RITA DEMPSEY and MELISSA STRATTON,

Grievants,

v. Docket No. 94-29-1068/1069

MINGO COUNTY BOARD OF EDUCATION,

Respondent,

and

BETTY SAMMONS and PAM VARNEY,

Intervenors.

D E C I S I O N

Grievants, Rita Dempsey and Melissa Stratton, are employed as Secretary II's by the Mingo County Board of Education ("MCBOE"). They argue certain positions at MCBOE's Central office should have been posted. Betty Sammons and Pam Varney, Intervenors, hold the positions in question. This grievance was waived at Levels I and III and denied at Level II. A Level IV hearing was held on April 12, 1995, and this case became mature for decision on June 1, 1995, after the submission of proposed findings of fact and conclusions of law.

The material facts giving rise to this grievance are not in dispute and are set forth below as findings of fact.

Findings of Fact

1. Grievants, Rita Dempsey and Melissa Stratton, are employed as Secretary II's at Burch Junior High School and Williamson Junior High School, respectively.

2. Betty Sammons, Intervenor, was employed at MCBOE's Central Office as a Clerk II. She filed a grievance requesting to be reclassified as a Computer Operator. After a discussion with Superintendent Everett Conn and a recommendation from her direct supervisor, Intervenor Sammons was reclassified as a Clerk II/ Secretary III, and she dropped her grievance.

3. In 1988, Intervenor Sammons took a secretarial competency test designed and given by the Bureau of Employment Programs at the request of MCBOE. She received notice she had passed the test with an almost perfect score. She did not receive a secretarial position at that time because of insufficient seniority.

4. Intervenor Sammons' direct supervisor is Charles Cline, Director of Chapter I. In this position she completes order forms for Chapter I and Title II funds, fills out order forms for teachers, completes program applications for Chapter I, takes care of insurance, and types Mr. Cline's correspondence and memos. She does secretarial work for Superintendent Conn and Assistant Superintendents as time allows. She also rotates with the other secretaries to cover the receptionist's duties. Intervenor Sammons performs the same duties as the other individuals classified as Secretary III's in MCBOE's Central Office.

5. Pam Varney, Intervenor, has been an employee of MCBOE since 1973. Her first years she worked as an aide. In November, 1986, she bid on and received a position as a Secretary II at Red Jacket Elementary. No competency test was required at that time. She held that position for the remainder of the school year. As the result of a grievance styled, Hatfield v. Mingo County Bd. of Educ., Docket No. 29-87-019-4 (May 28, 1987), Intervenor Varney was removed from that position and returned to an aide position. The grievance was resolved on the issue of seniority only, and Intervenor Varney's qualifications were not questioned. Id. at Finding of Fact 6.

6. In 1989, Intervenor Varney was hired as a Receptionist/ Clerk II in MCBOE's Central Office. Intervenor Varney later filed a grievance asking to be reclassified to a Computer Operator. After a discussion with Superintendent Conn and a recommendation from her direct supervisor, Intervenor Varney was reclassified as a Receptionist/Clerk II/Secretary III. The grievance was then dropped.

7. Intervenor Varney's direct supervisor is Mr. Tommy Sammons, Treasurer. In this position she answers all the telephones in the Central Office and responds to numerous questions. She also deals with Mr. Sammons' daily correspondence, types letters and memos, does some limited transcribing, and itemizes the monthly long distance telephone bills for twenty-four schools and discusses these with the school principals. She also performs secretarial tasks for Superintendent Conn and AssistantSuperintendents as time allows. Her work, with the exception of answering the telephones, is similar to the work performed by other Secretary III's in the Central Office.

8. Secretarial positions in MCBOE's Central Office have previously been reclassified without

posting.

Issues

Grievants make three arguments. First, Grievants state MCBOE violated W. Va. Code §18A-4-7a when it did not post the positions. Second, Grievants argue the Intervenors are not qualified to be secretaries, as Intervenor Sammons had not passed the state competency exam, and Intervenor Varney has passed no competency exam. Grievants also argue Intervenor Varney's eight months in the position of a Secretary II cannot count as qualifying her for a secretarial position, because her placement was overturned by a subsequent grievance. Third, Grievants argue MCBOE violated W. Va. Code §18A-4-8 when it reclassified the Intervenors as they were not performing the duties of secretaries at the time.

Intervenors respond there were no vacancies created which required posting when they were reclassified. Additionally, MCBOE followed past practice and procedures in reclassifying Central Office Staff. Intervenors also argue they are both qualified to be secretaries, Intervenor Sammons by the test she took and passed in 1988, and Intervenor Varney by having held a regular secretarial position during the 1986-87 school year prior to the requirement for competency testing. Intervenors also state their duties have not changed since the reclassification, and they were doing thework of Secretary III's both before and after their reclassification.

Respondent argues it has not violated any code sections. Indeed, Respondent contends W. Va. Code §18A-4-8 requires county boards of education to reclassify employees who are working out-of-classification. Respondent also notes the reclassification of employees is within its substantial discretion, and its actions were not arbitrary and capricious.

Discussion

W. Va. Code §18A-4-8b states:

Boards shall be required to post and date notices of all job vacancies of established existing or newly created positions in conspicuous working places for all school service employees to observe for at least five working days.

The above-stated Code section "requires boards 'to post . . . all job vacancies of established existing or newly created positions . . .', not the partial duties of a position." Butcher v. Logan County Bd. of

Educ., Docket No. 95-23-015 (July 27, 1995); Napier v. Logan County Bd. of Educ., Docket No. 94-23-541 (Apr. 25, 1995). No violation of W. Va. Code §18A-4-8b is found in MCBOE's failure to post these positions when they were reclassified. No new positions were created, and no positions were vacant.

As to whether the Intervenors are qualified to hold the positions, this argument is also without merit. (See footnote 1) W. Va. Code §18A-4-8e, requiring competency testing, was enacted in 1990. Intervenor Sammons took and made an almost perfect score on a MCBOE competency test prior to that time. To require her to take a second test after she has demonstrated her competency would be incorrect. Accord, W. Va. Code §18A-4-8e ¶3; Lewis v. Putnam County Bd. of Educ., Docket No. 92-40-086 (June 29, 1992). Additionally, it must be noted that it was this same 1988 competency test which resulted in Grievants receiving their regular secretarial positions.

Intervenor Varney is also qualified for a secretarial position by having held the position for eight months. This finding is pursuant to W. Va. Code §18A-4-8e which states, "[n]otwithstanding [these competency testing provisions] once an employee holds or has held a classification title in a category of employment, that employee shall be deemed as qualified for said classification title even though that employee no longer holds that classification." The statutory language is clear; once an employee has held the classification they are "deemed" qualified for the position. Losing the position as the result of a grievance based on seniority does not change the fact that Intervenor Varney once held the classification and thus is qualified.

Grievants' third argument must fail as well. W. Va. Code §18A-4-8 defines a Secretary III as: Personnel assigned to the county board of education office administrators in charge of various instructional, maintenance, transportation, food services, operations and health departments with particular responsibilities of purchasing and financial control or any personnel whohave served in a position which meets the definition of "Secretary II" or "Secretary III" herein for eight years.

Intervenors meet this definition as they are employed in MCBOE's Central Office and are assigned to "office administrators in charge" of finances and Title I. Further, Intervenors' testimony plus that of Assistant Superintendent Johnny Fullen revealed Intervenors' duties are similar to the duties of other Secretary III's and Executive Secretaries at the Central Office.

MCBOE is correct in stating W. Va. Code §18A-4-8 requires improperly classified employees to be reclassified. It states in pertinent part:

The county boards shall review each service personnel employee job classification annually and shall reclassify all service employees as required by such job classifications. **(Emphasis added.)**

Thus, MCBOE not only did not violate the above-stated Code Section, but followed it when it reclassified the Intervenors.

The above discussion is supplemented by the following conclusions of law.

Conclusions of Law

1. Grievants have the burden of proving a failure to post a vacancy issue by a preponderance of the evidence. Snodgrass v. Kanawha County Bd. of Educ., Docket No. 93-20-296 (Dec. 30, 1993).

2. MCBOE did not violate W. Va. Code §18A-4-7a when it did not post positions which were reclassified and never vacant. Accord, Snodgrass, supra; Hall v. Mingo County Bd. of Educ., Docket No. 92-29-499 (Feb. 2, 1993).

3. Intervenors were qualified to hold the classification of secretary. Intervenor Sammons was qualified by her competency testing and Intervenor Varney was qualified by having previously held the position. See, W. Va. Code §18A-4-8e.

4. Intervenors were properly reclassified pursuant to W. Va. Code §18A-4-8 as they were performing the same duties as other Secretary III's in the Central Office; thus no violation of this Code section occurred.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mingo 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 Administrative Law Judges is a party to such appeal, and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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JANIS I. REYNOLDS

Administrative Law Judge

Dated: August 30, 1995

Footnote: 1It is questionable whether Grievants have standing to complain about the Intervenors' qualifications since there were no vacancies to post, but in the interest of clarity, this issue will be addressed.