DALE KYER,

Grievant,

v. **Docket No. 96-54-450**

WOOD COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant Dale Kyer is employed by Respondent Wood County Board of Education as a Truck Driver/Warehouse Clerk. A position of Warehouse Clerk/Inventory Supervisor was vacated on or about May 31, 1996. Grievant alleges that Respondent filled the position with a less senior employee, without posting the position in violation of W.Va. Code §§18A-4-8b and 18A-4-15. As relief, he requests "posting of the position and if he is the most senior applicant that he be instated to the position with back pay and other benefits retroactive to twenty working days after the date of the retirement of the employee who previously held the position." Respondent holds that the position was not filled due to a reduction in force. Following a Level II hearing on October 1, 1996, the grievance was denied and waived to Level IV on October 28, 1996. The matter was submitted for decision based upon the lower level record. The case became mature for decision on March 10, 1997 with the receipt of supplemental fact/law proposals.

Discussion

On May 31, 1996, Jim Robinson, the Warehouse/Clerk/Inventory Supervisor at the Wood County Schools Food Warehouse, retired. His duties were to maintain the warehouse by receiving and shelving food, supervising the drivers who deliver the food, and maintaining a weekly inventory of food stored in the warehouse. The inventory was conducted manually by Mr. Robinson, but is now tracked by computer. An accountant/secretary presently performs this duty. At about the time of Mr. Robinson's retirement, a reduction in force took place. It was decided that his position would be eliminated. Manual inventory was no longer necessary. Remaining duties were to be distributed among existing personnel, who were all classified as Truck Driver/Warehouse Clerk. Therefore, the position of Warehouse Clerk/Inventory Supervisor was not posted.

Grievant contends that Mr. Robinson's duties were given to co-worker, Bill Allen. Mr. Allen is also classified as a Truck Driver/Warehouse Clerk. Grievant has more seniority than Mr. Allen, 17 years as opposed to 12. Grievant further contends that other duties were absorbed by David Conley, who holds the position of Accountant/Secretary. It is important to determine the nature of the duties performed by Mr. Robinson. The testimony of Wade Leech, the Food Service Director, at the Level II hearing, provided some background. He stated that Mr. Robinson was in charge of the food warehouse. As such, he supervised and directed the warehouse personnel, including Mr. Allen and Mr. Kyer. He manually conducted a weekly inventory of the contents of the warehouse and supplied this information to Mr. Leech. (See footnote 1) After Mr. Robinson's retirement, the inventorybecame computerized. It was not necessary to reassign the manual performance of this task to other personnel. The computerized inventory is performed by an Accountant/Secretary, David Conley. Mr. Leech indicated that there would be an occasional manual spot-checking of the computer. The person who would check the shelves for a particular item was either Mr. Conley, or a Truck Driver/Clerk, depending upon who was available. Mr. Conley was responsible for reporting and maintaining the inventory.

Grievant contends that Bill Allen has assumed some of the Mr. Robinson's supervisory duties. He alleges that Mr. Allen has control of the warehouse on a day-to-day basis. In fact, Grievant regards Mr. Allen along with David Conley, as being in charge of the warehouse. (L2 at 17). Grievant contradicts himself regarding Mr. Conley's authority. When asked as to whether Mr. Conley has supervisory duties, Grievant replied, “none that I know of”. He then goes on to describe the nature of Mr. Conley's direction to him and Mr. Allen. He said, “he just comes over tells you, [sic] you know, certain -- like if this needs to go now take it. He will write the orders, say that this particular piece has to be delivered today. He just deems what goes on day by day”. (L2 at 18). The undersigned concludes that this is supervising.

Mr. Allen testified at the Level IV hearing. He stated that he had been a Truck Driver/Warehouse Clerk since September of 1985. In September of 1994, his duties changed somewhat. He spent more time in the warehouse cleaning and doing paperwork and less time driving a truck. His duties were not affected by Mr. Robinson's retirement. They were not changed to include any supervisory functions. He stated that he is in the warehouse more than the other Truck Driver/Warehouse Clerks. He explained thatformerly, warehouse duty was rotated among the truck drivers. However, this was

not favored by the men. Mr. Allen now works in the warehouse, while the others drive the trucks. (L2 at 50). The undersigned recognizes that being stationed in the warehouse may give Mr. Allen the appearance of more authority. However, the record does not indicate that he actually has more authority. It has not been shown that he at any time gave orders to Grievant except to relay messages from Mr. Conley.

Respondent alleges that a necessary reduction in service personnel caused the decision to eliminate the Warehouse Clerk/Inventory Supervisor position. (See footnote 2) The West Virginia Code required that methods other than reduction in force, such as attrition, be utilized. (See footnote 3) Therefore, upon Mr. Robinson's retirement, the position was not filled. It was eliminated through attrition and its duties were reallocated.

There is no legal or mandatory requirement that the position of Warehouse Clerk/Inventory Supervisor be filled if the duties can be performed in a more economical authorized way. Stewart v. Brooke County Bd. of Educ., Docket No. 96-05-394 (April 10, 1997). An authorized way would be to assign the duties to others whose job descriptions are compatible with those duties.

Respondent's exhibit one at Level II, is a job description of the Truck Driver position. Neither Grievant nor Respondent have placed into evidence the duties of the Truck Driver/Clerk position. It will be assumed that this additional information was not relevant. The duties performed by a Truck Driver are as follows:

1. Performing pre-trip inspection and fill out the pre-tripform.

2. Operating trucks in a safe and efficient manner and maintaining truck in a clean condition.

3. Loading trucks with frozen foods, dry groceries, paper and cleaning supplies and equipment as needed.

4. Unloading items at schools in designated areas. Putting away all food products in freezers, refrigerators & stock room when cooks are not available.

5.

Helping to maintain warehouse and grounds.

6.

Retrieving frozen products from warehouse walk-in cooler and freezer for school delivery and working in freezer as needed.

7.

Performing extra duties as required, such as loading and delivery of cafeteria equipment, freezers, stoves and etc.

8.

Packing, loading and delivering summer food to sites enrolled under the Summer Feeding Program, and

9.

Performing any and all other duties as assigned by immediate supervisor.

Upon cross-examination at the Level II hearing, Grievant was asked to examine the above list of tasks as shown in Respondent's exhibit number one. After doing so, he stated, “All I do is just four through eight”. (L2 at 25). His testimony further revealed his belief that Bill Allen is the one in charge of the warehouse. However, when questioned about Mr. Allen's duties, he admitted that they were consistent with number five, “helping to maintain warehouse and grounds as needed”.

The position of accountant/secretary also needs to be examined regarding duties now performed by Mr. Conley, but formerly performed by Mr. Robinson. The description of these duties is contained within Respondent's exhibit one at Level IV. It is as follows:

1. Processes insurance information and maintains reports, if required.

2.

Processes payroll and/or accounts payable information conforming to all regulations of the Board of Education.

3.

Processes student accounting, accounts payable, or purchasing information, if required.

4. Places, receives, routes and/or records phone messages.5.

Greets visitors and refers them to proper persons; screens unexpected callers in accordance with instructions.

6. Takes and transcribes dictation of various types.

7. Schedules appointments and conferences.

8.

Maintains a regular filing system and processes incoming correspondence as instructed.

9.

Receives, dispenses and makes inventories and orders supplies.

10.

Bookkeeping and accounting tasks meeting the county audit regulations, if applicable.

11. Maintains the daily employee payroll sheets, if applicable.

12. Trains and supervises Accountant I/Secretary II's, if applicable.

13. Distributes lunch tickets, if applicable.

14.

Takes care of ill or injured students in absence of the school nurse, if applicable.

15.

Operates office machines necessary for the particular office (includes computers and/or word processors).

16.

Receives, sorts, dispatches, delivers or otherwise handles letters, parcels and other mail.

17. Maintains confidentiality of information.

18. Performs other duties as assigned.

David Conley testified at the Level IV hearing and said that his duties have not changed since Mr. Robinson retired. He worked about one half of his time at the warehouse both before and after. The undersigned concludes that warehouse inventory control is a task which clearly is part of number

nine, which reads, “Receives, dispenses and makes inventories and orders supplies.”

That Mr. Conley's actual duties have not changed is due in large part to the computerization of the warehouse inventory. A manually performed inventory would be a time consuming task. Its reallocation would have been noted by its recipients. However, the undersigned believes that even so, that such a reassignment of duties would have been encompassed by the job activity number nine.

The undersigned further believes that the position of Warehouse Clerk/InventorySupervisor was eliminated, and that its duties were reallocated to existing personnel. Furthermore, the existing personnel perform these duties completely within the confines of their job descriptions.

In addition to the foregoing discussion, the following finding of facts and conclusions of law are appropriate:

FINDINGS OF FACT

1. Grievant Dale Kyer, and Bill Allen are employed by Respondent as Truck Driver/Warehouse Clerks at the Wood County Food Warehouse.

2. Their basic duties are to load and unload food onto and from trucks and transport the food by truck from the warehouse to the various schools in the county. 3. Jim Robinson was employed by Respondent as a Warehouse Clerk/Inventory Supervisor until his date of retirement, May 31, 1996.

4. The need to reduce the number of service personnel caused Respondent to eliminate Mr. Robinson's position after his retirement and reallocate his duties to existing personnel.

5. Mr. Robinson's basic duties had been to maintain the Wood County Food Warehouse by receiving and shipping food, supervising the drivers who deliver the food, and maintaining a weekly inventory of food stored in the warehouse.

5. David Conley is employed by Respondent as an Accountant/Secretary.

6. Mr. Conley's basic duties regarding the warehouse are to receive, dispense and make inventories, and order supplies.

7. Prior to Mr. Robinson's retirement, the inventory of the food warehouse wasperformed by him manually, with an actual counting of the foods where they were stored.

8. After Mr. Robinson's retirement, the inventory of the food warehouse was computerized and

did not require weekly manual counting of the food.

9. In September of 1994, Mr. Allen was permanently stationed at the warehouse while Mr. Kyer and others operated the trucks.

10. Mr. Allen's main duty after September of 1994 was to maintain the warehouse, which was within the job description of Truck Driver.

11. After Mr. Robinson's retirement, Mr. Allen did not obtain any supervisory authority and, in fact, his duties did not change.

12. After Mr. Robinson's retirement, Mr. Conley's duties did not change, a fact largely contributed to by the computerization of the inventory process.

CONCLUSIONS OF LAW

1. In non-disciplinary matters, Grievant must 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 1990).

2. Respondent is not required in all instances to post and/or fill employment positions when the work can be done more economically through a reallocation of duties among employees. Stewart v. Brooke County Bd. of Educ., Docket No. 96-05-394 (April 10, 1997).

3. Respondent properly eliminated the position of Warehouse Clerk/Inventory Supervisor and reallocated some of its duties among the positions of Truck Driver/Clerk and Accountant/Secretary. Accordingly, this grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Wood 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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JAMES D. TERRY

Administrative Law Judge

DATE: September 22, 1997

Footnote: 1

A hearing at Level II was held October 1, 1996. A transcript of that hearing was prepared. Mr. Leech's pertinent testimony appears at pages 40-43. Further reference to the Level II transcript will be in the following format: L2 at __.

Footnote: 2

Respondent's Ex. No. 2, Level II hearing.

Footnote: 3

W.Va. Code §18-9A-4