CURTIS MEEKS,

Grievant,

v. **Docket No. 95-20-019**

KANAWHA COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Curtis Meeks, a Heating and Air Conditioning Mechanic II ("HVAC II"), alleges he is subjected to harassment, discrimination and favoritism, because he is not allowed to take the repair truck out by himself, while other HVAC II's are allowed to do so. He seeks as relief to be treated the same as all other HVAC II's and to be allowed to work without supervision. This grievance was denied at Levels I and II and waived at Level III. A Level IV hearing was held on July 31, 1995, and this case became mature for decision on September 8, 1995, the deadline for the parties' proposed findings of fact and conclusions of law.

In December, 1991, the Kanawha County Board of Education ("KCBOE") placed Grievant in a HVAC I position pursuant to a Grievance Board decision. Meeks v. Kanawha County Bd. of Educ., Docket No. 90-20-424 (Oct. 31, 1991) ("Meeks I"). In that grievance, KCBOE argued Grievant was not qualified for the position because he did not score a passing grade, or 70%, on each sectionof the HVAC I competency test. Administrative Law Judge Drew Crislip ruled Grievant passed the test because his section scores of 95% and 45% averaged 70%.

Six months later, Grievant lost this position in a reduction-in-force ("RIF"). Grievant filed another grievance opposing his RIF, stating a less senior HVAC II should have been RIF'd instead. Meeks v. Kanawha County Bd. of Educ., Docket No. 92-20-204b (Sept. 25, 1992) ("Meeks II"). ALJ Crislip held a county board may target a grade of classification such as HVAC I for RIF and was not required to RIF a broad classification area, such as all HVAC's. Id. at 5. ALJ Crislip also stated a HVAC II was a "more highly-skilled or licensed" employee, and noted Grievant "may not possess the background, training or abilities to perform the . . . duties of an [HVAC II]." Id. at 4.

In December, 1992, KCBOE hired Grievant from the Preferred Recall List to fill a HVAC II position

pursuant to another Meeks decision rendered by ALJ Crislip, but not related to a HVAC position. Meeks v. Kanawha County Bd. of Educ., Docket No. 92-20-249 (Sept. 25, 1995) ("Meeks III"). This Decision held that for purposes of promotion and filling of positions, Custodians I, II, III, and IV are considered one classification. Id. at 5. When Grievant filed another grievance on the HVAC II position, KCBOE interpreted Meeks III as requiring it to place Grievant in the HVAC II position. (See footnote 1)

Because the HVAC I classification is a helper or apprentice level position, and the HVAC II classification is a journeyman level position, KCBOE was concerned about safety issues and discussed them with Grievant during an interview. At that time, Grievant stated he was not qualified to be a HVAC II, but needed a job, did not want to lose his seniority, and agreed to take the position with certain conditions.

That discussion and agreement was commemorated by the following letter signed by Mr. David Stewart, KCBOE Treasurer, and the attached HVAC II job description.

Dear Mr. Meeks:

Your return to work was approved by the Kanawha County Board of Education at its December 17, 1992 meeting. As you know, Mr. Shew and Mr. Harper have expressed reservations about employing you as a Heating and Air Conditioning Mechanic II when you admittedly do not possess the skills and expertise normally required in the position. Nevertheless, state law has deemed you qualified for the position.

You will initially be assigned to work with other experienced personnel in order to learn new skills and to minimize any safety hazards to yourself, co-workers and others. You indicated during your interview that you were willing to take classes on your own time to increase your level of knowledge and skills. By copy of this letter, I am asking Mr. Shew to contact the vocational schools to determine what relevant classes would be available.

After a reasonable time has passed for you to learn the new job, you will be expected to perform the tasks required in the Heating and Air Conditioning Mechanic IIjob description (attached). Failure on your part to master the required skills will result in the initiation of a plan of improvement per the evaluation procedure. As a regular employee, you are also eligible to apply for any other positions that may be posted.

KANAWHA COUNTY SCHOOLS JOB DESCRIPTION

HEATING AND AIR CONDITIONING MECHANIC II

A.

HEATING AND AIR CONDITIONING MECHANIC II (Heating and Air Conditioning Mechanic) - means personnel employed at the journeyman level to install, repair and maintain heating and air conditioning plants and related electrical equipment.

B. JOB DESCRIPTION SUMMARY:

This individual must be able to install, repair, and maintain heating and air conditioning plants, and related electrical equipment found throughout the Kanawha County School System.

C. DIMENSION:

Must be able to utilize all heating and air conditioning tools and equipment needed to perform the electrical task and operations. Must have the ability to receive and comprehend written and oral instructions. Must be willing and able to work with a helper from time to time and assist him in learning the trade.

D. NATURE AND SCOPE:

CONTEXT:

Individual reports to the electrical shop supervisor. Some heating plants use high voltage electricity which can be hazardous to the mechanic. Individual will sometimes have a worker assisting him and for whom he is responsible (for safety and additional support purposes).

DUTIES:

1.

To make daily repairs and perform routine maintenance tasks associated with hearing and air conditioning plants found within the school system.

2.

To maintain records on what parts were used and work performed on each particular job (time and material).

3.

To make electrical repairs as related to specific craft.

4.

To perform related tasks as assigned by supervisor.

5.

To install new and repaired heating/air conditioning equipment.

RELATIONSHIP WITH SUPERIORS AND SUBORDINATES:

Individual reports to electrical shop supervisor. Assisted by electrical shop worker when jobs required assistance.

CONTACTS INSIDE AND OUTSIDE SCHOOL DISTRICT:

Individual must make contacts with school principals, teachers, custodians, concerning problems with the heating and cooling systems. Limited vendor contacts. Contacts with dispatcher for job scheduling.

KNOW-HOW REQUIRED:

Individual should have a high school education or equivalent, training through an approved apprenticeship program or related experience and three to five years experience in heating and air conditioning or closely related electrical maintenance.

PROBLEM SOLVING:

Trouble shooting of control units on heating and cooling plants.

FREEDOM TO ACT:

Individual's freedom to act is limited to safety precautions for himself and others.

E. PRINCIPAL ACCOUNTABILITY:

1.

To maintain positive work habits,

2.

To perform duties efficiently and productively, and

3.

To maintain and/or upgrade skills.

On January 5, 1993, Mr. Ben Shew, Director of Maintenance and Energy, requested information about appropriate HVAC II training. The recommended course work was a 5½ month, 1,200 hour, Monday through Friday evening course. KCBOE would bear the complete cost of this training.

Grievant refused to attend the course because it would take too much of his own time.

When Grievant asked for alternative ways to prove his competency at the HVAC II level, Mr. Shew suggested taking and passing the HVAC II competency exam developed and used by KCBOE prior to the State Education Department's test. Grievant refused on advice of his attorney.

Upon his return to work in December, 1992, Grievant worked the majority of the time with a senior HVAC II. Occasionally, in the senior HVAC II's absence, Grievant was allowed to go to a work site alone to make simple repairs. Grievant also completed some repairs while he was out with the senior HVAC II, but not right beside him. Mr. Shew found out about this practice. He stated he must not have communicated clearly to Grievant's supervisor, as Grievant was never to be on a job site by himself.

Grievant now works only at the direction and in the company of a senior HVAC. At hearing, Mr. Shew stated Grievant must work only at the direction of a senior HVAC and at the same site, but the senior HVAC II, at his discretion, may allow Grievant to perform appropriate repairs alone.

During the course of this grievance, Grievant detailed the training and experience he has had which he believes qualifies him to work at the HVAC II level without supervision. In 1981, Grievant took a basic, 92 hour air conditioning course at Ben Franklin. In 1994, Grievant took another basic, 72 hour course in refrigerators and air conditioners. This course contained "book work" plus "hands on" experience with refrigerators, chest freezers and window air conditioners. These courses contained no heating theory or experience. Grievant stated he received some training in electronics in the Navy, but did not state when this was or clarify the type of training. Grievant's other relevant work experience consists of six months as a HVAC I with KCBOE prior to the RIF, and the time he has worked since his return in December 1992. Grievant believes he is competent and qualified to work alone and to perform the duties of a HVAC II.

Grievant's complaints of discrimination, harassment and favoritism focus on the fact he is treated differently from Mr. Dave Perry, a HVAC II. Grievant noted Mr. Perry is allowed to go to a work site alone, and to work without supervision. Grievant also complains he has not been given needed boiler training.

Mr. Shew explained Mr. Perry was hired as a HVAC II in 1992, after passing the HVAC II competency exam. He also testified Mr. Perry had multiple years of experience in the private sector prior to hiring and was qualified to be a journeyman. Mr. Shew was unsure of Mr. Perry's formal

training or schooling but stated that because he had passed the test he was deemed qualified.

On the issue of boiler training, Mr. Shew testified he requests money every year for staff development, but has not received any. He believed Grievant and Mr. Perry are the only two HVAC's who have not had this formal training, but indicated Mr. Perry had experience in this area in the private sector. According to Mr. Shew, Grievant will receive boiler training as soon as he has funds to provide it.

Mr. Shew's main concerns are the safety issues involved in Grievant's working alone as a HVAC II when he has not demonstrated competency. Mr. Shew verbalized concerns for Grievant's own personal safety, the safety of other employees and students, and concern for the expensive equipment Grievant would service and repair. These concerns, and the steps to be taken to deal with them, are clearly identified in Mr. Stewart's letter of December 29, 1992.

Grievant stated he is harmed by KCBOE's failure to allow him to work independently because the other HVAC II's think he is not doing the work of a HVAC II, but is receiving the pay.

Discussion

W. Va. Code §§18-29-2(m), (n) and (p) define favoritism, discrimination and harassment in the following manner.

(m) "Discrimination" means any differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing by the employees.

(n) "Harassment" means repeated or continual disturbance, irritation or annoyance of an employee which would be contrary to the demeanor expected by law, policy and profession.

(o) "Favoritism" means unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of another or other employees.

In regard to these claims Grievant compares himself to Mr. Perry and no one else. Grievant's testimony Level IV.

To prove discrimination, harassment and favoritism a grievant must first establish a prima facie case by demonstrating:

(a) that he is similarly situated, in a pertinent way, to one or more other employee(s);

> (b) that he has, to his detriment, been treated by his employer in a manner that the other employee(s) has/have not, in a significant particular;

and,

> (c) that such differences were unrelated to actual job responsibilities of the grievant and/or the other employee(s), and were not agreed to by the grievant in writing.

Steele, et al. v. Wayne County Bd. of Educ., Docket No. 89-50-260 (Oct. 19, 1989).

Grievant has demonstrated that he and Mr. Perry are both classified as HVAC II's, but Grievant has not demonstrated he is qualified to be a HVAC II. KCBOE demonstrated Mr. Perry is qualified to be a HVAC II. Grievant has also demonstrated he is treated differently from Mr. Perry. However, unrebutted testimony, both at Level II and Level IV and commemorated by the agreement cited at page 3, indicates Grievant agreed in writing to differences in his treatment. Also the HVAC II job description indicates Grievant did not have the "Know-How Required" for the position. This description clearly states an individual's "Freedom to Act" is limited to safety precautions for himself and others,and that HVAC II's are expected "to maintain and/or upgrade skills." Grievant was specifically told he would need to upgrade his skills. Grievant agreed to do so on his own time. He has not done this and refused to take the identified course work.

However, assuming arguendo, that this letter and job description are not considered a "written agreement" and Grievant has demonstrated a prima facie case, then the burden of production shifts to KCBOE to demonstrate a "legitimate, nondiscriminatory reason" for its action. (See footnote 2)

KCBOE has met this burden and established a very real safety concern; Grievant is not qualified as a journeyman, and thus should only be working under the direction and supervision of a journeyman. Mr. Perry is a journeyman, having both the necessary experience and having demonstrated competency by passing the test. Thus, KCBOE's different treatment of Mr. Perry, vis-a-vis Grievant, has actually two legitimate, nondiscriminatory rationales. Since Grievant did not prove KCBOE's rationale was mere pretext, he has failed to demonstrate discrimination, harassment or favoritism.

The above discussion will be supplemented with the following findings of fact and conclusions of law.

Findings of Fact

1. Grievant, with only six months experience as a HVAC I, an apprentice level position, was hired as a HVAC II.

2. Because Grievant is not qualified to be a journeyman, but was placed in a journeyman's position, certain conditions were placed on his employment at the outset. These conditions included taking additional classes on his own time, working under constant supervision, and mastering additional skills on an ongoing basis.

3. Grievant refused to take the course recommended by his supervisor, Mr. Shew.

4. Grievant was also given the option of taking the HVAC II competency test to demonstrate his ability to perform HVAC II work without constant supervision. He refused.

5. Mr. Perry, a KCBOE HVAC II, is qualified to perform the work of a HVAC II journeyman.

Conclusions of Law

1. When alleging discrimination, harassment and favoritism Grievant must first demonstrate a prima facie case. Steele, et al. v. Wayne County Bd. of Educ., Docket No. 89-50-260 (Oct. 19, 1989).

2. Grievant did not demonstrate a prima facie case of discrimination, harassment and/or favoritism. Steele, supra.

3. Grievant agreed to written conditions in his employment as a HVAC II and has not met these conditions in that he has not taken the classes recommended by his supervisor.

4. Assuming arguendo, Grievant has demonstrated a prima facie case of discrimination, harassment and favoritism, KCBOE has demonstrated a "legitimate, nondiscriminatory reason" for not requiring Grievant to work with supervision - safety. Steele, supra.

5. KCBOE also demonstrated a "legitimate, nondiscriminatory reason" for allowing Mr. Perry to work without supervision.

6. Grievant failed to demonstrate KCBOE's rationale for requiring Grievant to work under supervision was "mere pretext." Steele, supra.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha 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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JANIS I. REYNOLDS

Administrative Law Judge

Dated: October 27, 1995

Footnote: 1This grievance, dealing with the filling of a HVAC II position with a HVAC I from the preferred recall list, did not comebefore the Grievance Board. Thus, this Board has not ruled on the issue of whether positions involving craftsmen, and the attendant safety issues, are to be filled in the same way as other service personnel positions which have Roman Numerals, but require no competency level.

Footnote: 2If Respondent is successful in demonstrating such a reason, Grievant is given the opportunity to show the rationale given is "mere pretext." Steele at 15.