

high-school equivalency. [\(See footnote 3\)](#)

3. At the end of the 1994-95 school year, one of HCBE's maintenance workers retired. Subsequently, sometime in August 1995, HCBE posted the newly-created service position of Supervisor of Maintenance, 240-day employment term, pay grade H.

4. As described in the posting for Supervisor of Maintenance, one function of the position was to direct all facets of maintenance on HCBE's buildings and property throughout the county, as well as ensuring compliance with regulations pertaining to boilers, sewage plant operations, fire inspections, asbestos management, and the operation of the Honeywell energy management plan.

5. One qualification listed on the posting for the position of Supervisor of Maintenance was possession of a high school diploma or its equivalent, at the minimum, although an associate degree or higher in maintenance-related fields or engineering was "preferred." Another requirement was that the candidate have experience with the general maintenance activities of schools and a working knowledge or experience in "plumbing, HVAC, electrical wiring/service, boiler operations, and general construction procedures." The posting also mentioned that basic computer experience "will be considered." Finally, the successful candidate had to have passed the State competency test for Supervisor of Maintenance.

6. The Honeywell heating, cooling and ventilation systems in HCBE's schools are computer controlled.

7. Grievant and Intervenor were among the applicants for the newly-created position of Supervisor of Maintenance, and neither held the class title.

8. At the time of the posting, Grievant had no prior experience or knowledge of computer-controlled heating and cooling systems. His only experience with computers related to problems with automobiles.

9. Grievant had the most seniority of all the applicants. On September 12, 1995, he and several other applicants, including Intervenor, passed the State Board of Education's comprehensive basic skills test for maintenance supervisor. 10. Intervenor, the successful applicant, had been employed by HCBE since October 1989 as an "HVAC" Technician assigned to HCBE's Maintenance Department. In his work capacity with HCBE, he had been extensively trained in HCBE's heating and cooling systems by the Honeywell Corporation.

11. Intervenor completed high school and one year of college at West Virginia University. He

previously worked as an Industrial Electrician at a steel company and as an Electrician-Foreman for a construction company engaged in new construction and renovation- remodeling. In addition, Intervenor completed training for Building Inspectors and for Management Planners (both courses related to the Federal Toxic Substances Control Act) in November 1991; attended an Environmental Protection Agency approved refresher course in Asbestos Abatement for Supervisors, Contractors and OSHA Competent Persons in March 1992; was awarded a Class I-S certificate from the West Virginia Department of Health and Human Resources - Office of Environmental Health Services for wastewater treatment plant operator (based on a test score of 92% where only a 70% score was required for passing) in May 1993; was certified as a Technician Type Universal after completing an approved program offered by a technical school in August 1994; and completed a twelve hour EPA-approved course at West Virginia University - Extension Service for Radon Technology in January 1994. ([See footnote 4](#))

Discussion

HCBE does not dispute that Grievant qualified for the position by passing the competency test. It simply argues that, under Hopkins v. Ohio County Bd. of Educ., 457 S.E.2d 537 (W.Va. 1995), it is entitled to consider all of the hiring criteria for service employees under Code §18A-4-8b, and select the most qualified applicant for a supervisory position, relative to the job description which has been established for the position, in this case, for Supervisor of Maintenance. HCBE argues that the position requires a working supervisor, and that Grievant's work experience for HCBE in its Transportation Department has been limited to automotive mechanics and incidental work on small engines while Intervenor's work in the Maintenance Department has involved extensive training in Honeywell's systems.

Intervenor also relies on Hopkins, and argues that the Court "has recognized that county boards of education may give special emphasis to the criterion of qualifications when filling service personnel positions that are quasi-administrative in nature." Intervenor's Brief at 2. Intervenor points out that he met all of the qualifications of the posting, while Grievant lacked a high school diploma and expertise in the areas identified in the posting. Intervenor also relies on the earlier-decided Grievance Board cases of Mayle v. Barbour County Bd. of Educ., Docket No. 94-01-260 (Feb. 28, 1995), and Cyphers v. Marion County Bd. of Educ., Docket No. 94-24-134 (Oct. 31, 1994), for the proposition that

applicants for a position that requires special training and licensure are not necessarily qualified for the position, even if they pass a competency test. In this case, Intervenor argues, he possessed the necessary experience and requisite training for the job, in particular, certification in asbestos removal.

In contrast, Grievant relies on Bowman v. Marion County Bd. of Educ., Docket No. 95-24-003 (Oct. 10, 1995), the Grievance Board's most-recent decision on the question of hiring supervisory service positions. It was decided in Bowman that the most senior service applicant with satisfactory evaluations is entitled to a vacancy if he has qualified for the class title by passing the State Board of Education's competency test for the position, whether a supervisory position or not. Under Bowman, Grievant argues, because he passed a competency test for Supervisor of Maintenance, he is qualified and entitled to the position as the most senior applicant.

The Grievance Board adheres to the doctrine of stare decisis in adjudicating grievances that come before it, and follows precedents established by the West Virginia Supreme Court of Appeals as the law of this jurisdiction. Additionally, prior decisions of this Grievance Board are followed unless a reasoned determination is made that the prior decision was clearly in error. Berry v. Logan County Bd. of Educ., Docket No. 95-23-421 (Mar. 29, 1996); Belcher v. W.Va. Div. of Highways, Docket No. 94-DOH-341 (Apr. 27, 1995); Chafin v. W.Va. Dept. of Health & Human Resources, Docket No. 92-HHR-132 (July 24, 1992).

In Bowman, supra, the administrative law judge determined that, because the West Virginia Supreme Court of Appeals did not discuss the State Board of Education competency tests (mandated in Code §18A-4-8e) in Hopkins, supra, Hopkins was not controlling. Therefore, Bowman, not Hopkins, must control in this case. Because Grievant had satisfactory evaluations, passed the competency test for Supervisor of Maintenance and was the most senior applicant, he is entitled to the position in dispute. Bowman.

In addition to the foregoing, the following conclusions of law are appropriate.

Conclusions of Law

1. Boards of education in West Virginia must fill school service personnel positions on the basis of seniority, qualifications, and evaluations of past service. Qualification is defined as holding the classification title of the vacancy or being able to meet that definition as contained in W.Va. Code §18A-4-8.

2. Under W.Va. Code §18A-4-8e, achieving a passing score on a competency test shall conclusively demonstrate the qualification of an applicant for a classification title. Bowman v. Marion County Bd. of Educ., Docket No. 95-24-003 (Oct. 10, 1995).

3. With the implementation of statutory definitions and guidelines for establishing qualifications, county boards of education may no longer develop or expand qualifications for service personnel positions where a competency test has been developed by the State Board of Education. Id.

4. The position of Supervisor of Maintenance must be awarded to the most senior applicant who passed the competency test for the class title.

Accordingly, the grievance is **GRANTED**, and the Hancock County Board of Education is Ordered to instate Grievant to the position of Supervisor of Maintenance with all back pay and benefits to which he is entitled.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Hancock 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 appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate Court.

NEDRA KOVAL

Administrative Law Judge

Date: April 29, 1996

[Footnote: 1](#)

The record consists of the pleadings, lower level decisions, the transcript of the November 15, 1995, level two hearing and the evidence adduced at the January 31, 1996 level four hearing.

[Footnote: 2](#)

According to Grievant, he has remodeled people's homes, including complete gutting and wiring, plumbing, carpentry, air conditioning, and refrigeration. He also stated he has run a backhoe and bulldozer and has laid block and done other masonry work. T2.14.

[Footnote: 3](#)

For the past several years, boards of education may not employ new service employees who do not hold a high-school degree or the equivalent, unless the candidate is enrolled in a program in preparation for obtaining an equivalency. See W.Va. Code §18A-2-5. This statute would not apply to Grievant, even for a "newly- created" position, because he had been hired prior to the passage of the statute.

[Footnote: 4](#)

Intervenor also noted on his resume that he possessed knowledge and experience installing and maintaining electrical systems, including security, heat and smoke detection systems; reading and interpreting blueprints, schematic and diagrams relative to heating and cooling systems; and welding and pipefitting.