HELEN EVANS

v. Docket No. 93-14-440

HAMPSHIRE COUNTY BOARD OF EDUCATION

DECISION

Grievant, Helen Evans, employed by the Hampshire County Board of Education (Board or Respondent) as a Paraprofessional/Aide IV, advanced a claim to level four on October 22, 1993, in which she alleged that she was certified as a Paraprofessional effective December 7, 1992, but was not reclassified by the Board until September 13, 1993.1 Grievant asserts that she was performing the duties of a Paraprofessional since the time of her certification and requests reclassification with backpay from December 7,

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1Grievant filed this claim at level one on September 1, 1993. Stephen Keener, principal of Romney Elementary School, responded on September 7, 1993, that he lacked the authority to make decisions regarding pay levels and retroactive pay. Following an evidentiary hearing held at level two on October 11, 1993, Superintendent Gerald A. Mathias denied the grievance. Grievant chose to bypass consideration at level three consistent with the provisions of W.Va. Code 18-29-4(c).

1992, through August 26, 1993. A level four hearing was conducted on May 13, 1994. Proposed findings of fact and conclusions of law were submitted by the Board on May 31 and

by Grievant on June 6, 1994, at which time the matter became mature for decision.

The facts of this matter are essentially undisputed.

Prior to December 1992 Grievant was classified as an Aide IV and had entered into an agreement to be a Supervisory Aide. Grievant applied for and received classification as a Paraprofessional from the State Board of Education, effective December 7, 1992. Grievant was notified by letter dated January 8, 1993, that the certification had been issued; shortly thereafter she requested that she be reclassified as a Paraprofessional/Aide IV. At that time she understood the procedure might require some time to complete but that her reclassification would be made retroactive to December 1992 or January 1993. When no action was taken by June 17, 1993, Grievant requested in writing that she be reclassified. On August 16, 1993, Superintendent Mathias informed Grievant that she would be classified as a Paraprofessional/Aide IV, effective August 27, 1993.

Grievant asserts that she is entitled to reclassification effective December 7, 1992, the date she received the Paraprofessional certification. In addition to possession of the certification, Grievant further asserts that she was performing the duties of a Paraprofessional in December 1992. Specifically, she was instructing students on a substitute basis in the absence of the regular classroom teachers. Grievant argues that W.Va. Code 18A-4-8 requires that the Board implement the upgraded classification effective the date the advanced certification was issued when she was actually performing the duties of

the higher classification.

The Board argues that it did not have a job description for an Aide/Paraprofessional at the time Grievant received her certification, nor was Grievant assigned to a position as a Paraprofessional. The Board concedes that Grievant covered for a teacher for one-half day and for odd amounts of time for other teachers who were attending meetings, but argues that such assignments were within the duties listed for Supervisory Aide. Superintendent Mathias explained that the Board chose not to treat the Paraprofessional classification as an entitlement to aides who had attained the requisite certification, but rather determined it to be a distinct job classification to be filled as a vacancy or through reclassification under that section of W.Va. Code 18A-4-8 which requires the annual review of service employees classifications. Because the Board had not chosen to utilize the Paraprofessional classification prior to adopting the job description in June 1993, the Board argues that Grievant was correctly assigned as an Aide IV, with supervisory duties, throughout the 1992-93 school year.

As an Aide, Grievant is employed and trained to assist teachers in the classroom setting.2 By virtue of her training and experience Grievant has attained the classification of Aide IV. Grievant had also entered into a supplemental contract with the Board in which she agreed to serve as a supervisory aide during the 1992-93 school term. In return for additional compensation Grievant agreed to perform supervisory duties when requested by the principal, assistant principal, or professional employee to whom the

aide is assigned in accordance with W.Va. Code 18A-5-8. Specific duties and responsibilities listed on the contract were "early bus duty at 3:00, emergency substituting for teachers [and] cover for teachers for meetings."
On her own initiative Grievant attained certification as a paraprofessional, defined by W.Va. Code 18A-4-8 as

> a person certified pursuant to section two-a [18A-3-2a], article three of this chapter to perform duties in a support capacity including, but not limited to, facilitating in the instruction and direct or indirect supervision of pupils under the direction of a principal, a teacher, or another designated professional educator: Provided, That no person employed on the effective date of this section in the position of an aide may be reduced in force or transferred to create a vacancy for the employment of a paraprofessional.

2A brief description is provided in W. Va. Code 18A-4-8 for Aide I as "personnel selected and trained for teacher-aide classifications such as monitor aide, clerical aide, classroom aide or general aide." Aides II, III, and IV are further defined only as to training, seniority, or assigned work location.
The three-page job description adopted by the Board for the position classification of "Aide-Paraprofessional" is a comprehensive listing of qualifications and responsibilities. The pertinent parts of this document are

the "Job Goal" and "Performance Responsibilities." The "Job Goal" is "[t]o assist the teacher and the principal in maintaining appropriate classroom activities and environment in order that students may learn effectively." The "Performance Responsibilities" is a seventeen item listing of functions to be completed, most important to this matter being number thirteen which provides for the paraprofessional to act in the capacity of a substitute teacher for one-half day or less.3

The Board's position that Grievant was properly classified during the 1992-93 school year is erroneous. This conclusion is based upon a review of the following: W.Va. Code 18A-5-8 provides in pertinent part that any aide who agrees to do so shall stand in the place of the parent or guardian and shall exercise such authority and control over pupils as is required of a teacher . . . The principal shall designate such aides in the school who agree to exercise such authority on the basis of seniority as an aide and shall enumerate the instances in which such authority shall be exercised by an aide when requested by the principal, assistant

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3This provision continues that the aide "[m]ay also be asked to cover other classrooms in the building for no more than one-half day or less to perform . . . duties: (This does not apply to Chapter I Aides/ParaProfessionals who are not allowed to work in the capacity of substitute teacher due to program guidelines." Grievant is a Chapter I

Aide/Paraprofessional and is accordingly limited to working within that program.

principal or professional employee to whom the aide is assigned: Provided, That such authority does not extend to suspending or expelling any pupil, participating in the administration of corporal punishment or performing instructional duties as a teacher or substitute teacher."

A comparison of the provisions defining a supervisory Aide and Paraprofessional establishes that the primary difference in the classifications is that the Paraprofessional may provide instruction to students on a limited basis. It is undisputed that the Board assigned Grievant such instructional duties throughout the 1992-93 school year; therefore, she was in fact performing the duties of a Paraprofessional.

The Board's second argument, that it had prior to June 1993 elected not to utilize the classification of Paraprofessional and had no job description for such a position is not persuasive. Although the Board had not formally adopted the classification, Grievant and possibly other aides who were certified and providing instructional services on a substitute basis were functioning as Paraprofessionals without the benefit of that classification. It is noted that the classification of Paraprofessional was added to W.Va. Code 18A-4-8 effective August 31, 1990, giving the Board a two-year notice that some employees might be entitled to reclassification with the proper certification.4 Because Grievant was performing

the duties of a Paraprofessional on December 7, 1992, the effective date of her certification for that classification, she is entitled to the appropriate compensation from that date.

In addition to the foregoing narration it is appropriate to make the following formal findings of fact and conclusions of law.

FINDINGS OF FACT

1. Grievant was employed by the Hampshire County Board of Education as an Aide IV during the 1992-93 school year.

2. In addition to her regular classification Grievant entered into a supplemental contract as a supervisory aide for the 1992-93 school year.

3. Grievant's supervisory duties included "emergency substituting for teachers" and "cover for teachers for meetings."

4. Effective December 7, 1992, Grievant was certified as a Paraprofessional.

4As noted in an opinion of the State Superintendent of Schools, dated March 31, 1993, solicited by Grievant, her "job could have grown into a paraprofessional position." In this case it appears that is exactly what happened when the Board included the instructional duties in the supplemental supervisory contract.

5. The Board adopted a job description for Paraprofessional in June 1993 and Grievant was reclassified as an Aide IV/Paraprofessional effective August 1993.

6. Grievant was not awarded backpay to the effective date of her certification.

CONCLUSIONS OF LAW

1. Supervisory aides shall stand in the place of the parent or guardian and shall exercise such authority and control over pupils as is required of a teacher. The principal shall enumerate the instances in which such authority shall be exercised by an aide when requested; however, this authority does not extend to performing instructional duties as a teacher or substitute teacher. W.Va. Code 18A-5-8.

2. A paraprofessional is a person certified to perform duties in a support capacity, including, but not limited to, facilitating in the instruction and direct or indirect supervision of pupils under the direction of a principal, a teacher, or another designated professional educator. W.Va. Code 18A-4-8.

3. "Upon the change in classification or upon meeting the requirements of an advanced classification of or by any employee, his salary shall be made to comply with the requirement of this article, and to any county salary schedule. . . ." W.Va. Code 18A-4-8.

4. Because Grievant was performing the duties of a paraprofessional as defined by statute, she was entitled to the advanced position classification and enhanced salary classification upon receipt of her certification as a paraprofessional on December 7, 1992.

Accordingly, the grievance is GRANTED and the Hampshire County Board of Education is hereby Ordered to compensate

Grievant for the advanced classification from December 7, 1992, through August 27, 1993.

DATED 9/28/94 SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE