BARBARA ASHLEY,

Grievant,

v.

DOCKET NO. 97-20-555

KANAWHA COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Barbara Ashley, filed this grievance on September 8, 1997, alleging she received inadequate training for the warehouse clerk competency test, which resulted in her not being selected for the posted position. As relief, Grievant seeks “appropriate” in- service training, an opportunity to be retested, and should she pass, to have her qualifications and seniority judged against the successful applicant.

Following adverse decisions at levels one and two, Grievant appealed to level four on December 18, 1997, and the parties agreed to submit the case on the record developed below, including the level two transcript, exhibits, and decision dated December 15, 1997. This case became mature for decision on February 6, 1998, the deadline for the parties' submission of proposed findings of fact and conclusions of law.

SUMMARY OF EVIDENCE

Evaluator's Exhibits

Ex. 1 -

Grievance documents.

Grievant's Exhibits

Ex. 1 -

September 19, 1996 letter from William H. Courtney to Connie Mullins.

Ex. 2 -

Handwritten results of Warehouse Clerk competency tests.

Testimony

Grievant testified in her own behalf and offered the testimony of Connie Mullins, James Foster, and Judy Gale Bays. Respondent offered the testimony of Norman Richardson and Kenny Cooper. (See footnote 1)

FINDINGS OF FACT

I find, by a preponderance of the evidence, the following facts.

1. Grievant has been employed by the Kanawha County Board of Education ("Board") in the school service personnel classification of Itinerant Aide, Special Education for approximately 18 years.

2. In August 1997, Grievant bid on a school service position of Warehouse Clerk.

3. In order to be hired as a Warehouse Clerk, Grievant was required to take and pass the state competency test for Warehouse Clerks.

4. Prior to taking the Warehouse Clerk competency test, Grievant was provided approximately 4 hours of fork truck training, and one day of inservice training in the Warehouse. Grievant had in excess of eight hours inservice training for the Warehouse Clerk competency test. 5. The fork truck training was provided on July 30, 1997, by the Regulatory Training Center.

6. The inservice training was conducted by Norman Richardson, Director, Purchasing and Supply Management, Connie Mullins, Warehouse Foreman, and Judy Bays, a substitute warehouse clerk, on July 31, 1997.

7. On the morning of July 31, 1997, Grievant and the other applicants, arrived at the Crede Warehouse. Connie Mullins provided on-the-job training, showing them how to read, fill and package

orders, and how to load the trucks.

8. In the afternoon, Grievant and the others had a classroom training session with Norman Richardson and Mary Clark, Warehouse Supervisor.

9. Following the classroom session, Grievant and the others returned to the warehouse with Mary Clark. Judy Bays showed them different types of forms, such as invoices, orders, and bills of lading, and Connie Mullins showed them how to clean up the area following a day's work.

10. Grievant and all the other applicants took and failed the Warehouse Clerk competency test on August 27, 1997. As a result, the Warehouse Clerk position was awarded to a school service employee less senior than Grievant.

11. The inservice training for the Warehouse Clerk competency test was appropriate and satisfied the requirements of W. Va. Code §18A-4-8e.

DISCUSSION

W. Va. Code § 18A-4-8e states in pertinent part:

> Competency tests shall be administered to applicants in a uniform manner under uniform testing conditions.
>
> . . .
>
> A minimum of one day of appropriate inservice training shall be provided employees to assist them in preparing to take the competency tests.

The Grievance Board has previously determined that providing a full day of inservice training prior to administration of a competency test to a regularly employed school service personnel employee is mandatory. Quintrell v. Lincoln County Bd. of Educ., Docket No. 95-22-051 (Aug. 31, 1995), aff'd, Cir. Ct. of Kanawha County, Civil No. 95-AA-241 (Apr. 30, 1996). See Marion County Bd. of Educ. v. Bonfantino, 179 W. Va. 202, 366 S.E.2d 650 (1988). Grievant complains that the inservice training she was provided by the Board did not comply with W. Va. Code § 18A-4-8e, because the training given was not appropriate and relevant to the test.

Grievant contends that the inservice trainers failed to provide any information at all which was

relevant to the Warehouse Clerk competency test. Grievant testified there was no training on bar codes, dock plates, computer inventories, shrinkage, or unloading trucks. Judy Bays was also provided the same inservice training as Grievant and failed the same test. Ms. Bays testified that "nothing" was discussed during the classroom training session with Mr. Richardson. Immediately after she took the Warehouse Clerk competency test, she called George Beckett to complain about the test.

Mr. Richardson testified that he spent about an hour and a half talking with Grievant and the others about duties and responsibilities associated with the warehouse. He testified he went over, even if briefly, information about general warehouse operations, fork truck safety, general first aid, fire safety, the different types of warehouse employees, different types of forms, and the computerized perpetual inventory. He admitted that hedid not have visual aids for any of these things, but that he did discuss them, and gave the employees an opportunity to ask questions. After the training, the employees did go back to the Warehouse and Judy Bays showed them the different types of forms.

Clearly, there is a significant difference of opinion with regard to the training conducted by Mr. Richardson. Unfortunately, Grievant did not submit a copy of the competency test into evidence, so it is virtually impossible to tell what information would have been relevant to the test. Other than general questions about subject areas, no evidence was presented as to the material actually presented on the test.

Because Grievant and Ms. Bays have a compelling interest to convince the undersigned that Mr. Richardson failed to provide even the most basic information during the inservice, their testimony must be considered somewhat slanted in that vein. There is no dispute that Mr. Richardson spent at least 45 minutes talking with the employees, although the employees deny he spent an hour and a half. Nevertheless, he must have talked about <u>something</u> during that time, and I am not convinced that, as Ms. Bays testified, "nothing was discussed" during the entire classroom session which would have been helpful to the employees in taking the competency test. A county board need not provide an inservice trainer who is familiar with the test, as opposed to the subject matter covered by the test. The inservice instructor is expected to disseminate generic information which would be helpful to an employee taking the competency test, not provide the "correct" answers to specific questions included on the test. <u>Bailey v. Logan County Bd. of Educ.</u>, Docket No. 97-23-436 (Feb. 27,

1998). Unfortunately, based on the evidence provided upon which Grievant bears the burden of proof, I cannot find that the Board failed to provide her with appropriate inservice training for the Warehouse Clerk competency test.

CONCLUSIONS OF LAW

1. In a nondisciplinary grievance, the grievant has the burden of proving each element of her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.19 (1996); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997). See W. Va. Code § 18-29-6.

2. W. Va. Code § 18A-4-8e mandates that a school service employee be provided a minimum of eight hours appropriate inservice training prior to taking a competency test, unless the employee voluntarily waives the training opportunity. Bailey v. Logan County Bd. of Educ., Docket No. 97-23-436 (Feb. 27, 1998); Quintrell v. Lincoln County Bd. of Educ., Docket No. 95-22-051 (Aug. 31, 1995), aff'd, Cir. Ct. of Kanawha County, Civil Action No. 95-AA-241 (Apr. 30, 1996). See Marion County Bd. of Educ. v. Bonfantino, 179 W. Va. 202, 366 S.E.2d 650 (1988).

3. Grievant failed to prove by a preponderance of the evidence that the Board violated W. Va. Code § 18A-4-8e in regard to the nature of the inservice training provided Grievant on July 31, 1997, to assist her in preparing for the Warehouse Clerk competency test.

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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MARY JO SWARTZ

Administrative Law Judge

Dated: March 31, 1998

Footnote: 1

Apparently, the testimony of Kenny Cooper was lost due to a malfunction of the tape recording equipment at level two: however, the level two hearing examiner concluded that Mr. Cooper felt the training for the Warehouse Clerk position was "appropriate and helpful to him in successfully passing the test." Level II Decision, Dec. 15, 1997.