

**THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

**DEBRA J. DEMPSEY,**

**Grievant,**

**v.**

**Docket No. 2019-0324-KanED**

**KANAWHA COUNTY BOARD OF EDUCATION,**

**Respondent.**

**DECISION**

Grievant, Debra J. Dempsey, filed this grievance against her employer, Respondent, Kanawha County Board of Education, dated September 5, 2018, stating as follows: "Grievant is currently employed by Respondent as Inventory Supervisor. At the request and direction of Respondent, Grievant has also been routinely performing the job duties of Crew Leader by organizing the work for maintenance employees to carry out assigned projects. Grievant has not been reclassified by Respondent as required by W. Va. Code § 18A-4-8(l). Grievant is not receiving compensation at the pay grade for the Crew Leader classification title, as required by W. Va. Code § 18A-4-8(i)(67)." As relief sought, "Grievant seeks reclassification by Respondent to include Crew Leader to her classification title of Inventory Supervisor. Grievant seeks compensation at the higher pay grade established for Crew Leader."

A level one hearing was held on September 26, 2018. The grievance was denied at level one by decision issued October 23, 2018. Grievant appealed to level two on or about October 25, 2018.<sup>1</sup> A level two mediation was conducted on December 13, 2018.

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<sup>1</sup> The level two grievance form signature date was October 25, 2018. However, it appears that the Grievance Board did not receive the level two appeal until November 15, 2018. member.

Grievant perfected her appeal to level three on January 14, 2019. A level three grievance hearing was conducted on March 12, 2019. Grievant appeared in person, and by counsel, George B. Morrone, III, Esq., General Counsel, West Virginia School Service Personnel Association. Respondent appeared by counsel, Lindsey D. C. McIntosh, Esq., General Counsel, and was represented in person by Terry Hollandsworth, Executive Director of Maintenance for Kanawha County Schools. This matter became mature for decision on April 15, 2019, upon receipt of the last of the parties' proposed Findings of Fact and Conclusions of Law.

### **Synopsis**

Grievant is employed by Respondent as an Inventory Supervisor. Grievant asserts that in addition to her inventory duties, as a regular part of her job, she organizes the work of maintenance crews to complete assigned work projects. Therefore, Grievant asserts that she is entitled to be multiclassified as an Inventory Supervisor/Crew Leader. Respondent denies Grievant's claims and argues that she is properly classified and is not entitled to hold the Crew Leader classification in addition to that of Inventory Supervisor. Grievant also argues that Respondent violated West Virginia Code § 18A-4-8(l) by failing to review her job classification annually to ensure that she is properly classified. Grievant failed to prove by a preponderance of the evidence that she is entitled to hold the Crew Leader classification title in addition to that of Inventory Supervisor. Grievant proved by a preponderance of the evidence that Respondent violated West Virginia Code § 18A-4-8(l). However, as she did not prove that she is entitled to hold the Crew Leader title, Respondent's violation is harmless error. Therefore, the grievance is DENIED.

The following Findings of Fact are based upon a complete and thorough review of the record created in this grievance:

### **Findings of Fact**

1. Grievant, Debra Dempsey, is employed by Respondent as an Inventory Supervisor in the Maintenance Department, which is a pay grade D position. Grievant has been so employed since April 25, 2016. Grievant has been employed by Respondent as service personnel since December 7, 1989.

2. Grievant is the only Inventory Supervisor employed by Kanawha County Schools.

3. As an Inventory Supervisor, Grievant is responsible for ordering stock, getting price quotes from vendors, receiving goods, preparing requisition forms, stocking and maintaining inventory, maintaining inventory and purchasing records, pulling stock forward, sweeping, and dusting, among other things.

4. Grievant is also responsible for certain daily duties pertaining to the processing of work orders for the four maintenance crews. Grievant is required to receive and process work orders submitted through the computer system from throughout the county school system, organize and distribute the work orders to the maintenance crews, and to receive, process, close, and file completed work orders. Grievant also directly assigns work orders to two employees in the electrician crew, Mark Painter and Tim Smith.

5. Grievant handles about 90% of all the work orders submitted.<sup>2</sup> Grievant receives and processes numerous work orders. The number varies from day to day.

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<sup>2</sup> See, testimony of Terry Hollandsworth.

Terry Hollandsworth, Respondent's Executive Director of Maintenance and Grievant's immediate supervisor, assigns about ten percent of the work orders received to the maintenance crews. Based upon the evidence presented, it appears that Mr. Hollandsworth and Grievant are the only two employees to process work orders.

6. The first thing Grievant does when she gets to work each day is to check the computer system for the work orders that have been requested. She reviews each to determine the type of work needed, then assigns each to the different crews or individuals. Two to three times each day she collects, or receives, hardcopies of the completed work orders. Grievant attaches to each work order the workers written comments and a list of parts, or materials, used to complete the job, then enters into the system the time, date, parts/materials used, comments, and vehicle the worker used to complete the work into the computer system. Grievant then files each paperwork order and attachments, and maintains the same for at least one month.

7. Grievant spends between 35% and 50% of her work day performing the work order duties.

8. The Kanawha County Schools job description for Inventory Supervisor does not include any duties pertaining to work orders.

9. The Crew Leader classification category is a pay grade F position in Kanawha County.

10. Respondent has a written job description for the position of Inventory Supervisor. This job description includes the following sections: Job Summary,

Performance Responsibilities, Qualifications, Physical Demands, and Work Environment.<sup>3</sup>

11. The Job Summary section states the Inventory Supervisor “[m]aintains and controls a stocking facility to keep adequate tools and supplies on hand for daily withdrawal for all school maintenance crafts, assuring efficient support of plan maintenance activities.”

12. The Performance Responsibilities section states as follows:

**PERFORMANCE RESPONSIBILITIES: Additional duties may be assigned.**

- Responsible for stocking and maintaining inventory.
- Responsible for arranging stock and making recommendations relative to the quality of items to replenish.
- Issues tools and supplies daily.
- Maintains stock inventory control and re-orders.
- Verifies receipt of goods against purchase order.
- Stock shelves in an orderly manner.
- Maintains maintenance supply records.
- Maintains control and accountability of tools.
- Posts daily issues and receipts to inventory control cards to maintain perpetual inventory.
- Suggests alternative to requested stock items not available.
- Delivers materials to job sites.
- Placed orders for material.
- Receives price quotes.
- Keep updated on new materials that are new and available.
- Keep EPA records on Freon.
- Keep warranties on material used.
- File inventory shrink report monthly.
- Maintains regular attendance.

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<sup>3</sup> See, Grievant’s Exhibit 1, Inventory Supervisor Job Description.

- Maintains a neat and orderly work area.
- Complies with KCS Policies.
- Receives permission from building/supervisor to work in excess of 40 hours per week.
- Maintain file of completed purchase order and warehouse requisitions.
- Maintain school property inventory file.
- Attends in-services and workshops as directed.
- Follows all safety rules and regulations and uses prescribed personal protective equipment.
- Maintains confidentiality.
- Continuously improves processes.

13. The qualifications for Inventory Supervisor listed as follows:

High school diploma or equivalent, pursuant to WV Code § 18A-2-5; Criminal Background check conducted pursuant to WV Code § 18-5-15c; Meet the definition of “Qualifications” in WV Code § 18A-4-8b; demonstrated competency, pursuant to WV Code § 18A-4-8e (state-approved competency test) as required. Should have three to five years’ experience in a hardware store, automotive parts store or similar situations where a working knowledge of electrical, plumbing, refrigeration (sic), and carpentry tools and supplies could be obtained. Knowledge of common business ordering, record keeping, and inventorying is an essential requirement. Typing is helpful.

14. The Inventory Supervisor job description was last revised in October 2011.<sup>4</sup>

15. Prior to the filing of this grievance, Respondent had not reviewed Grievant’s job classification to determine if she should be reclassified or multiclassified.

16. In or about February 2019, after the filing of this grievance, Respondent performed a review of Grievant’s position. Respondent had Grievant submit a Position Analysis Questionnaire (PAQ). Respondent then used “point factor methodology” to review Grievant’s position based upon the PAQ. In this methodology, each classification

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<sup>4</sup> See, Grievant’s Exhibit 1, Inventory Supervisor Job Description.

is assigned a total point value based on the following seven compensable factors: experience, effect of errors, knowledge, complexity of duties, contact with others, type of supervision, and working conditions. Each factor is evaluated by degree level, with increasing point values in ten-point increments for each increase in degree level. For example, the factor complexity of duties is evaluated from 1<sup>st</sup> degree, which is “little judgment,” meaning “understand and follow simple instructions and use simple equipment involving few decisions,” to 6<sup>th</sup> degree, which is “advanced judgment and ingenuity,” meaning “plan and perform complex work which involves new or constantly changing problems where there is little accepted method of procedure. . . Considerable ingenuity an (sic) exceptional judgment require (sic) to deal with factors not easily evaluated, interpret results and make decisions carrying a great deal of responsibility.”<sup>5</sup>

17. Respondent initially set the Inventory Supervisor classification as having a point value of 490 point. Respondent set the Crew Leader classification as having a point value of 650.

18. Respondent determined that based upon its review, the effect of error and working conditions factors should be moved up one degree level, thus adding 20 points to the Inventory Supervisor position, making it have a point value of 510. This point increase moved the Inventory Supervisor classification from a pay grade D to a pay grade D1. This increased Grievant’s pay.

19. According to Respondent’s review, the Crew Leader position is evaluated 140 points higher than that of Inventory Supervisor.

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<sup>5</sup> See, Respondent’s Exhibit 7, Job Evaluation for Service Jobs.

20. In its review of Grievant's position, Respondent did not compare Grievant's actual duties to those of the Crew Leader position. Instead, Respondent reviewed the duties of Grievant's classification title in terms of the seven compensable factors to determine whether she was correctly classified.

21. The Grievant's PAQ was not presented as evidence in this matter.

22. Respondent's written Crew Leader job description was not presented as evidence in this matter.

23. It is unknown who held the Inventory Supervisor Position before Grievant and whether that person was responsible for processing work orders.

### **Discussion**

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-3 (2018). "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. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993), *aff'd*, Pleasants Cnty. Cir. Ct. Civil Action No. 93-APC-1 (Dec. 2, 1994). Where the evidence equally supports both sides, the burden has not been met. *Id.*

Grievant asserts that, based upon her duties, she is entitled to hold the classification of Inventory Supervisor, as well as Crew Leader. Grievant also argues that Respondent violated law by failing to review her classification annually. Respondent asserts that Grievant is not entitled to hold the Crew Leader classification, and that she holds the correct class title of Inventory Supervisor.



The issue of whether Respondent was required to review Grievant's classification annually will be addressed first. West Virginia Code § 18A-4-8(l) which states as follows:

Each county board shall review each service person's job classification annually and shall reclassify all service persons as required by the job classification. The state superintendent may withhold state funds appropriated pursuant to this article for salaries for service personnel who are improperly classified for the county boards. Further, the state superintendent shall order a county board to correct immediately any improper classification matter and, with the assistance of the Attorney General, shall take any legal action necessary against any county board to enforce the order.

*Id.* However, Respondent's policy on classification reviews for service personnel states as follows:

An employee or a supervisor *may request* the Division of Human Resources to conduct a formal classification review when significant changes occur in the principal duties and responsibilities of a service position. *All such requests shall be made between September 1 and October 31 of each year.* The supervisor shall conduct an analysis of actual job responsibilities and submit the results to the Department of Human Resources using a point factor system developed by the Department of Human Resources. The analysis shall include observations, interviews and document review (where available). A copy of the analysis shall be provided to the employee. The employee may also submit a separate account of responsibilities and supporting documentation for review by the supervisor, Department of Human Resources and other appropriate persons.<sup>6</sup> (Emphasis added).

Based upon this policy, it appears that Respondent views the annual review as discretionary. The statute makes clear that the annual review is required, stating, "[e]ach county board *shall review* each service person's job classification annually and shall

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<sup>6</sup> See, Respondent's Exhibit 1, Kanawha County Schools Administrative Regulation, Classification Review-Service Personnel, Series G61A, section 61.01 "Classification Review."

reclassify all service persons as required by the job classification. . . .” *Id.* (emphasis added). Grievant has held the Inventory Supervisor position for three years and Respondent failed to conduct any reclassification reviews of her position until months following the filing of this grievance. Ms. Gillespie, one of Respondent’s employees in its human resources office, testified that Grievant’s review was the first she had ever performed in the four years she has been employed by Respondent. Respondent’s policy on classification reviews appears to be contrary to law as it places the burden of requesting a classification review on the employee. Accordingly, Respondent violated West Virginia Code § 18A-4-8(l) by failing to review Grievant’s job classification each year, and Respondent’s interpretation of this statutory obligation is incorrect. As such, Grievant has proved this part of her claim by a preponderance of the evidence.

In order to prevail in a misclassification grievance, an employee must establish that his/her job duties and responsibilities more closely fit the sought classification rather than the existing classification. *Sammons/Varney v. Mingo County Bd. of Educ.*, Docket No. 96-29-356 (Dec. 30, 1996). A school service employee who establishes, by a preponderance of the evidence, that he/she is performing the duties of a higher W. VA. CODE § 18A-4-8 classification than that under which he/she 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 the employee

misclassified *per se*. *Carver v. Kanawha County Bd. of Educ.*, Docket No. 01-20-057 (Apr. 13, 2001). “County boards of education may expand upon the W. VA. CODE §18A-4-8 classification definitions in a manner which is consistent with those definitions. *Brewer v. Mercer Co. Bd. of Educ.*, Docket No. 91-27-002 (March 30, 1992).’ *Pope and Stanley v. Mingo County Bd. of Educ.*, Docket No. 91-29-068 (July 31, 1992).” *Beahm and Himes v. Randolph County Bd. of Educ.*, Docket No. 98-42-241 (Jan. 7, 1999).

The two classifications at issue in this grievance are Inventory Supervisor and Crew Leader. An 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(i)(56). A Crew Leader is defined as “a person employed to organize the work for a crew of maintenance employees to carry out assigned projects.” W. VA. CODE § 18A-4-8(i)(29). Grievant is classified as an Inventory Supervisor. She argues that she should be multiclassified as an Inventory Supervisor/Crew Leader because in addition to her Inventory Supervisor duties, she performs the duties of Crew Leader through her daily work processing work orders. “‘Multiclassification’ means a person employed to perform tasks that involve the combination of two or more class titles in this section. In these instances, the minimum salary scale is the higher the pay grade of the class titles involved.” W. VA. CODE § 18A-4-8(i)(67).

Respondent conducted what it calls a classification review months after Grievant filed the instant grievance. However, Respondent, admittedly, did not compare Grievant’s current job duties to those of a Crew Leader. Respondent has adopted its own written job descriptions for positions, and it utilizes a “point factor methodology” to classify

positions. It is noted that the statutory definition comparison and the “point factor methodology” are two separate comparisons. Even though Respondent uses its own methodology to make these comparisons, the methodology must comply with the statutes. The “point factor methodology” cannot supersede statute.

Respondent explains its “point factor methodology” as follows:

Point rating is an analytical, quantitative, objective method of determining the relative values of jobs. Point-rating plans define characteristics or elements common to the jobs being evaluated, define degrees of each element and allocate point values to each degree. The total value determined for each job is the sum of the point values assigned by the evaluators.<sup>7</sup>

The point value assigned to each job determines its pay grade. Respondent’s point factor methodology considers these seven compensable factors: experience, effect of errors, knowledge, complexity of duties, contact with others, type of supervision, and working conditions. Each factor is evaluated by degree level, with increasing point values in ten-point increments for each increase in degree level. This evaluation method results in a total point score for each classification title. Respondent evaluates positions based on information supplied by the supervisor of the position on a Position Analysis Questionnaire, which is reviewed by the employee incumbent in the position.

Respondent’s policy goes on to explain its standards of review in classification reviews as follows:

61.06 Standards of Review. The following standards shall be applied in classification reviews:

61.06.1        Reclassification requires the establishment that an employee’s duties more closely match a classification rather than the employee’s current classification.

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<sup>7</sup> See, Respondent’s Exhibit 7, “Job Evaluation for Service Jobs.”

- 61.06.2 A requirement that an employee undertake some responsibilities of another classification (even regularly) does not render an employee misclassified *per se*.
- 61.06.3 Increased volume of work alone is not sufficient justification for reclassification.
- 61.06.4 When a statutory classification definition is generally worded, it must be applied broadly.
- 61.06.5 Comparisons will be made with the statutory definitions of other classifications and job descriptions of other classifications, not with the duties performed by employee who serve in the other job classifications.
- 61.06.6 Incidental duties that are outside the responsibilities defined for a class title, and that require an inconsequential amount of time to complete, will not support reclassification of the remainder of the employee's duties fall within the current classification.<sup>8</sup>

It appears that Respondent used its point factor methodology to evaluate the Inventory Supervisor position itself, assessing it with the seven compensable factors, to determine if it was assigned the correct point value and if Grievant was in the correct pay grade. Respondent then compared this total point value and the scoring in the seven compensable factors to that of Crew Leader. The Inventory Supervisor position had initially been assigned the point value of 490. During its evaluation, Respondent determined that the position should be assigned the value of 510 points instead of 490. This resulted in Grievant receiving an increase in her pay grade, but no reclassification of

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<sup>8</sup> See, Respondent's Exhibit 1, Kanawha County Schools Administrative Regulation, Classification Review-Service Personnel, Series G61A, section 61.06 "Standards of Review."

her position. The Crew Leader position is assigned 650 points. Respondent asserts that the higher point value for the Crew Leader position is the result of it having to demonstrate higher degrees of the compensable factors, such as more complex duties, than those required of an Inventory Supervisor. In its evaluation, Respondent determined that the Crew Leader position had higher point values for six of the compensable factors, tying the Inventory Supervisor position on the “working conditions” factor. Given all of this, Respondent concluded that Grievant should not be reclassified to the position of Crew Leader.

Respondent’s review reveals nothing about the duties Grievant actually performs. Such is unfortunate considering that statute requires Grievant to be reclassified if Grievant’s “daily work more closely fits the duties” of a Crew Leader than an Inventory Supervisor. Looking at the statutory definitions, it appears that the critical determination will depend on whether Grievant’s daily work in processing the work orders constitutes “organizing” the work for a crew of maintenance employees to carry out assigned projects. No definition of the word “organizing” in this context has been offered by either party. Neither party presented as evidence Respondent’s local written job description for the Crew Leader classification title. Therefore, the ALJ does not know what the specific daily duties a Crew Leader at Kanawha County Schools performs. Neither party called any Crew Leaders or maintenance workers to testify at the level three hearing. However, Mr. Hollandsworth testified generally as to some of things a Crew Leader does. He testified that Crew Leaders work on projects, and they go to the job sites and determine what products, materials, and equipment are needed to complete the same. Further, Mr. Hollandsworth testified that Crew Leaders assign work to their crew members and send

purchase orders to Grievant to order materials or products needed for the jobs. Mr. Hollandsworth explained that Crew Leaders are responsible for getting the projects completed.<sup>9</sup>

It is undisputed that Grievant receives work order requests each day through the computer system from schools all over the county and generates the work orders. She then determines which maintenance crew performs the type of work needed, and sends the work order to that crew's Crew Leader so the work can be done. There is one exception to this process: Grievant assigns work orders directly to two electrical employees without having to send the work order to a Crew Leader. It is unknown how often Grievant sends work orders to the two electrical employees. After Grievant sends the work orders to the Crew Leader, it is the Crew Leader who decides which of his crew members will be assigned the work. Grievant admits that she does not supervise or direct the work of the crew members. She does not tell them how or when to perform the work, and she does not tell them what tools or supplies to use.

At least two times each day, Grievant picks up completed work orders from the maintenance crews. On days when she has a large number of work orders, Grievant will have to pick them up three times in a day. Sometimes the workers will bring them to her. It is noted that Grievant is stationed at the Crede Warehouse where the Crew Leaders and maintenance workers are also based. When she has the paper work orders back from the maintenance crews, Grievant "completes" the work order by entering into the computer system the date and time the work was completed, parts used, vehicle used, equipment used, maintenance workers' notes, and the time it took the worker to finish the

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<sup>9</sup> See, testimony of Terry Hollandsworth.

job. She does not simply mark the work order completed, or check a box, in the system. Finally, Grievant attaches to the printed work order any notes and the list of parts used and files the same. She maintains these records for at least a month. Grievant spends somewhere between 35%-50% of her work day doing work related to the work orders, in addition to inventory duties. The percentages of time spent varies based upon work orders received and completed. Grievant's job description lists no duties or responsibilities pertaining to the processing of work orders. However, this job description states that "additional duties [not listed therein] may be assigned," presumably by Mr. Hollandsworth. Grievant is required to perform these work order duties as part of her position; they are not optional.<sup>10</sup>

Grievant argues that she is not required to supervise the maintenance employees in order to hold the Crew Leader classification title. Grievant points out that the Crew Leader definition says nothing about supervision, but that the "Foreman" classification title definition does. "'Foreman' means a skilled person employed to supervise personnel who work in the areas of repair and maintenance of school property and equipment." W. Va. Code § 18A-4-8(i)(47). It is noted that the witnesses in this grievance have referred to the employees who supervise the maintenance crews as either Crew Leaders or Crew Supervisors. There has been no evidence presented to suggest that they hold the Foreman classification title. Further, the service personnel "Job Structure" spread sheet does not list Foreman as one of the classification titles utilized at Kanawha County Schools at this time. Crew Leader, however, is listed. Crew Supervisor is also not listed

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<sup>10</sup> See, testimony of Terry Hollandsworth.



in the Job Structure.<sup>11</sup> As Respondent's local Crew Leader job description was not presented as evidence, the established duties and responsibilities of the same are unknown.

Processing work orders is a significant portion of Grievant's job. While it is true that Grievant may be alerted to order certain parts for inventory through her dealings with the work orders and that she uses the same computer system for her inventory duties, the actual processing of work orders really has little, if anything, to do with her inventory duties. It is certainly easy to view the work order duties as belonging to some other classification title. However, the only other employee who does any of the work pertaining to processing work orders is Mr. Hollandsworth, the Executive Director of Maintenance, and he does about 10% of such. Mr. Hollandsworth is Grievant's supervisor, and by the nature of his position, he is ultimately the supervisor of all the maintenance employees. Nevertheless, the evidence presented does not demonstrate by a preponderance of the evidence that Grievant's work in processing the work orders more closely fits with the job duties and responsibilities of a Crew Leader. With respect to the work orders, Grievant's job is clerical. Aside from the work orders Grievant sends directly to the two electrical maintenance employees, she does not assign work orders to the other individual maintenance crew members. Grievant noted during her testimony that there are four crews and each crew has four or five members. Grievant sends the paper work orders to the Crew Leaders, who appear to be assigning the work to their individual crew members.

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<sup>11</sup> See, Respondent's Exhibit 5, "Job Structure" spreadsheet.

Grievant is assigning work orders directly to the two electrical maintenance employees. In those instances, Grievant is not dealing with the Crew Leaders. Grievant is not instructing those two workers on how or when to do the work, or on what materials they will need to do the work. She is only giving them the work order. Even if this can be considered the work of a Crew Leader, it would be only a fraction of her work order duties. As stated previously, simply because an employee is required to undertake some responsibilities normally associated with a higher classification, even regularly, does not render the employee misclassified *per se*. *Carver v. Kanawha County Bd. of Educ.*, Docket No. 01-20-057 (Apr. 13, 2001). As such, assigning the work directly to the two electrical employees does not, in and of itself, render Grievant misclassified, or a Crew Leader.

While Grievant's work order duties do not appear to fit in with those of an Inventory Supervisor, Grievant has not proved by a preponderance of the evidence that these duties fit more closely with those of a Crew Leader. The Crew Leader job description was not presented at the level three hearing. Further, the limited evidence presented regarding the duties of a Crew Leader suggests that Crew Leaders are responsible for getting the work ordered finished, determining what materials and equipment will be needed to perform the work, taking action to secure the same, and assigning the work to crew members. Even though Grievant is performing Inventory Supervisor purchasing duties and assigning work orders to the two electrical employees, Grievant is not performing such duties. Grievant's work order duties are largely clerical, and she is not organizing the actual work of the maintenance crews. Grievant is mostly forwarding work orders to Crew Leaders, who are to organize how to get the work that has been ordered done.

When the crews have finished the work that was ordered, Grievant again engages with the crews to finish the necessary clerical work to “complete” the work order in the computer system. There has been no evidence presented to suggest that Grievant is responsible for getting the actual work that has been ordered finished. That responsibility appears to fall on the Crew Leaders. Accordingly, Grievant has failed to prove that her duties more closely fit those of a Crew Leader. As such, she is not entitled to hold the Crew Leader classification. Therefore, this grievance is DENIED.

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. W. VA. CODE ST. R. § 156-1-3 (2018). “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. Dep’t of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993), *aff’d*, Pleasants Cnty. Cir. Ct. Civil Action No. 93-APC-1 (Dec. 2, 1994). Where the evidence equally supports both sides, the burden has not been met. *Id.*

2. “Each county board shall review each service person’s job classification annually and shall reclassify all service persons as required by the job classification. The state superintendent may withhold state funds appropriated pursuant to this article for salaries for service personnel who are improperly classified for the county boards. Further, the state superintendent shall order a county board to correct immediately any improper classification matter and, with the assistance of the Attorney General, shall take

any legal action necessary against any county board to enforce the order.” W. Va. Code § 18A-4-8(l).

3. In order to prevail in a misclassification grievance, an employee must establish that his/her job duties and responsibilities more closely fit the sought classification rather than the existing classification. *Sammons/Varney v. Mingo County Bd. of Educ.*, Docket No. 96-29-356 (Dec. 30, 1996). A school service employee who establishes, by a preponderance of the evidence, that he/she is performing the duties of a higher W. VA. CODE § 18A-4-8 classification than that under which he/she 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 the employee misclassified *per se*. *Carver v. Kanawha County Bd. of Educ.*, Docket No. 01-20-057 (Apr. 13, 2001).

4. “County boards of education may expand upon the W. VA. CODE §18A-4-8 classification definitions in a manner which is consistent with those definitions. *Brewer v. Mercer Co. Bd. of Educ.*, Docket No. 91-27-002 (March 30, 1992).’ *Pope and Stanley v. Mingo County Bd. of Educ.*, Docket No. 91-29-068 (July 31, 1992).” *Beahm and Himes v. Randolph County Bd. of Educ.*, Docket No. 98-42-241 (Jan. 7, 1999).

5. An 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(i)(56).

6. A Crew Leader is defined as “a person employed to organize the work for a crew of maintenance employees to carry out assigned projects.” W. VA. CODE § 18A-4-8(i)(29).

7. Grievant proved by a preponderance of the evidence that Respondent violated West Virginia Code § 18A-4-8(l) by failing to review her job classification annually to ensure that she is properly classified. However, as Grievant has failed to prove that she is entitled to the reclassification she is seeking, Respondent’s failure to review her job classification annually is harmless error.

8. Grievant failed to prove by a preponderance of the evidence that her duties with respect to the processing of work orders meets the statutory definition of the classification title Crew Leader found in West Virginia Code § 18A-4-8(i)(29). Therefore, Grievant has failed to prove her claim that she is entitled to be multiclassified as an Inventory Supervisor/Crew Leader.

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 civil action number should be included

so that the certified record can be properly filed with the circuit court. See *also* W. VA.  
CODE ST. R. § 156-1-6.20 (2018).

**DATE: June 17, 2019.**

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**Carrie H. LeFevre**  
**Administrative Law Judge**