WILLIAM AIRHART, et al.,

Grievants,

v. **DOCKET NO. 04-54-288**

WOOD COUNTY BOARD

OF EDUCATION,

Respondent,

and

PRESTON DABBS,

Intervenor.

DECISION

On May 6, 2004, Grievants, (See footnote 1) all classified as Mechanics, filed a claim against their employer, the Wood County Board of Education, ("Respondent"), claiming they should be multi-classified as Mechanics/Bus Operators. Preston Dabbs, a Bus Operator, was joined as an Intervenor at level two.

Having been denied at all lower levels, a level four hearing was held in the Grievance Board's Charleston office on October 1, 2004. Grievants appeared *pro se*, with Mr. Airhart serving as spokesman. Respondent was represented by counsel, Dean Furner,Esq., and Intervenor was represented by counsel, John Roush, Esq. of the West Virginia School Service Personnel Association. The matter became mature for decision at the close of the hearing.

Based on a preponderance of the evidence contained in the record and adduced at the level four hearing, I find the following material facts have been proven:

FINDINGS OF FACT

1. Grievants are employed by Respondent as Mechanics in its Transportation Department.

Each Grievant is properly certified and licensed to drive a bus with students.

2. In February, 2004, Transportation Director Larry Edwards asked Grievants if they would like to be multi-classified as Mechanics/Bus Operators. Grievants signed a form indicating they would assent to the reclassification.

3. Mechanics are routinely used as substitute Bus Operators when a need arises at the last minute, in order to ensure that all runs are made on time, and also when a Bus Operator can only perform half of his regular run due to an extra duty assignment. Mechanics also have been used as full-time drivers on new runs until the exact needs of the run are determined and a regular Bus Operator is hired.

4. Bus driving is not included in the job description for the Mechanic positions.

DISCUSSION

This is a non-disciplinary grievance in which Grievants bear the burden of proof. Grievants' allegations must be proven by a preponderance of the evidence. *See*, W. Va. Code § 18-29-6, 156 W. Va. C. S. R. 1 § 4.21. The facts here are not disputed, and Respondent does not even dispute Grievants should be granted the relief they are asking for. In fact, Respondent's Proposed Findings of Fact and Conclusions of Law offered at level two actually support Grievants and find they should be reclassified. Apparently,Respondent offered the classification change to all mechanics and Grievants accepted the offer, but Respondent withdrew its offer after learning the regular bus operators would protest the change, instead requiring Grievants to obtain an order from an outside source. Intervenor, without stating exactly how it would affect him, does challenge the notion that mechanics should hold dual classifications. “Pursuant to W. Va. Code § 18-29-3(u), [an educational employee] employed by a county board of education may intervene in a grievance proceeding at any level if [he or she] believes the disposition of the grievance will adversely affect his or her rights or property or if [he or she] believes his or her interest is not adequately represented by the existing parties.” *State of W. Va. ex rel. Monk v. Knight*, 205 W. Va. 535; 499 S.E.2d 35 (1997). Intervenor argues that Grievants are more like substitute bus operators than regular bus operators, but asserted no argument at level two or level four as to how the other bus operators would be harmed.

As is, Intervenor simply has no standing to challenge the reclassification of Grievants to a multi-classified position. "Standing, defined simply, is a legal requirement that a party must have a personal

stake in the outcome of the controversy." *Wagner v. Hardy County Bd. of Educ.*, Docket No. 95-16-504 (Feb. 23, 1996). In order to have a personal stake in the outcome, a grievant must have been harmed or suffered damages. The intervenor "must allege an injury in fact, either economic or otherwise, which is the result of the challenged action and shows that the interest he seeks to protect by way of the institution of legal proceedings is arguably within the zone of interests protected by the statute, regulation or constitutional guarantee which is the basis for the lawsuit." *Shobe v. Latimer*, 162 W. Va. 779, 253 S.E.2d 54 (1979). “Without some allegation of personal injury, a grievant is without standing to pursue the grievance. *Lyons v. Wood County Bd.of Educ.*, Docket No. 89-54-501 (Feb. 28, 1990)” *Beard v. Bd. of Directors/Shepherd College*, Docket No. 99-BOD-268 (Apr. 27, 2000).

A general claim of unfairness or an employee's philosophical disagreement with a policy does not, in and of itself, constitute an injury sufficient to grant standing to grieve. *See Olson v. Bd. of Trustees/Marshall Univ.*, Docket No. 99-BOT-513 (Apr. 5, 2000) (citing *Skaff v. Pridemore*, 200 W. Va. 700, 490 S.E.2d 787 (1997)). Even if the employer has misapplied a statute or its own policies, where the grievant is not personally harmed, there is no cognizable grievance. *Cremeans v. Bd. of Trustees/Marshall Univ.*, Docket No. 96-BOT-099 (Dec. 30, 1996). It would probably be safe to assume the regular Bus Operators like Intervenor do not want anyone else able to bid on extra-duty assignments or accruing bus operator seniority. However, Intervenor made no such argument. In fact, Intervenor made *no* argument aside from asserting Respondent was under no obligation to reclassify Grievants, and at the end of the level four hearing that this grievance was asking for an advisory opinion.

"A skeletal argument, really nothing more than an assertion, does not preserve a claim. . . . Judges are not like pigs, hunting for truffles buried in briefs." *State ex rel. Robert Michael B. v. Robert Morris N.*, 195 W. Va. 759, 765, 466 S.E.2d 827, 833 (1995) (quoting *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991)) (citations omitted). In any event, Grievants are asking for tangible relief and not just an advisory opinion, and Intervenor's presumed concerns are no more valid than if Respondent were to simply hire more bus operators. *See McElroy v. Monongalia County Board of Education*, Docket No. 01-30-020 (Sep. 17, 2001).

As Respondent points out, Grievants' bus driving duties, although not specifically spelled out in their present job descriptions, are more than just incidental to their primarymechanic jobs. Grievants

are utilized on an almost daily basis to undertake bus driving duties for one reason or another. Respondent derives an important benefit from having back-up operators on hand ready on short notice. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. *Dillon v. Bd. of Educ. of County of Wyoming*, 177 W. Va. 145, 351 S.E.2d 58 (1986). Intervenor has not shown Respondent abused such discretion in assigning bus driving duties to Grievants.

The multi-classification of service employees as described in W. Va. Code §18A-4-8 is sometimes necessary for the efficient operation of the schools. *Roberts v. Wyoming County Bd. of Educ.*, Docket No. 55-86-322-4 (Apr. 3, 1987). However, the statutes are silent about what portion of time a worker must spend on an out-of-class task in order to deserve reclassification and/or multi-classification. The Grievance Board has provided guidance on these matters. While a worker may be required to perform occasional "overlap" duties of another distinct class, if the assignments are specified in the worker's job description and are reasonably related to the duties contemplated by the statutory description of the presently-held classification, reclassification or multi-classification is not required. *See Boyer v. Wood County Bd. of Educ.*, Docket No. 90-54-196 (Jan. 29, 1991). Conversely, when a worker regularly performs work in her own and another classification, multi-classification is required. *White v. Randolph County Bd. of Educ.*, Docket No. 94-42-033 (Aug. 15, 1994).

Grievants, for their part, have proven they are regularly performing Bus Operator duties in addition to their Mechanic Duties. A school service employee who establishes, by a preponderance of the evidence, that he is performing the duties of a higher W. Va. Code §18A-4-8 classification than that under which he is officially categorized, is entitledto reclassification. *Gregory v. Mingo County Bd. of Educ.*, Docket No. 95-29-006 (July 19, 1995). “Multiclassification” is applied to personnel who perform tasks that combine two or more class titles, and multiclassified employees are entitled to the highest pay grade of the classifications in which they are employed. W. Va. Code § 18A-4-8(i)(61). Multiclassification is a higher-order class title than any singular classification, and Grievants are entitled to be reclassified into a multiclassification title because their assigned duties fall in both Mechanic and Bus Operator class descriptions. The following Conclusions of Law support this decision:

CONCLUSIONS OF LAW

1. This is a non-disciplinary grievance in which Grievants bear the burden of proof. Grievants' allegations must be proven by a preponderance of the evidence. *See*, W. Va. Code § 18-29-6, 156 W. Va. C. S. R. 1 § 4.21. "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health and Human Resources*, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the party bearing the burden has not met its burden. *Id.*

2. A Bus Operator has no standing to intervene challenge the multiclassification of a Mechanic/Bus Operator without alleging some injury in fact that would be caused by the classification. *See Beard v. Bd. of Directors/Shepherd College*, Docket No. 99-BOD-268 (Apr. 27, 2000)*. See also McElroy v. Monongalia County Board of Education*, Docket No. 01-30-020 (Sep. 17, 2001).

3. The multi-classification of service employees as described in W. Va. Code §18A-4-8 is sometimes necessary for the efficient operation of the schools. *Roberts v.Wyoming County Bd. of Educ.*, Docket No. 55-86-322-4 (Apr. 3, 1987); *Sizemore v. Wyoming County Bd. of Educ.*, Docket No. 55-86-310-4 (Apr. 20, 1987).

4. While a worker may be required to perform occasional "overlap" duties of another distinct class, if the assignments are specified in the worker's job description and are reasonably related to the duties contemplated by the statutory description of the presently-held classification, reclassification or multi-classification is not required. *See Boyer v. Wood County Bd. of Educ.*, Docket No. 90-54-196 (Jan. 29, 1991). Conversely, when a worker regularly performs work in her own and another classification, multi-classification is required. *Bailey v. Mercer County Bd. of Educ.*, Docket No. 91-274-158 (Jan. 31, 1992). *White v. Randolph County Bd. of Educ.*, Docket No. 94-42-033 (Aug. 15, 1994)

5. “Multiclassification” is applied to personnel who perform tasks that combine two or more class titles, and multiclassified employees are entitled to the highest pay grade of the classifications in which they are employed. W. Va. Code § 18A-4-8(i)(61). A multiclassified position has a higher-order class title than any singular classification.

6. A school service employee who establishes, by a preponderance of the evidence, that he is performing the duties of a higher W. Va. Code §18A-4-8 classification than that under which he is

officially categorized, is entitled to reclassification. *Gregory v. Mingo County Bd. of Educ.*, Docket No. 95-29-006 (July 19, 1995); *Hatfield v. Mingo County Bd. of Educ.*, Docket No. 91-29-077 (Apr. 15, 1991); *Holliday v. Marshall County Bd. of Educ.*, Docket No. 89-25-376 (Nov. 30, 1989); *Scarberry v. Logan County Bd. of Educ.*, Docket No. 89-23-63 (Oct. 30,1989). 7. Respondent, by regularly assigning Grievants duties associated with the Bus Operator classification in addition to their regular duties as Mechanics, is obligated to reclassify Grievants as multiclassified Mechanics/Bus Operators.

For the foregoing reasons, this grievance is **GRANTED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or to the Circuit Court of Wood 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 Grievance Board with the civil action number so that the record can be prepared and transmitted to the circuit court.

Date: October 25, 2004 _____

M. Paul Marteney

Administrative Law Judge

Footnote: 1

Grievants are: William C. Airhart, David P. Gant, LeRoy D. Kinney, John P. Nichols and Hans K. Rinehart. Mr. Gant, although he did not appear at the level two hearing, apparently did receive the level two decision and appealed to level four. Robert E. Marlowe and Timothy H. Moyers were named as grievants at level two, but did not appeal to level four.