ROBERT FRAMPTON,

Grievant,

v. **Docket No. 06-20-108**

KANAWHA COUNTY BOARD

OF EDUCATION,

Respondent.

DECISION

Robert Frampton ("Grievant") initiated this proceeding on December 27, 2005, alleging he was given inadequate in-service training for a glazier's position. He seeks to be given adequate training, a competency test, and employment in a glazier's position. After denials at the lower levels, Grievant appealed to level four on March 26, 2006, at which time the parties agreed to submit this matter for a decision based upon the lower level record. This grievance became mature for consideration upon receipt of the parties' fact/law proposals on May 15, 2006. (See footnote 1)

The following material facts have been proven by a preponderance of the evidence of record.

Findings of Fact

1. Grievant has been employed by Respondent for approximately 26 years. Most of his employment has been in his current classification as a truck driver. 2. In the fall of 2005, Grievant applied for a posted position for a glazier. (See footnote 2)

3. Because he had never previously been employed as a glazier, Grievant attended an in-service training for that classification, which was offered prior to competency testing.

4. The in-service session was taught by Roy Russell, Training Coordinator for Respondent, who administers all competency testing and in-service training.

5. In order to prepare for in-service training, Mr. Russell consults with the foreman of the particular area, and obtains training films and materials on the subject. In addition, for the glazier's

training, he obtained materials from the glazier's trade union in Charleston, West Virginia.

6. Prior to the in-service session at issue here, Mr. Russell had never conducted training for glazing or glasswork.

7. The eight hours of in-service training for glazier included a tour of that department, viewing of training films, and review of written training manuals.

8. Grievant has a learning disability that makes reading difficult for him.

9. Mr. Russell knew about Grievant's reading difficulties, and spent time during the training session reading and explaining some of the material to Grievant.

10. Grievant informed Mr. Russell that he was having difficulty comprehending all the material. 11. Shortly before 4:00, when the training had already lasted approximately eight hours, a break was taken. (See footnote 3) At that time, only Grievant and one other person were continuing to attend the training. Grievant did not return after the break and did not take the glazier competency test.

12. At no time did Grievant request that he be given the glazier test orally. Grievant knew of this option, because he had taken a different competency test orally at an earlier time.

13. Two individuals who attended the in-service glazier training passed the competency test.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his claims by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2004); *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 contends that Respondent failed to provide adequate competency testing, as required by the provisions of W. Va. Code § 18A-4-8e, and that he was not provided with the option of an oral test, which is also provided for under that statute. Respondent counters that the training provided complied with the statute, and that Grievant never requested an oral exam. It believes it has complied with all competency testing requirements. Pursuant to W. Va. Code § 18A-4-8e, requires the State Board of Education to create competency tests for all service personnel classification titles, which are meant to provide a method for boards of education to determine whether employees not previously

classified in a particular category can meet the statutory definition. As to in-service training, the statute states that "[a] minimum of one day of appropriate in-service training is provided to employees to assist them in preparing to take the competency tests."

As here, the adequacy of competency testing was challenged in *Bailey v. Logan County Board of Education*, Docket No. 97-23-436 (Feb. 27, 1998). In that case, the administrative law judge noted that the statute only requires that the in-service training "assist" employees preparing for competency tests, so the key issue is whether or not the training was helpful and the board of education substantially complied with its obligation. As in the instant case, the grievant in *Bailey* made no suggestions of who would have better conducted the training or what specific materials should have been handled differently.

Although Grievant claims that Mr. Russell was not personally familiar with the glazier training materials, he has introduced no specific evidence to prove that Mr. Russell did not adequately cover the pertinent material. Since Grievant did not even take the competency test, his point becomes even more difficult to prove, because he cannot establish how the training was deficient as related to the actual test. While Mr. Russell did admit that glazier training is extensive, normally encompassing several weeks to obtain basic skills, the evidence in this case does not establish that he failed to provide training which was helpful and would "assist" employees taking the test. As to Respondent's failure to provide Grievant with an oral test, this is a moot issue, because Grievant never raised the issue until after he had filed this grievance. W. Va. Code § 18A-4-8e does provide that applicants must be given the opportunity to take a competency test orally, upon request, and that the test must be administered by someone who does not know the applicant personally. There has been no violation of that provision here.

The following conclusions of law support this decision.

Conclusions of Law

1. In a non-disciplinary matter, Grievant has the burden of proving his claims by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2004); *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. Prior to competency testing, "[a] minimum of one day of appropriate in- service training is provided to employees to assist them in preparing to take the competency tests." W. Va. Code § 18A-4-8e(g).

3. Grievant has failed to prove that the in-service training for the glazier position at issue was not helpful in preparing for the glazier competency exam or that it otherwise violated any of the provisions of W. Va. Code § 18A-4-8e.

Accordingly, this grievance is **DENIED**.

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

Date: June 8, 2006

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DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

Grievant was represented at all levels by Gary Archer of the West Virginia Education Association, and Respondent was represented by counsel, James Withrow.

Footnote: 2

"'Glazier' means personnel employed to replace glass or other materials in windows and doors and to do minor carpentry tasks. W. Va. Code § 18A-4-8(i)(44).

Footnote: 3

After the break, the one remaining person received additional training for approximately 45 minutes.