ARNOLD HUGHES,

Grievant,

v. **Docket No. 01-33-027**

McDOWELL COUNTY BOARD OF EDUCATION,

Respondent,

and

MANUEL DAWSON,

Intervenor.

D E C I S I O N

Grievant, Arnold Hughes, employed by the McDowell County Board of Education (MCBOE) as a bus operator, filed a level one grievance on October 24, 2000, in which he alleged a violation of W. Va. Code §18A-4-8e. For relief, Grievant requested instatement into the position of Supervisor of Transportation. The parties agreed to waive review at level one, and following an evidentiary hearing, the matter was denied at level two. Grievant advanced his claim to level four on January 29, 2001. A level four hearing was conducted in the Grievance Board's Beckley office on May 10, 2001, at which time Grievant was represented by Gloria M. Stephens, Esq., MCBOE was represented by Sidney Bell, Esq., and Intervenor was represented by Kathryn Bayless, Esq. The matter became mature for decision upon receipt of proposed findings of fact and conclusions of law filed on behalf of all parties on or before July 30, 2001. (See footnote 1)

The following facts are derived from the record in its entirety, including the level two transcript and exhibits, as well as the evidence adduced at level four.

Findings of Fact

1. Grievant has been employed by Respondent for approximately thirty-five years, and has held the classification of bus operator throughout that period of time.

2. In Dawson, et al. v. McDowell County Board of Education, Docket No. 97-33- 010 (May 29, 1998), the Grievance Board determined that Respondent had improperly filled the position of Supervisor of Transportation. As a result, Respondent was Ordered to provide grievants, including

Grievant Arnold Hughes, the required eight hour in-service training as provided in W. Va. Code § 18A-4-8e, and then allow them to take the Supervisor of Transportation test. This decision was affirmed by the Circuit Court of Kanawha County by Order entered on September 10, 1999, and the West Virginia Supreme Court of Appeals refused the Petition for Appeal on September 7, 2000.

3. On September 26, 2000, Ron Estep, Director of the McDowell County Career Technology Center and the county service personnel test coordinator, conducted inservice training for applicants, including Grievant, who would be taking the competency test for the position of Supervisor of Transportation.

4. The inservice training began at 8:00 a.m., and at noon the participants took a one hour lunch break. The training reconvened at 1:00 p.m. Mr. Estep reviewed a sample test with the applicants, and reminded them of the areas of competency in which they needed to be knowledgeable, including the laws, rules, and regulations applicable to bus operation.

5. Mr. Estep advised the applicants that he was available the entire day to answer questions and discuss issues with them regarding the competency test.

6. At approximately 3:00 p.m., the applicants indicated they had no other questions, and were ready to conclude the training. 7. The competency test for the position of Supervisor of Transportation was administered by Mr. Estep the following day, September 27, 2000. The test, prepared by the West Virginia Department of Education, is comprised of seventy-nine multiple choice questions.

8. The applicants were given no time limits on taking the test. Grievant was the second applicant to complete the test.

9. As the only applicant to pass the competency test, Intervenor was awarded the position of Supervisor of Transportation.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §4.21 (2000); 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.

Grievant argues that Respondent violated W. Va. Code §18A-4-8e when it did not provide him

with a full eight hours of inservice training prior to taking the competency test.

MCBOE asserts that it acted properly in providing one day of inservice that lasted as long as the applicant's regular work day. Intervenor joins with Respondent in arguing there is no statutory definition of “one day,” nor is there a written requirement that participants sign a written waiver to terminate the training. W. Va. Code § 18A-4-8(e)(g) states that “[a] minimum of one day of appropriate inservice training shall be provided employees to assist them in preparing to take the competency tests.” Addressing this statute in another matter, the Grievance Board has stated that “county boards are required to provide at least one full day, or eight hours, of inservice training for each competency exam.” Quintrell v. Lincoln County Bd. of Educ., Docket No. 95-22-05 (Aug. 31, 1995). In that same decision, it was noted that applicants are not required to participate in eight hours of inservice training they do not want or need, and may sign a written waiver foregoing the training. Id.

In the present matter, Grievant makes much ado over the fact that he did not receive a full eight hours of training. However, the evidence establishes that the training ended by mutual agreement. Mr. Estep inquired whether anyone had any other questions, or wished to discuss any other matters. Grievant did not indicate that he had any questions, and did not state an objection to leaving at approximately 3:00 p.m. Grievant recalled that he commented that he needed “a couple of more days” at one point. If Grievant was serious, and wanted an extension of time to study for the test, he did not adequately convey this to Mr. Estep. In any case, Respondent was only required to provide one day of inservice training. By all accounts, Grievant amicably left with the other applicants. Grievant certainly could have stayed and continued the training. Although the applicants did not sign a written waiver, the record supports a finding that the training was concluded at their behest. In consideration of all the evidence, Respondent has substantially, if not actually, complied with the statutory obligation to provide inservice training. Grievant also complains that the content of the training was inadequate in that it did not cover the actual test content. Melinda Isaacs, Coordinator of Standards and Assessments at the State Department of Education, testified that the sample test is not designed to provide the answers to the actual test, but is simply intended to familiarize the applicants with the format of the test. Generally, an inservice instructor is expected to disseminate generic information which would be helpful, and is not expected to provide correct answers to specific questions on the test. Bailey v. Logan County Bd. of Educ., Docket No. 97-23-436 (Feb. 27, 1998).

While Mr. Estep may have approached the training differently, it cannot be determined that it was conducted improperly.

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. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §4.21 (2000); 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.

2. W. Va. Code § 18A-4-8(e)(g) requires that "[a] minimum of one day of appropriate inservice training shall be provided employees to assist them in preparing to take the competency tests."

3. Respondent has substantially, if not actually, complied with the statutory requirement that it provide one day of inservice training prior to administering a competency test for the position of Supervisor of Transportation.

4. Grievant failed to prove that the content of the inservice was flawed in any significant manner, or that Respondent was to provide instruction for questions actually included on the competency test.

Accordingly, the decision is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of McDowell 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: August 21, 2001 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

For administrative reasons, the grievance was reassigned to the undersigned on July 11, 2001.