JOHNIE WINNELL,

Grievant,

v v.

Docket No. 02-20-240

KANAWHA COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Johnie Winnell, is employed by the Kanawha County Board of Education ("KCBOE" or "Board"). He filed the following grievance on May 20, 2002:

> Statement of Grievance and Relief Sought: Grievant is a Transportation Clerk II for Kanawha County Schools. He feels that his job duties and responsibilities fall within the job classification of a Computer Operator II and therefore should be reclassified. This is a violation of WV Code 18A-4-8(l). He is requesting that the reclassification be effective 7-01-01.

This grievance was denied at Level I. A Level II hearing was held on July 11, 2002, and a Level II decision **granting** the grievance was issued on July 24, 2002. The Superintendent appealed this Decision to Level III, and the Board waived participation, and stated Grievant could appeal this decision to the Grievance Board. (See footnote 1) Grievant appealed to Level IV on August 15, 2002. Respondent's proposed Findings of Fact and Conclusions of Law stated the grievance was appealed by KCBOE. This case was submitted on the record. The deadline for the parties' proposed findings of fact and conclusions of law was September 20, 2002, but this deadline was extended until October 1, 2002, at which time this grievance became mature for decision. (See footnote 2)

Standard of Review

When a county board of education appeals the Level II Grievance Evaluator's decision, the county board of education has the burden of proof. The standard of review at Level IV is found in W. Va.

Code §18-29-3(t), which provides:

> Any chief administrator or governing board of an institution in which a grievance was filed may appeal such decision on the grounds that the decision (1) was contrary to law or lawfully adopted rule, regulation or written policy of the chief administrator or governing board, (2) exceeded the hearing examiner's statutory authority, (3) was the result of fraud or deceit, (4) was clearly wrong in view of the reliable, probative and substantial evidence on the whole record, or (5) was arbitrary or capricious or characterized by abuse of discretion. Such appeal shall follow the procedure regarding appeal provided the grievant in section four [§18-29-4] of this article and provided both parties in section seven [§18-29-7] of this article.

See Jackson v. Grant County Bd. of Educ., Docket No. 97-12-224 (Oct. 16, 1997); Harmon v. Fayette County Bd of Educ., Docket No. 96-10-500 (Aug. 25, 1997).

It appears neither Grievant nor Respondent is aware of this Code Section's requirements or the Grievance Board's case law on this issue.

Issues and Arguments

Grievant asserts the Level II Decision is correct and should be affirmed. Respondent argues Grievant did not meet his burden of proof, and should not be reclassified.

After a detailed review of the entire record, the undersigned Administrative Law Judge makes the following Findings of Fact.

Findings of Fact

1. Grievant has been employed as a Clerk II in the Office of Pupil Transportation for six years, and his duties have increased over the years.

2. Grievant operates KCBOE's EDULOG system. This is a computerized database system which maps the home addresses of all Kanawha County students and is utilized in bus routing, redistricting, and school consolidation studies.

3. W. Va. Code § 18A-4-8(i) contains the class titles and definitions for service personnel. "'Clerk II' means personnel employed to perform general clerical tasks, prepare reports and tabulations and operate office machines." "'Computer operator' means qualified personnel employed to operate computers." Id. at (24)&(25).

4. There is no Computer Operator II classification listed in W. Va. Code § 18A- 4-8(i), but KCBOE has developed Job Descriptions for Computer Operators I - III.

5. Grievant engages in a variety of activities involving the EDULOG system. He does not use

any other system. Grievant enters data, backs up data, transfers data, sets parameters to produce reports, downloads data from WVEIS, and generates a variety of maps on several computers.

6. The duties Grievant performs are similar to those outlined in KCBOE's Computer Operator II Job Description. (See footnote 3) Grt. Ex. No. 6, at Level II.

7. The duties Grievant performs are similar to those performed by other Computer Operators within KCBOE. 8. In the Winter of 2001 - 2002, Grievant requested reclassification. Grievant's request was denied by KCBOE's Reclassification Committee. Although Superintendent Duerring was aware of this denial, he recommended Grievant's reclassification to KCBOE. KCBOE rejected this recommendation.

Discussion

As previously stated, a county board of education has the burden of proof in this situation, and it must allege one of the five grounds stated in W. Va. Code §18-29-3(t). KCBOE must demonstrate the Grievance Evaluator's Decision: (1) was contrary to law or lawfully adopted rule, regulation or written policy of the chief administrator or governing board, 2) exceeded the hearing examiner's statutory authority; (3) was the result of fraud or deceit; 4) was clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or (5) was arbitrary or capricious or characterized by abuse of discretion.

Respondent's proposals assert Grievant did not prove his current classification was erroneous, or that the undertaking of some of the duties from another classification rendered him misclassified. Looking at this argument, it would appear Respondent is arguing the decision to reclassify Grievant is either clearly wrong or contrary to law or rule, based on the evidence of record.

A review of the evidence demonstrates Respondent has not met its burden of proof. The testimony of record indicates Grievant performs the same type of duties and functions performed by other KCBOE Computer Operators. Thus, the Decision cannot be clearly wrong. As far as contrary to law or rule, there is a problem in classifying Grievant as a Computer Operator II. The KCBOE's Job Description states a Computer Operator II must have been a Computer Operator I for a least one year. Grievant cannot meet this requirement. Accordingly, KCBOE is directed to reclassify Grievant as a Computer Operator I, from July 1, 2001 to July 1, 2002. (See footnote 4) Then, as of July 1, 2002, Grievant should be classified as a Computer Operator II.

The above-discussion will be supplemented by the following Conclusions of Law.

Conclusions of Law

1. When a county board of education appeals the Level II Grievance Evaluator's decision, the county board of education has the burden of proof, and the standard of review at Level IV is found in W. Va. Code §18-29-3(t). See Jackson v. Grant County Bd. of Educ., Docket No. 97-12-224 (Oct. 16, 1997); Harmon v. Fayette County Bd of Educ., Docket No. 96-10-500 (Aug. 25, 1997).

2. W. Va. Code §18-29-3(t) provides:

> Any chief administrator or governing board of an institution in which a grievance was filed may appeal such decision on the grounds that the decision (1) was contrary to law or lawfully adopted rule, regulation or written policy of the chief administrator or governing board, (2) exceeded the hearing examiner's statutory authority, (3) was the result of fraud or deceit, (4) was clearly wrong in view of the reliable, probative and substantial evidence on the whole record, or (5) was arbitrary or capricious or characterized by abuse of discretion.

3. Respondent did not meet its burden of proof and demonstrate the Decision of the Grievance Evaluator violated any of the above-stated grounds with the exception of placement of the Grievant in the Computer Operator II classification, instead of a Computer Operator I classification, for the one year required by the Job Description.

Accordingly, this grievance is **GRANTED,** and KCBOE is **ORDERED** to classify Grievant as a Computer Operator I as of July 1, 2001, to July 1, 2002. Then, as of July 1, 2002, KCBOE is **ORDERED** to classify Grievant as a Computer Operator II.

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

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JANIS I. REYNOLDS

Administrative Law Judge

Dated: October 28, 2002

Footnote: 1

It should be noted that since this grievance was granted, no further action by Grievant was required.

Footnote: 2

Grievant was represented by Rosemary Jenkins from the West Virginia Federation of Teachers, and the Board was represented by Attorney James Withrow.

Footnote: 3

Only the Job Description for Computer Operator II was submitted into evidence.

Footnote: 4

Although not specifically argued by Respondent, the undersigned Administrative Law Judge finds the Grievance Evaluator did not abuse her discretion in setting this date, according to the evidence of record and the past practice of the Board.