

**LEONARD CHRIS GILLISPIE,**

**Grievant,**

**v.**

**Docket No. 00-30-041**

**MONONGALIA COUNTY BOARD OF EDUCATION,**

**Respondent.**

### **DECISION**

Grievant, Leonard Chris Gillespie, employed by the Monongalia County Board of Education (MCBOE) and classified as Maintenance Clerk/Inventory Supervisor, filed a level one grievance on or about September 17, 1999, in which he alleged a violation of W. Va. Code §18A-4-8. Grievant asserts that he is misclassified, and requests classification to Accountant II/Inventory Supervisor. A level one decision was not made part of the record; however, the matter was denied following a hearing at level two. Grievant elected to bypass consideration at level three, as is permitted by W. Va. Code §18-29-4(c), and the grievance was advanced to level four on January 28, 2000. The parties agreed to submit the matter for decision based upon the record, supplemented with an additional joint exhibit and proposed findings of fact and conclusions of law, filed on or before May 18, 2000. ([See footnote 1](#))

The essential facts of this matter are undisputed, and may be set forth as the following formal findings of fact.

#### **Findings of Fact**

1. Grievant has been employed by MCBOE since August 1977, and has been assigned to the Maintenance Department, holding the multi-classified title of Maintenance Clerk/Inventory Supervisor, since the 1990-91 school year.
2. Marty Baker, Manager of Facilities Management, has been Grievant's immediate supervisor for the past five years. Mr. Baker oversees all of MCBOE's physical facilities, consisting of some ninety (90) buildings.
3. When Mr. Baker was appointed to his position he requested, and received, a budgetary allocation for the department. As a result of this and other changes in methods and procedures, Grievant's duties relating to the position of Maintenance Clerk have changed somewhat.
4. Grievant's duties now require that he:

- utilize the computer network, WVEIS to enter purchase requisitions which had previously been hand written;
- obtain three (3) quotes from prospective vendors of needed parts and/or services so that MCBOE may obtain the best available price;
- enter on the requisitions the appropriate code from the list provided by the Business Office to designate the type of expenditure being requested;
- track all purchases for the department and keep a running balance of funds expended and available for each area of the department, using a computerized spreadsheet;
- review invoices and authorize them for payment to the Business Office;
- provide a monthly accounting report to Mr. Baker;
- maintain contact with the Business Office regarding the needs and activities of the Maintenance Department;
- maintain project files including monitoring of warranty information; and,

-project orders needed to maintain inventory of items. 5. In May 1998, Mr. Baker advised Assistant Superintendent Jacob Mullett that Grievant had assumed additional duties, and requested that he be reclassified as Accountant II/Inventory Supervisor.

6. Receiving no response, Mr. Baker again requested that Grievant's classification be reviewed by memorandum dated March 11, 1999.

7. Assistant Superintendent Jacob Mullett notified Grievant on October 11, 1999, that a job reclassification review had been conducted for his position by the reclassification committee, which did not recommend that the request be forwarded to the Superintendent for further consideration.

### Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving each element of his 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); Hanshaw v. McDowell County Bd. of Educ. Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code §18-29-6. A preponderance of the evidence is defined as "evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary (6th ed. 1991), Leichliter v. W. Va. Dept. of Health and

Human Res., Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, a party has not met its burden of proof. Id.

In order to determine whether or not a school service personnel employee is entitled to reclassification, a fact specific analysis must be completed to establish that the employee is performing duties more closely associated with a different classification. Daniels v. Randolph County Bd. of Educ., Docket No. 98-42-170 (Feb. 24, 1999); Norman v. Greenbrier County Bd. of Educ., Docket No. 96-33-263 (Apr. 15, 1997). However, because of similarities in the nature of certain jobs, two or more definitions may encompass the same duties. Performance of such crossover duties does not necessarily mandate reclassification. Graham v. Nicholas County Bd. of Educ., Docket No. 93-34-224 (Jan. 6, 1994). Simply being required to undertake some responsibilities normally associated with a higher classification, even regularly, does not render a Grievant misclassified per se. Hatfield v. Mingo County Bd. of Educ., Docket No. 91-29-077 (Apr. 15, 1996).

Grievant argues that the additional duties qualify him for classification as Accountant II. MCBOE argues that the duties Grievant cites in support of his claim are natural extensions of his responsibility as Inventory Manager. Although Grievant's duties have evolved in the recent past, the evidence of record does not support his claim for reclassification.

W. Va. Code §18A-4-8 provides the following relevant classification definitions: Accountant II is defined as "personnel employed to maintain accounting records and to be responsible for the accounting process associated with billings, budgets, purchasing and relating operations."

Clerk II is defined as "personnel employed to perform general clerical tasks, prepare reports and tabulations and operate office machines." Inventory Supervisor is defined as "personnel who are employed to supervise or maintain operations in the receipts, storage, inventory and issuance of materials and supplies."

Certainly, some duties of Clerk and Accountant II appear to be similar; however, Grievant does not perform the essential job functions included on the Accountant II job description. He does not calculate and prepare state and federal tax returns, compute the salary and social security of personnel, issue purchase orders, or pay invoices. Grievant does maintain records and keeps track of budgetary expenditures. At times his advice is sought from Mr. Baker regarding these matters. Many of the records kept by Grievant are duplicative of those already generated in the central office. Mr. Baker has asked that he generate the financial reports to provide him a current picture of

expenditures because the central office staff provides the information only on a periodic basis, and to break down the maintenance budget into more detailed accounts than those provided by the central office.

Grievant's responsibilities maintaining records, preparing reports, and keeping up- to-date financial information, fall squarely within the definition of Clerk II. These duties do not require that he exercise any independent judgement, and they are not part of MCBOE's accounting process. They are simply tabulations completed as a convenience to assist the Manager of Facilities Management. Grievant's required use of codes and computers to complete purchase orders are reflective of the advanced technology which most employees now use to more efficiently complete their work. Any duties completed by Grievant which may be characterized as those of an Accountant II are minimal and incidental to the duties of his current classification, and do not merit his reclassification. In addition to the foregoing findings of fact and discussion it is appropriate to make the following formal conclusions of law.

#### Conclusions of Law

1. In a misclassification grievance, the grievant has the burden of proving his case by a preponderance of the evidence. Midkiff v. Lincoln County Bd. of Educ., Docket No. 95-22-262 (Mar. 3, 1996); Perdue v. Mercer County Bd. of Educ., Docket No. 92-27-280 (Mar. 29, 1993).
  2. Simply being required to undertake some responsibilities normally associated with a higher classification, even regularly, does not render a Grievant misclassified per se. Hatfield v. Mingo County Bd. of Educ., Docket No. 91-29-077 (Apr. 15, 1996).
  3. "'Accountant II' means personnel employed to maintain accounting records and to be responsible for the accounting process associated with billing, budgets, purchasing and related operations." W. Va. Code §18A-4-8.
  4. Grievant's responsibilities regarding the maintenance department are not associated with the "accounting process" as contemplated by W. Va. Code §18A-4-8.
  5. Grievant is not entitled to reclassification as a Accountant II/Inventory Supervisor.
- Accordingly, this grievance is **DENIED**.

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

Monongalia 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. However, the appealing party is required by W. Va. Code §29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

Date: June 29, 2000 \_\_\_\_\_

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

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[Footnote: 1](#)

*Grievant was represented by John E. Roush, Esq., of WVSSPA. MCBOE was represented by Kelly J. Kimble, Esq., of Kay Casto & Chaney.*