PATRICK O. PAYNE,

Grievant,

v. DOCKET NO. 94-10-144

FAYETTE COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Patrick O. Payne, filed a grievance at Level I on July 15, 1993 alleging a violation of W. Va. Code § 18A-4-8b. The grievance was denied at Levels I, II and III, and grievant appealed to Level IV on April 14, 1994, alleging as follows:

> Grievant contends that after the retirement of Bill Hurt (Crew Leader), Respondent filled the position with another employee, Rupert Chuyka, without posting the position in violation of West Virginia Code §18A-4-8b. Grievant seeks posting of the Crew Leader position held by Bill Hurt and filling of the same pursuant to West Virginia Code §18A-4-8b.

The parties agreed to submit the case on the record developed below, which consists of the transcript and exhibits from the Level II hearing, the Level II decision, and proposed findings of fact and conclusions of law submitted by the parties.

The following facts are not in dispute:

1. Grievant has been employed as an Electrician by Respondent since November 9, 1989.

2. William Hurt was employed as a Carpenter II/Crew Leader by Respondent on August 14, 1987, and retired on July 1, 1993.

3. Superintendent Rick Powell abolished the Crew Leader position held by Mr. Hurt by memorandum dated May 17, 1993.

4. Mr. Hurt's duties were reassigned by Superintendent Powell to Rupert Chuyka and Charles Hambrick with the employees' consent at no additional pay.

5. Rupert Chuyka has been employed by Respondent since October 1, 1988.

6. Charles Hambrick has been employed by Respondent since July 12, 1987.

7. Vacancies for Electrician II/Truck Driver and Electrician II/Plumber were posted on May 18, 1993, and reposted on June 8, 1993.

8. Grievant filed a grievance on July 15, 1993, alleging that Respondent had violated W. Va. Code § 18A-4-8b by not posting the position of Crew Leader, and by placing Rupert Chuyka in that position without it being posted.

Discussion

Respondent determined, after Mr. Hurt announced his retirement, that the position of Crew Leader was not needed and eliminated that position by memorandum dated May 17, 1993. Respondent assigned some of the duties performed by Mr. Hurt to Rupert Chuyka and William Hambrick, both classified as Foreman, with their consent and at no additional pay. Respondent laterdetermined that there was more of a need for electricians and posted the two Electrician positions referenced above.

Grievant contends that Respondent was obligated to post the Crew Leader position and also challenges Mr. Chuyka's and Mr. Hambrick's classification as Foremen. Respondent offered various exhibits at Level II indicating that these two gentlemen are classified as Foremen. Exhibit A-2, a Second-Month Report of Service and Auxiliary Personnel for Fayette County Schools, which is submitted to the Department of Education, lists both Chuyka and Hambrick in the Foreman classification. Exhibit A-3, a listing of Fayette County Maintenance Department Employees lists Mr. Chuyka as Foreman since October 1, 1988, and Mr. Hambrick as Foreman since July 13, 1987. Both of these gentlemen are classifed as Foreman and are being paid as Foreman at paygrade G.

Grievant contends that he was not aware that these gentlemen were Foremen and his representative submitted Fayette County Board of Education minutes for September 2, 1988, September 13, 1988, October 3, 1988, October 17, 1988, October 28, 1988, November 7, 1988, November 28, 1988, December 19, 1988, and January 9, 1989, presumably to show that no Board action had been taken during that period of time to classify Mr. Chuyka as a Foreman. (See footnote 1)

While no mention is made in the minutes regarding either Mr. Chuyka or Mr. Hambrick's classification, the absence of such does not mean that they were not properly classified as Foremen,

and Respondent certainly has been compensating them for many years in the Foreman paygrade. In any event, the Grievant has no standing to grieve another employee's classification when there has been no showing that Grievant has been injured in any way by such classification. See Pomphrey v. Monroe County Bd. of Educ., Docket No. 94-31-183 (July 1, 1994).

School law requires that a board of education post notices of position vacancies and openings, but there is no requirement to do so when a legitimate vacancy does not occur. Terek v. Wetzel County Bd. of Educ., Docket No. 52-86-122-2 (Aug. 25, 1987). County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. Nevertheless, this discretion must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious. Dillon v. Bd. of Educ. of County of Wyoming, 351 S.E.2d 58 (W. Va. 1986).

Conclusions of Law

1. A board of education has the discretion to determine the number of jobs for and the employment terms of service personnel. When a board of eduction seeks to reduce employment costs, the board may decide that the schools' best interests requires the elimination of some service personnel jobs. See Lucion v. McDowell County Bd. of Educ., 446 S.E.2d 487 (W. Va. 1994). Respondent didnot act in an arbitrary and capricious manner when it decided that it was in the school's best interest to eliminate the position of Crew Leader upon the retirement of William Hurt.

2. Respondent had no obligation to post a vacancy for Crew Leader position when that position no longer existed.

3. Grievant has failed to establish by a preponderance of the evidence that Respondent violated W. Va. Code § 18A-4-8b in eliminating the Crew Leader position and assigning the duties of that position to Mr. Chuyka and Mr. Hambrick, with their consent and at no additional pay.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Fayette County and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code § 18-29-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal, and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so

that the record can be prepared and transmitted to the appropriate court.

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MARY JO ALLEN

Administrative Law Judge

Dated: September 28, 1994

Footnote: 1 *The Board minutes in question were not presented at the Level II hearing, but were sent to the undersigned at a later date. Grievant had instructed the undersigned not to review these documents until Respondent's counsel agreed to their submission into evidence. No response was received by Respondent's counsel. While it does not appear that Respondent would have objection to the submission of Board minutes, and the undersigned has reviewed the same, the minutes, while somewhat relevant, do not alter the outcome of this grievance.*