paperwork and was office work in nature as opposed to the skilled, labor intensive duties of a mechanic working with tools. His affiliation with the maintenance department is not controlling for county salary supplement purposes as salary supplements must be accorded on the basis of uniformity of duties performed.

10. Grievant's request for back wages to 1983 is untimely as a matter of law as he did not act on the salary disparity until April 1985 and he is only entitled to back wages from that time when he notified the proper authorities and relied upon their efforts to remedy the situation thus demonstrating cause for his delay in filing a grievance from 1985 until 1987.

CONCLUSIONS OF LAW

1. It is incumbent upon an employee to timely pursue his or her rights through the grievance process and when timeliness is questioned to demonstrate the reason for the delay. Badgley v. Parkersburg Community College, Docket No. 54-86-064; Scarberry v. Mason County Board of Education, Docket No. 26-86-291.

2. Employees must share with their employer the burden of insuring their proper compensation, Spahr, et.al. v. Preston County Board of Education, Docket No. 36-86-342-2, and failure over a significant period of time to exercise an employment right or show cause for delay to prosecute a grievous matter acts as a bar to the recovery of alleged back wages. Maynard v. Wayne County Board of Education, 357 S.E.2d 246 (W.Va. 1987); Turner v. McDowell County Board of Education, Docket No. 33-86-049; Hysell v. Mason County Board of Education, Docket No. 26-86-159-1; Miller v. Ohio County Board of Education, Docket No. 15-88-013-3.

3. Grievant herein made a good faith, diligent effort to resolve a grievous matter with school officials in 1985 and relied in good faith upon the efforts of those officials that the matter would be rectified and he will not be barred from pursuing a grievance upon the denial thereof and will be entitled to back wages for the period in question from 1985 until 1987. Steele v. Wayne County Board of Education, Docket No. 50-87-062-1.

4. A county board of education has a non-discretionary duty to uniformly compensate all persons regularly employed and performing like assignments and duties within the county, W.Va. Code, 18A-4-5b, and grievant herein has established that he performed office type duties in his capacity of buyer, F paygrade, for the maintenance department from at least 1985 through 1987.

Accordingly, this grievance is **GRANTED** in part but only to the extent that the board is Ordered to compensate grievant with back wages from April 1985 until July 1987 for the salary differences between his earnings at the C/D rate and the amount he was entitled to receive at the F pay rate and county supplement for office-type F employees. The grievance is **DENIED** as to any back wages from 1983 through March 1985.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Putnam County and such appeal must be filed within thirty (30) 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.

DATED: May 26, 1988

Nedra Koval

NEDRA KOVAL
Hearing Examiner