

**KAREN CONNER**

**v. Docket No. 94-01-1108**

**BARBOUR COUNTY BOARD OF EDUCATION**

**D E C I S I O N**

This grievance arose during Karen Conner's employment as a bus operator with Respondent Barbour County Board of Education (BCBE). [\(See footnote 1\)](#) She contends that, based on her seniority and experience, she was entitled to a posted position as bus operator trainer during the 1994-95 school year. Grievant seeks back wages, the money she would have earned had she been rightfully selected, and other relief. BCBE denies wrongdoing in this matter, and states Grievant was not qualified for the job. The case became mature for decision, based on the level two record, on July 16, 1996, the final day for the parties to submit fact/law proposals.

There is little dispute about the underlying facts which gave rise to this grievance. The following findings of fact are based on all matters of record. [\(See footnote 2\)](#)

Findings of Fact

1. On May 20, 1994, BCBE posted a position for a bus operator trainer position, on an "as needed" basis for the 1994-95 school year, at the salary of \$14.00 per hour. GR EX 1.

2. A bus driver trainer, essentially, a type of adult teaching position, is not a classified service position. A board of education may have its would- be bus operators trained in cooperation with a Regional Education Service Area (RESA), from trainers supplied by another board of education, or by its own certified trainers.

3. Grievant timely applied for the trainer's post. In her formal letter of application, Grievant stated, in part, that she had been certified as a bus operator trainer in 1985, and had taught six classes in the past. She also noted she had fourteen years of accident-free service as a bus operator. [\(See footnote 3\)](#) GR EX 2.

4. Grievant had retained the trainer's post from 1985 through 1992. Grievant, L2 TR.

5. From time to time, a bus operator's certification to drive must be updated. Although Grievant had a refresher class, a one-day training session in approximately 1991, when new manuals were issued, it is not clear from therecord whether this class was for recertification as a bus operator or as a bus operator trainer. Grievant, L2 TR.

6. In 1992, two other BCBE service employees, one, a bus operator, received trainer certification. Following the posting in May 1994, these persons were employed as trainers for the 1994-95 school year.

7. At the time of the posting for the 1994-95 trainer job, Grievant's trainer certificate had lapsed. Grievant, L2 TR.

8. Grievant had not "updated" her trainer certification since the 1993- 94 school year. Grievant stated at the level two hearing in this grievance that she had requested the training and that, "during the grievance hearings," she had indicated her willingness "to take whatever it was necessary" to get her trainer certification updated. Grievant, L2 TR. She had previously grieved over not receiving the trainer job for the 1992-93 and 1993-94 school years.

9. BCBE's members and various administrators had not recommended or authorized Grievant for any trainer certification update (in- house), but such training was also available from the State.

### Discussion

In her level four grievance pleading, Grievant alleged BCBE violated W.Va. Code §§18A-4-8b and 18A-4-8g when it filled the trainer position with two less-senior applicants. [\(See footnote 4\)](#) As relief should she prevail in the grievance, Grievant demands that BCBE authorize her to receive the training update; hire her exclusively for bus operator trainer, due to her superior seniority over thetwo other trainers; and pay her wages for training classes held during the 1994-95 school year. [\(See footnote 5\)](#)

BCBE argues that Grievant has no employment rights to the trainer job based upon the statutes she cited. BCBE further argues that Grievant was not properly certified as a bus operator trainer at the time in question, and was not entitled to the

job in that regard.

W.Va. Code §18A-4-8b, entitled "Seniority rights for school service personnel," includes criteria for the hiring of regularly employed service workers in a particular category of employment, further defined by a classification title under Code §18A-4-8. Code §18A-4-8g is entitled "Determination of seniority for service personnel," and describes specifically how seniority is accrued overall and in the various service personnel classification titles, including multi-classification titles, by both regular and substitute employees.

Grievant has not established that she was entitled to the job in question based upon the provisions of W.Va. Code §§18A-4-8b and 18A-4-8g. Simply put, Grievant's seniority-based argument that BCBE had to select her over less-senior applicants for the trainer position has no merit. See Froats v. Hancock County Bd. of Educ., Docket Nos. 93-15-251/257 (Sept. 28, 1995).

In Froats the grievant complained after she learned the school board paid a bus operator to provide required CPR instruction to other bus operators. She claimed the assignment was either an extra-duty job for bus operators, to be assigned accordingly, or an extracurricular assignment. These arguments were rejected, and it was further determined that an assignment involving instruction does not meet the definition of a service personnel position. The question was not reached as to what criteria should have been used to select someone for the CPR assignment, because the grievant, on medical leave, was unable to establish she was physically able to perform the assignment.

In this case, it is clear that the bus operator trainer assignment in question is not a classified service position. [\(See footnote 6\)](#) Neither is the trainer position an extracurricular assignment pursuant to Code §18A-4-16, since a trainer works "as needed" and the trainer's duties do not "occur on a regularly scheduled basis," such as those defined by the statute. Under Code §18A-4-16, an extracurricular assignment must have a clearly defined number of hours per school year. Thus, Grievant had no entitlement to the trainer's job under the seniority-based statutes she cited, or under any other statute relative to the employment of school service personnel. [\(See footnote](#)

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Additionally, it cannot be found that BCBE abused its discretion or acted arbitrarily and capriciously in its selection of applicants other than Grievant for the trainer assignment. Grievant was not certified to serve as a bus operator trainer while the selected persons were. Apparently, Grievant believes BCBE was somehow obligated to provide the trainer update. Absent any evidence in the record that BCBE was legally compelled to provide the training and that such training was not available through sources other than BCBE, it cannot be held that BCBE's non-action on the issue of "authorizing" another BCBE employee to provide the training adversely precluded Grievant from obtaining the training elsewhere. BCBE was not required under any law, policy or regulation to provide Grievant with the training she needed to qualify for an assignment not defined or recognized as a service personnel position.

Finally, it cannot be found in this record that BCBE's actions were motivated by reprisal because Grievant had filed grievances in the past, as Grievant alleged. Id.; Conner v. Barbour County Bd. of Educ., Docket No. 95- 01-031 (Sept. 29, 1995). For one thing, Grievant failed to present any pertinent evidence on the issue of retaliation or reprisal. (See footnote 8) While administrative notice can be taken that Grievant has filed a number of grievances, it was not established in the record when Grievant had last filed a grievance. Again, Grievant was not hired to serve as trainer because she was not qualified for the post, and she had not secured the necessary update to recertify as a trainer.

In addition to the foregoing findings and determinations, the following formal conclusions of law are made.

#### Conclusions of Law

1. It is incumbent upon a grievant to prove all the allegations constituting the grievance by a preponderance of the evidence. Rupich v. Ohio County Bd. of Educ., Docket No. 89-35-719 (June 29, 1990); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988).

2. Grievant failed to establish a violation of W.Va. Code §§18A-4-8b and 18A-

4-8g with respect to BCBE's selection of applicants other than her for a bus operator trainer assignment, an assignment not covered under the various statutes regulating the employment of service personnel. 3. Because Grievant's certification as a bus operator trainer had lapsed, the board of education's decision to hire certified trainers cannot be construed as retaliation against her, especially since the board is not legally required to provide trainer training to keep a trainer's certification current.

4. Grievant failed to demonstrate BCBE abused its discretion or acted arbitrarily or capriciously in this matter.

5. Grievant failed to prove by a preponderance of the evidence she is legally entitled to the relief she seeks in this grievance.

Accordingly, the grievance is **DENIED** in its entirety.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Barbour 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.

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**NEDRA KOVAL**

**Senior Administrative Law Judge**

**Date: July 18, 1996**

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[Footnote: 1](#)

*It is noted that Grievant was terminated from her position in January 1995, and that she had a number of grievances pending at that time. This case was held in abeyance until the Barbour County Circuit Court ruled on BCBE's appeal of the Grievance Board's order in Conner v. Barbour County Bd. of Educ., Docket No. 95- 01-031 (Sept. 29, 1995), to reinstate Grievant. On April 19, 1996, the circuit court reversed Conner and upheld the termination.*

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[Footnote: 2](#)

*The record contains a copy of the transcript and exhibits of the November 17, 1994, level two hearing. The transcript contains no pagination or page numbers, and references will simply note the party testifying, "\_, L2 TR."*

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[Footnote: 3](#)

*Grievant was terminated by BCBE as a bus operator as the result of a bus driving accident on December 12, 1994, with students aboard, because she failed to follow safety-related procedures after the accident.*

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[Footnote: 4](#)

*Grievant stated that she would not be willing to conduct training sessions on a rotating basis with BCBE's two other trainers because, in the past, if she wanted the job, she "got to do it" by herself. Grievant, L2 TR.*

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[Footnote: 5](#)

*Since Grievant is no longer employed by BCBE as a bus operator, the only relief available would be wages for training conducted from the onset of the 1994-95 school year until her termination in January 1995.*

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[Footnote: 6](#)

*Service personnel class titles are listed and defined in Code §18A-4-8.*

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[Footnote: 7](#)

*Grievant's reliance on Cramer/Castle v. Preston County Bd. of Educ., Docket No. 95-39-400 (Mar. 27, 1996), is misplaced. In that case, two secretaries who had not been selected for an "extracurricular" job as a GED Proctor claimed they had priority over a less-senior secretary who received the assignment. The administrative law judge agreed, apparently concluding that such an assignment constituted a type of clerical duty a secretary was qualified to perform. In this case, and in Froats, supra, the jobs were adult teaching assignments, and clearly not the type of duties expected of bus operators.*

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[Footnote: 8](#)

*Reprisal is defined in W.Va. Code §18-29-3(p) as "the retaliation of an employer or agent toward a grievant or any other participant in the grievance procedure either for an alleged injury itself or any lawful attempt to redress it."*