

BEFORE THE WEST VIRGINIA SUPREME COURT OF APPEALS

REBECCA SHANKLIN,

Petitioner,

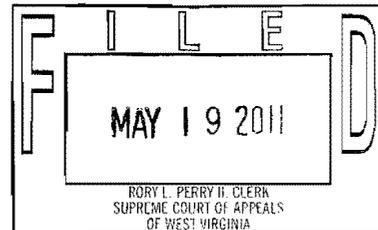
v.

Appeal No. 101526

Civil Action No. 10-AA-25

BOARD OF EDUCATION OF THE
COUNTY OF KANAWHA,

Respondent.



SUPPLEMENTAL BRIEF FILED ON BEHALF OF RESPONDENT

James W. Withrow
State Bar #4103
Kanawha County Board of Education
Office of General Counsel
200 Elizabeth Street
Charleston, WV 25311
304-348-7798

In accordance with this Court's Order entered on March 10, 2011, the respondent, the Kanawha County Board of Education wishes to submit this supplemental brief. In addition to the arguments made in the response to the petition for appeal, the respondent urges the Court to consider two additional arguments in favor of the respondent.

A brief recitation of the pertinent facts may be helpful. Prior to June 30, 2010, Kanawha County Schools employed four individuals whose job classification were General Maintenance and who worked out of the Crede Warehouse. These four individuals performed job duties such as moving furniture, filling vehicles with fuel and similar "unskilled" jobs.¹ The respondent employed another individual who was classified as General Maintenance/Electrician and was assigned to work at Laidley Field, who had less seniority than the other four General Maintenance workers. This individual's job duties involved significant work on various electrical and electronic equipment at Laidley Field. The respondent eliminated the General Maintenance positions at Crede and those employees were provided other jobs within the school system. The respondent did not eliminate or reduce in force the General Maintenance/Electrician at Laidley Field

The petitioner cites the case of *Taylor-Hurley v. Mingo County Board of Education*, 209 W. Va. 780, 551 S.E. 2d 702 (2001) for the authority that multiclassified employees are to be considered as employed in all areas contained

¹ The use of the term "unskilled" is not intended to denigrate these employees, but rather to differentiate their duties from those who jobs require additional training, certification or skills.

within their multiclassification, and are required to be considered when there is a reduction in force in any area in which they are classified. The respondent argued before both the West Virginia Public Employees Grievance Board and the Circuit Court this particular case was unusual and distinguishable from *Taylor-Hurley* in that one of the classifications held by the individual at Laidley Field was electrician, and none of the other general maintenance employees were qualified to hold this position. The job at Laidley Field consists mostly of duties which are electrical in nature, such as wiring, keeping the scoreboard and clocks in working order and lighting. General Maintenance is a small portion of the job and was included only to provide the respondent with some flexibility in what such individual may be required to do. The petitioner is admittedly not a licensed electrician and is not qualified to hold the position. The petitioner's argument that all five of the general maintenance employees should have been RIF'd is academic, at best. Since she would not be able to perform the electrician's duties, she would not have been considered if the Laidley Field worker had been subject to a termination of contract and the position readvertised.

Despite these facts, the ALJ declined to employ the "absurd result" rule, citing the ruling in *Taylor-Hurley*. While the prior decision of this Court discourages the use of the "absurd result" doctrine, it did not rule out its use completely. This Court stated "the absurd results doctrine should be used sparingly." In *Taylor-Hurley* there was no need to employ the absurd results rule, since all of the service personnel positions involved in the reduction in force were

secretarial/clerical in nature. A review of the four positions in question in that case shows that the skills and abilities required for each of the positions appear to be similar. That is, they are all essentially equivalent or interchangeable positions. There is a distinct difference in this case. One of the required certifications for the job at Laidley Field is an electrician's license. None of the other four general maintenance employees who were RIF'd held such a license. It would have been a futile exercise and would not have benefited the petitioner in any way to terminate the contract of the Laidley Field worker and readvertise his job. This is often times described as "no harm, no foul." The petitioner has not been harmed by keeping the individual at Laidley Field, because she would not have been qualified to be placed in the position.

Also this Court in *Taylor-Hurley* noted that to comply with the statute a job classification can be deleted from an employee's job title. In footnote 11 this Court observed:

While we take no position on the alternative means of effecting a reduction in force, the Court notes that Appellee Hurley indicates that an alternative course would have been to simply terminate both Ms. Hurley and Ms. Hale, and delete the secretarial classification from the multiclassified titles of Ms. Sammons and Ms. Varney. If there remained a need for a secretary at the BOE's main office, then the Board could have terminated the contracts of Ms. Sammons and/or Ms. Varney and posted the new multiclassified positions containing the secretarial component. As Ms. Hurley points out, through such method "a reduction in force of two secretary positions could have been effected in accordance with the statute and with complete respect for the seniority rights of all parties.

This is the course the respondent undertook in this case. After the Board approved the elimination of the general maintenance positions at Crede, the general

maintenance classification was deleted from the Laidley Field position. This is what the statute says is to occur. West Virginia Code §18A-4-8g(l) provides, in part, “if a multiclassified service person is subject to reduction in force in one classification category, the service person retains employment in any of the other classifications categories that he or she holds.... In that case, the county board shall delete the appropriate classification title or classification category from the contract of the multiclassified employee.” The classification title of general maintenance has been deleted from the Laidley Field employee’s contract, and there are no longer any persons regularly employed by the respondent with the classification title of general maintenance.

Conclusion

Based on all of the foregoing, the respondent, Kanawha County Board of Education, respectfully requests that the Court determine that the decisions of the West Virginia Public Employees Grievance Board and the Circuit Court were clearly correct and deny the appeal of the petitioner herein.

Respectfully submitted
KANAWHA COUNTY BOARD
OF EDUCATION
By Counsel



James W. Withrow, State Bar #4103
General Counsel
Kanawha County Board of Education

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Charleston, WV 25311
304-348-7798

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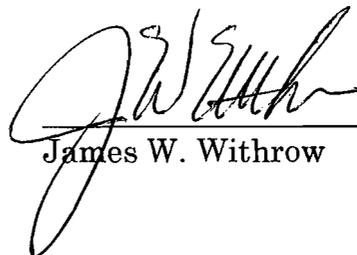
BOARD OF EDUCATION OF THE
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CERTIFICATE OF SERVICE

The undersigned, James W. Withrow, Counsel for the Board of Education of the County of Kanawha, hereby certifies that on the 18th day of May, 2011, I served the foregoing SUPPLEMENTAL BRIEF FIELD ON BEHALF OF RESPONDENT by mailing a true and correct copy thereof, postage prepaid to the following individual:

John E. Roush
West Virginia School Service
Personnel Association
1610 Washington Street East
Charleston, WV 25311


James W. Withrow