MARY C. SITES and JUANITA MURPHY

v. Docket No. 94-36-1112

PENDLETON COUNTY BOARD OF EDUCATION

DECISION

Mary C. Sites and Juanita Murphy, Grievants, employed by the Pendleton County Board of Education (Board) as teachers' aides, filed individual level one grievances in November 1994, in which they complained that they are misclassified because they perform the duties of paraprofessionals. Grievants' immediate supervisors lacked authority to resolve the matter at level one. After consolidation and hearing, the grievance was denied at level two.

Grievants elected to bypass consideration at level three and advanced the matter to level four on December 9, 1994. Following a hearing on February 24, 1995, the grievance became mature for decision with Grievants' submission of proposed findings of fact and conclusions of law on March 21, 1995.

The facts of this matter are as follows:

1. Grievant Mary C. Sites has been employed by the Boardfor approximately twenty-four years and is presently classified as an Aide IV assigned to the Special Education program at Circleville Elementary School.

2. Grievant Juanita Murphy has been employed by the Board for approximately twenty-two years and is assigned as an Aide IV in the special education program at Brandywine Elementary School.

3. Both Grievants fulfilled the requirements to obtain certification as paraprofessionals. Grievant Sites received her certification in November 1993. The effective date on Grievant Murphy's certificate is November 17, 1994, although it appears she did not actually receive the document until February 1995.

4. Both Grievants were employed as supervisory aides for the 1994-95 school year.

5. Grievants' request for reclassification was denied by the Board.

Grievants argue that they are entitled to reclassification because they have obtained the certification and perform the duties of paraprofessionals as defined by statute. The Board asserts that employees have no inherent right to the classification but that the determination of what constitutes paraprofessional positions is within its discretion. It argues that the classification of Grievants as paraprofessionals cannot be justified because their duties have not changed and they do not meet the criteria for theadvanced classification. It was suggested that reclassification for the 1995-96 school year may be possible due to program changes.

W.Va. Code §18A-3-2a(3) provides:

A paraprofessional certificate may be issued to a person who has completed thirty-six semester hours of post-secondary education or its equivalent in subjects directly related to performance of the job, all approved by the state board, and can demonstrate the proficiencies to perform duties as required of a paraprofessional as defined in section eight [§18A-4-8], article four of this chapter.

W.Va. Code §18A-4-8 defines paraprofessional as

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: 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.

These provisions establish that classification as paraprofessional is gained with certification and duties. Grievants possess the required certification. Both Grievants offered testimony that they instruct children most of their working hours. Grievants also offered interpretations of the State Superintendent of Schools which state that an employee with the proper certification will be entitled to the classification of paraprofessional by reason of work or bybidding on such a position.

The position of the Board is not well defined but it appears to assert that it has the right to determine whether a position will remain that of an aide or become paraprofessional. Assistant Superintendent Don Bucher stated that the Board does not believe Grievants are

performing the duties of paraprofessionals at this time.

While a board of education may determine to upgrade a position or to post a position as paraprofessional, rather than as an aide, it also has a statutory duty to review each service personnel employee's job classification annually and to reclassify employees as indicated. W.Va.Code §18A-4-8. Although the Board indicates that it interprets the Code §18A-4-8 definition of paraprofessional to require some vague, higher-level duties than those performed by aides, no such criteria exists.

On the contrary, the statutory definition is very generally worded and must be broadly applied. Therefore, because Grievants 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, teacher, or other professional educator, they are entitled to the classification of paraprofessional. See Morgan v. Pizzino, 256 S.E.2d 592 (W.Va. 1979).

The final matter to be determined is the appropriateremedy. Grievant Sites requests that she be reclassified effective November 1993. Grievant Murphy requests that she be reclassified from two months after she became eligible for certification as a paraprofessional. This request is based upon her assertion that the Board discouraged her from applying for the certificate by informing her that she would not be reclassified in any event and by denying her an application form.

Because Grievant Sites was certified and performing the requisite duties in November 1993, her classification must be made effective the date of her certification. It is unfortunate if a board of education would, in any manner, impede the professional growth of its employees; however, Ms. Murphy was not constrained from acting earlier in seeking the certificate by her own means. Therefore, her reclassification as paraprofessional shall also be effective the date of her certification.

In addition to the foregoing it is appropriate to make the following formal conclusions of law.

CONCLUSIONS OF LAW

1. Grievants have proven by a preponderance of the evidence that they are certified and perform duties in a support capacity, under the direction of a principal, teacher, or other

professional educator, which include, but are not limited to, facilitating in the instruction and direct orindirect supervision of pupils, and are, therefore, entitled to the classification of paraprofessional as provided by W.Va. Code §18A-4-8. Evans v. Hampshire County Bd. of Educ., Docket No. 93-14-440 (Sept. 28, 1994).

2. Grievants are entitled to reclassification as paraprofessionals with back pay from the effective dates of their certifications.

Accordingly, the grievance is GRANTED.

DATED 5/31/95 SUE KELLER, SENIOR ADMN. LAW JUDGE