LARRYEN NEWCOME,

Grievant,

v. **Docket No. 98-20-080**

KANAWHA COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Larryen Newcome's, Statement of Grievance states:

> The Grievant is currently employed as a Secretary III-A in the Title I programs office. Grievant alleges that she is misclassified and is seeking reclassification as a Coordinator of Services/Secretary III-A. Grievant alleges a violation of West Virginia Code §18A-4-8 and §18-4-8a and requests retroactive seniority, wages, benefits, and interest on all monetary sums.

At level I, Ms. Nancy Douglas, Grievant's supervisor believed the grievance should be granted, but was without the authority to grant the grievance. On February 23, 1998, a Level II decision denying the grievance was issued. On March 9, 1998, the Kanawha County Board of Education ("KCBOE") waived participation in this grievance. Grievant appealed to Level IV, and a hearing was held on May 18, 1998. (See footnote 1) This case became mature for decision on June 8, 1998, the deadline for the parties' proposed findings of fact and conclusions of law. After a detailed review of the record in its entirety the undersigned Administrative Law Judge makes the following Findings of Fact.

Findings of Fact

1. Grievant has been employed as a Secretary III by KCBOE as the Secretary for the Title I program since 1982. She wishes to be reclassified from a Secretary III-A in the Title I office to Coordinator of the Title I Budget/Secretary III-A. (See footnote 2)

2. Ms. Douglas is and has been the Director of the Title I program since its inception in 1978.

3. There are three Title I employees at the Central Office, Ms. Douglas, Grievant, and Pam George, the Research and Evaluation Specialist. There are four other Title I employees located at the Malden office; a Reading Specialist, a Math Specialist, a Secretary, and a part-time Clerk.

4. Ms. Douglas, as the Director, oversees the program, sets policy, and indicates what direction the Title I program should take. She is in charge of both the monetary and content aspects of the KCBOE Title I program. She meets with troubled schools to assist them in meeting the federal guidelines, and she polices all the schools to make sure they are meeting the required budget and program guidelines.

5. Ms. George collects student data and information, and she utilizes this data to assess whether the individual schools are meeting the goals stated in their individuallyprepared Title I plans. Ms. George helps schools to assess eligible students and their progress.

6. Over the years, Grievant has assumed more duties, and currently spends the majority of her time working with the individual Title I schools on a variety of budget issues. Each school is required to have a budget which outlines how much money will be spent in the various areas of salaries, supplies, training, travel, etc.

7. Grievant goes with the Title I team to schools to help them set up their budgets. During the school year, Grievant monitors the individual budgets and checks to make sure there are no problems in any of the individual line items. Grievant spends a significant amount of time answering questions from school principals about the amount of money remaining in the account, and whether certain funds can be transferred from one area to another. For example, toward the end of a school year a school may have funds remaining in the travel line item that it does not need, and the principal will call Grievant to see if it is possible to switch these funds from travel to supplies. Grievant routinely answers this type of question. The individual school principals are ultimately responsible for their schools' budgets, but the administrators in the Central Office are teaching them how to carry out that duty.

8. Grievant also trains these schools' secretaries in the computer programs required by Title I, such as WordPerfect and Excel.

9. Grievant provides assistance to other Title I employees, assists schools in completing their Title I applications, and prepares quarterly and final reports for submission to the State Department of Education. 10. KCBOE has Coordinators of Services in the following areas:

a. Coordinator of Services - Certification Analyst - An individual "responsible for seeing that all profession al personnel are properly certified at all times", who handles all matters pertaining to professional certification. This employee is supervised by the Director of Personnel.

b. Coordinator of Services - Payroll - An individual who manages all the procedures and operations of the KCBOE payroll. This individual is within the Office of Accounting, and is supervised by the Coordinator of Budget, Finance, and Accounting.

`

c. Coordinator of Services - Accounts Payable - This employee manages the procedures and operations of the KCBOE accounts payable within the Office of Accounting, and is supervised by the Coordinator of Budget, Finance, and Accounting.

d. Coordinator of Services/Secretary IIIA for Benefits - This employee manages the operation and implementation of employee benefits programs, including PEIA, dental/optical and disability insurance and is supervised by the Director of Employee Relations.

e. Accountant III/Coordinator of Services for Restricted Projects - This employee fiscally controls restricted budget and accounting procedures and assumes all responsibility for operational procedures. This employee is located within the Office of Budget, Finance, and Accounting, but the supervisor is not specified.

Grievant's Ex. No. 3, Level IV Hearing.

Discussion

As a misclassification grievance is non-disciplinary in nature, Grievant has the burden of proving each element of her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.19 (1996); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Perdue v. Mercer County Bd. of Educ., Docket No. 92-27-280 (Mar. 29, 1993); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va.Code § 18-29-6. “In order to prevail in a misclassification grievance an employee

must establish, by a preponderance of the evidence, that [her] duties more closely match those of another W. Va. Code §18A-4-8 classification than that under which [her] position is categorized." Porter v. Hancock County Bd. of Educ., Docket No. 93-15-493 (May 24, 1994). See Hamilton v. Jackson County Bd. of Educ., Docket No. 91-18-264 (Mar. 31, 1992). Conversely, simply being required to undertake some responsibilities normally associated with a higher classification, even regularly, does not render a grievant misclassified, per se. Hamilton v. Mingo County Bd. of Educ., Docket No. 91-29-077 (Apr. 15, 1991). Additionally, when a statutory definition is very generally worded, as here, it must be broadly applied. Sites and Murphy v. Pendleton County Bd. of Educ., Docket No. 94-36-1112 (May 31, 1995). This issue is whether Grievant should be reclassified from a Secretary III-A to a Coordinator of services/Secretary II-A, not whether any other classification not named by Grievant might be more appropriate, or a "better fit" for the duties she performs. (See footnote 3)

First, it must be noted that Grievant is a skilled employee, and it is clear KCBOE values the ability and dedication with which she performs her job. However, the question before this Grievance Board is whether the statutory definition of "Coordinator of services" is the best fit for the duties she performs. W. Va. Code § 18A-4-8 defines a Secretary III as "personnel assigned to the county board office administrators in charge of various instructional, maintenance, transportation, food services, operations and health departments, federal programs or departments with particular responsibilities of purchasing and financial control or any personnel who have served in a position which meets the definition of Secretary II or Secretary III herein for eight years." This same Code Section defines a "Director or coordinator of services" as "personnel who are assigned to direct a department or division."

Grievant is assigned to a county board of education administrator in charge of a federal, instructional program. She does not direct a department or division. She is responsible for many of the nuts and bolts and day to day operation of the Title I budget, but she does not have the final responsibility for the budget or budget decisions, as that duty falls on the shoulders of Ms. Douglas. Although in some ways her duties appear similar to the Coordinators listed in Finding of Fact Number 10, the information was not addressed in detail, and the individuals holding these positions were not called to testify as to their duties. A review of these Job Descriptions suggests these employees are in charge of specific divisions within the Office of Budget, Finance, and Accounting, Employee

Relations, or Personnel, and that they have control over their specific division or area of responsibility, which Grievant does not.

The above-discussion will be supplemented by the following Conclusions of Law.

Conclusions of Law

1. Because a misclassification grievance is non-disciplinary in nature, Grievant has the burden of proving her case by a preponderance of the evidence. Perdue v. Mercer County Bd. of Educ., Docket No. 92-27-280 (Mar. 29, 1993).

2. "In order to prevail in a misclassification grievance an employee must establish, by a preponderance of the evidence, that [her] duties more closely match those of another W. Va. Code §18A-4-8 classification than that under which [her] position is categorized." Porter v. Hancock County Bd. of Educ., Docket No. 93-15-493 (May 24, 1994). Hamilton v. Jackson County Bd. of Educ., Docket No. 91-18-264 (Mar. 31, 1992).

3. Simply being required to undertake some responsibilities normally associated with a higher classification, even regularly, does not render a grievant misclassified, per se. Hamilton v. Mingo County Bd. of Educ., Docket No. 91-29-077 (Apr. 15, 1991).

4. When a statutory definition is very generally worded, as here, it must be broadly applied. Sites and Murphy v. Pendleton County Bd. of Educ., Docket No. 94-36- 1112 (May 31, 1995).

5. Grievant does not direct a department or division, rather she assists her director in all budgetary aspects of the Title I program .

6. Grievant failed to meet her burden of proof and demonstrate the multi- classification of Coordinator of Services/Secretary III-A was a "better fit" for her current duties than the Secretary III classification.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha 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.

_____

JANIS I. REYNOLDS

Administrative Law Judge

Dated: June 25, 1998

Footnote: 1

Grievant was represented by Attorney John Roush and the Kanawha County Board of Education was represented by Attorney Greg Bailey.

Footnote: 2

The W. Va. Code § 18A-4-7 title is "Director or coordinator of services," and boards of education typically further identify the position with a more exact title. See Finding of Fact 10, infra.

Footnote: 3

Although there could be some other categories within W. Va. Code § 18A-4-8 which might be a better fit for Grievant's duties, these classifications were not addressed by Grievant, and the undersigned Administrative Law Judge will not engage in any speculation on these issues. It is noted that the Coordinator position is at Pay Grade H, the highest pay grade available.