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Administrator

WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD

GASTON CAPERTON
Governor

OFFICES:

240 Capitol Street
Suite 515
Charleston, WV 25301
Telephone: 348-3361

DARRELL HALL

v.

Docket No. 90-23-467

LOGAN COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, whose employment with Respondent Logan County Board of Education as a Mechanic Assistant was terminated March 29, 1990, pursuant to a reduction-in-force action, filed a grievance April 3, 1990, alleging that Respondent violated W.Va. Code §18A-4-8b(b). The Level I evaluator ruled that he had no authority to decide the claim, and it was denied at Level II. Consideration was waived at Level III¹ and the case was advanced to Level IV, where, after two continuances,² hearing was held.³

¹Although the Level I evaluator ruled on April 4, 1990, and Grievant promptly appealed, the Level II hearing was not held until June 14 and the decision issued July 2. Moreover, the Level III decision to waive consideration was not made until September 27 and Grievant was not notified of that determination until a month later, on October 26. The inescapable conclusion from this case-history is that this matter has been unreasonably delayed.

²Hearing scheduled for November 27 was continued at Respondent's request and hearing scheduled for December 27
(Footnote Continued)

While at hearing and in his proposals Grievant continues to allege a violation of Code §18A-4-8b(b),⁴ Grievant has not articulated any reason why the facts of this case constitute such a violation, and it is clear there was none. Grievant was the only Mechanic Assistant in the county,⁵ his position was eliminated, and there was no vacancy he could be moved into.

Grievant's complaint actually is that he believes he should have been classified as a Mechanic at the time the RIF occurred; if he had been a Mechanic, he would not have

(Footnote Continued)

was continued at Grievant's request. Hearing was held January 31, 1991.

³Responsive briefing was scheduled. While Grievant's proposed findings of fact and conclusions of law were received by the undersigned February 15, 1991, Respondent's counsel notified the undersigned that he had never received them and it was determined that they had not been served on Respondent. Briefing was extended; Respondent's proposals were received March 1, 1991.

⁴Code §18A-4-8b(b) provides in pertinent part, "Should a county board of education be required to reduce the number of employees within a particular job classification, the employee with the least amount of seniority within that classification or grades of classification shall be properly released and employed in a different grade of that classification if there is a job vacancy: Provided, That if there is no job vacancy for employment within such classification or grades of classification, he shall be employed in any other job classification which he previously held with the county board if there is a vacancy and shall retain any seniority accrued in such job classification or grade of classification."

⁵Grievant, originally employed by Respondent as a Greaser, was placed in the Assistant Mechanic classification in order to resolve, apparently by settlement, a prior grievance, wherein he contested Respondent's "try[ing] to move a mechanic in from the street in front of me," as he put it. Tr. 2.

been laid off. He believes that, since he has done mechanic work, he should have attained the classification. The record is clear, however, that Respondent requires all its Mechanics to be certified; while Grievant has taken a test for Mechanic certification, he has failed to pass it.

The law is well-settled that

[i]t is appropriate for a county board of education to require its employees to successfully complete an examination or demonstrate relevant prowess in some other reasonable fashion in order to attain privileges to an employment classification title. Moran v. Marion Co. Bd. of Educ., Docket No. 24-88-178 (Jan. 27, 1989); Jervis [v. Wayne Co. Bd. of Educ., Docket No. 50-88-084 (Nov. 2, 1988)]; Cook v. Wyoming Co. Bd. of Educ., Docket No. 55-87-014 (May 14, 1987); Jones v. Ohio Co. Bd. of Educ., Docket No. 35-86-051 (May 30, 1986); Adkins v. Logan Co. Bd. of Educ., Docket No. 23-86-024 (May 22, 1986).

Basham v. Kanawha Co. Bd. of Educ., Docket No. 89-20-581 (Nov. 21, 1989). Grievant did not show, or even attempt to show, any unreasonableness of Respondent's testing requirements, and, although he alleged that he was treated unfairly, clearly he has not been discriminated against because Respondent is treating him like all other employees who want to be Mechanics, requiring certification.⁶

⁶Grievant's representative asserted at the Level IV hearing that Grievant thought that Respondent had need of his services as a Mechanic. While Grievant, through representative, did not articulate why he thought such a statement was legally significant, it may be noted that it of course is insufficient to establish that Respondent improperly instituted the RIF action.

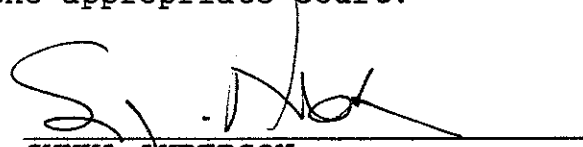
In addition to the findings of fact and conclusions of law contained in the foregoing discussion, the following is appropriate:

Conclusion of Law

Grievant failed to establish a violation of any statute, or discrimination, or that Respondent abused its discretion.

The grievance is accordingly **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Logan 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 Hearing Examiners is a party to such appeal, and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate court.



SUNYA ANDERSON
HEARING EXAMINER

Date: March 19, 1991