MARY CECELIA HIGGINS

v. Docket No. 94-42-1111

RANDOLPH COUNTY BOARD OF EDUCATION

DECISION

Grievant, Mary Cecelia Higgins, employed by the Randolph County Board of Education as a Secretary III, filed a level one grievance on September 12, 1994, in which she alleged that she is misclassified, a violation of W.Va. Code §18A-4-8. Grievant's immediate supervisor recommended multiclassification; however, the grievance was denied at level two. Grievant bypassed level three and advanced this matter to level four on December 9, 1994. An evidentiary hearing was conducted on September 13, 1995, and the grievance became mature with the filing of proposed findings of fact and conclusions of law by both parties on or before October 17, 1995.

The following facts are undisputed.

1. Grievant is presently classified as a Secretary III and is one of two secretaries assigned to Elkins Middle School.

2. Principal David Roth has divided the duties of the schoolsecretaries. One secretary maintains school records and provides other secretarial duties while Grievant primarily engages in financial duties.

3. Grievant utilizes in excess of fifty percent of the work day completing accounting related duties.

4. By memorandum dated July 9, 1993, Mr. Roth requested that Grievant be reclassified as Secretary III/Accountant based upon her duties managing the financial records at Elkins Middle School.

5. Grievant made several follow-up contacts with members of the administration regarding reclassification prior to July 11, 1994, when Superintendent Tony Marchio advised her that he could not recommend the requested classification, but indicated a desire to seek an acceptable alternative solution.

6. Grievant requested and received a waiver of the time limits in which to file a grievance while seeking an informal resolution to this matter.

7. Grievant received no further contact from the Board regarding this matter prior to initiating grievance proceedings in September 1994.

8. The Board requires that employees successfully complete a competency test prior to reclassification.

9. The Board has not administered the competency test for Accountant II at any time relevant to this matter.

Grievant asserts that more than half her work day is spent completing duties that fall under the statutory definition of Accountant II. W.Va. Code §18A-4-8 defines Accountant II as"personnel employed to maintain accounting records and to be responsible for the accounting process associated with billing, budgets, purchasing, and related operations." Grievant argues that she is entitled to the Accountant II classification because she is responsible for financial operations connected with the hot lunch fund, including point of service count, billing, accounts receivable, and monthly and yearly financial reports. She is also responsible for the maintenance of accounting records necessary for the school's general funds account and various special accounts, textbook user fees, including the preparation of notifications, billing, payment schedules, collection, and preparation of necessary reports, and for the Step 7 and grant funds received by the school.

Grievant argues that W.Va. Code §18A-4-8 requires the Board to annually review her position and classify her according to the duties she performs, and that the Code §18A-4-8e provision which provides for competency tests cannot be construed as an obstacle to the reclassification of an employee who is already performing the duties of a classification title and meets the statutory definition of the title. Grievant seeks reclassification as Secretary III/Accountant II, effective from the date of her initial request.

The Board responds that Grievant was notified on May 26, 1995, of her approved reclassification to Secretary III/Accountant II, effective upon her passage of the Accountant competency test. The Board argues that Grievant does not meet the qualifications for Accountant III because she does not possess a college degree withan emphasis in Accounting.

It appears there is no controversy as to Grievant's multiclassification as Secretary III/Accountant II. The Grievance Board has also determined that a board of education may require an employee to

successfully complete a competency test prior to reclassification. Cook v. Randolph County Bd. of Educ., Docket No. 95-42-238 (Dec. 27, 1995). The sole remaining issue is the effective date of Grievant's reclassification. This matter was also addressed in Cook. As with Ms. Cook, Grievant offered undisputed testimony that she had met with Superintendent Tony Marchio a number of times to discuss her work and classification, in an attempt to informally resolve the issue. A formal grievance was filed only after it became apparent to Grievant that she could not secure reclassification by this means.

Like Cook, this situation involves an employee working out of classification, with the Board's knowledge and tacit consent. No reason is offered why Grievant was not given a competency test in July 1993 when Mr. Roth requested her reclassification. The record indicates that the test was scheduled sometime in the spring of 1995, but was postponed at the request of one or more employees who were not available at that time. The Board does not address the delay in rescheduling the test or offer any reason why the test may not be administered to employees on an "as needed" basis. While a board may require that an employee pass a competency test prior to reclassification, this contingency does not exonerate the employer from the statutory duty to ensure that employees are properlyclassified. Grievant has established that she has been misclassified in excess of two years, a violation of W.Va. Code §18A-4-8.

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

CONCLUSIONS OF LAW

1. A grievant must prove all of the allegations constituting the grievance by a preponderance of the evidence. Weaver v. Mason County Bd. of Educ., Docket No. 94-26-028 (Oct. 25, 1994).

2. Grievant has proven that she has performed the duties of Accountant II since September 1993, with the Board's knowledge, while classified as a Secretary.

3. A requirement that an employee successfully complete a competency test prior to reclassification does not exonerate a board of education from the duty to ensure proper classification for all employees. Cook v. Randolph County Bd. of Educ., Docket No. 95-42-238 (Dec. 27, 1995).

Accordingly, the grievance is **GRANTED** and the Board Ordered to administer the competency test within thirty (30) days and upon her successful completion, to reclassify Grievant as a Secretary

III/Accountant II, effective September 1993. No backpay is requested and none awarded.

DATED: December 27, 1995 _____

Sue Keller

Senior Administrative Law Judge