JOANN SHANHOLTZER,

Grievant,

v.

Docket No. 99-14-035

HAMPSHIRE COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

JoAnn Shanholtzer (Grievant), employed by the Hampshire County Board of Education (HCBOE) as a Custodian IV, believes she should be classified as a Sanitation Plant Operator. This grievance was initiated at level one on December 4, 1998, and Grievant's immediate supervisor was without authority to grant relief. Grievant appealed to level two, where a hearing was held on January 5, 1999. The grievance was denied at level two on January 15, 1999. Level three consideration was bypassed, and Grievant appealed to level four on January 25, 1999. After the matter was held in abeyance pursuant to agreement of the parties, a level four hearing was held in the Grievance Board's office in Morgantown, West Virginia, on April 22, 1999. Grievant was represented by Harvey Bane of the West Virginia Education Association, and Respondent was represented by Claudia Bentley, Esquire. This matter became mature for consideration upon receipt of the parties' fact/law proposals on May 26, 1999.

The following findings of fact are made from a preponderance of the credible testimonial and documentary evidence of record.

Findings of Fact

1. Grievant is employed by HCBOE as a Custodian IV, and she is assigned toJohn J. Cornwell Elementary School (JJC).

2. The majority of Grievant's daily duties include cleaning most areas of the school, emptying trash receptacles, and replacing toilet paper and towels.

3. Grievant is also required to spend an average of one half hour per day cleaning and maintaining the sewage treatment plant that serves the school. This involves removing debris and sludge, hosing down the plant, cutting grass around the plant, and occasionally replacing filters.

4. JJC obtains its water supply from a well, rather than from a public water utility.

5. As part of her daily duties, Grievant is required to take water samples from various locations in the school and test their chlorination levels. If necessary, Grievant adds chlorine. She also sends monthly and quarterly water samples to the West Virginia Department of Health & Human Resources (DHHR). Grievant occasionally must adjust the pressure in the pressure tanks that serve the water system. Grievant's water system duties normally take an average of five minutes per day to perform.

6. JJC's water system is a Class 1D system, as designated by DHHR. In November of 1997, Grievant was notified by her supervisor that she would have to obtain a Class 1D Operator's Certification, as required by DHHR for all individuals in West Virginia operating public water systems.

7. Grievant completed the Class 1D course and received certification on December 12, 1997.

8. Grievant's Class 1D certification applies only to her duties related to the watersupply system at JJC.

9. HCBOE employs Gary Kidner under a supplemental duty contract to serve as the county's waste water treatment operator. Mr. Kidner's certification allows him to perform repairs and operational maintenance on Class IS sewage treatment facilities, including the plant at JJC. He visits JJC once a week to maintain the sewage treatment plant.

10. Grievant is not licensed to operate a Class IS sewage treatment facility.

11. HCBOE's job description for Custodians-General requires the employee to “[h]old a valid operators permit for operation of sewage plant, etc. in order to satisfy all state and federal requirements at the school where the custodian is assigned.”

12. The job description for Custodians-General contains thirty-six listed job duties, including repair of water pumps, “any general repairs to a building if the item concerned is repairable,” and any necessary cleaning of the buildings, premises and grounds.

Discussion

The burden of proof is upon the grievant to establish, by a preponderance of the evidence, that her duties more closely match those of another W. Va. Code § 18A-4-8 class title than that under which her position is categorized. Pierantozzi v. Brooke County Bd. of Educ., Docket No. 96-05-061 (May 31, 1996); Porter v. Hancock County Bd. of Educ., Docket No. 95-15-493 (May 24, 1994); Hatfield v. Mingo County Bd. of Educ., Docket No. 91-29-077 (Apr. 15, 1991). "[S]imply being required to undertake some responsibilities normally associated with a higher classification, even regularly, does notrender a grievant misclassified, per se." Midkiff v. Lincoln County Bd. of Educ., Docket No. 95-22-262 (Mar. 19, 1996), citing Hamilton v. Mingo County Bd. of Educ., Docket No. 91-29-077 (Apr. 15, 1991).

W. Va. Code §18A-4-8 requires county boards of education to "review each service personnel employee's job classification annually and . . . reclassify all service employees as required by such job classifications." A board of education is obligated to classify school service personnel according to the duties performed by said employees. Taflan v. Hancock County Bd. of Educ., Docket No. 15-86-099-2 (Jan. 12, 1987). Service workers cannot be assigned to perform duties not contemplated by the statutory description of their currently-held classifications or not stated in their official job descriptions. See Britton v. Preston County Bd. of Educ., Docket No. 90-39-015 (Aug. 31, 1990).

Grievant contends that, since she was required to obtain certification as a Class 1D water supply operator, she must be reclassified as a Sanitation Plant Operator. That service personnel classification is defined in W. Va. Code § 18A-4-8 as “personnel employed to operate and maintain a water or sewage treatment plant to ensure the safety of the plant's effluent for human consumption or environmental protection.” Grievant argues that she “operates and maintains” both the water and sewage treatment plants at JJC, entitling her to this classification. HCBOE does not have a specific job description for Sanitation Plant Operator.

“Custodian IV” is defined in the same statute as “personnel employed as head custodians” and their duties encompass those in the Custodian III definition. W. Va. Code § 18A-4-8 defines “Custodian III” as “personnel employed to keep buildings clean and freeof refuse, to operate the heating or cooling systems and to make minor repairs.” However, HCBOE does have a general job description for all custodians, which lists numerous duties and responsibilities, including duties

related to the upkeep and cleanliness of a school's grounds, along with making repairs to water taps, water pumps and general repairs to buildings. In addition, custodians for HCBOE are required to possess any necessary licenses for sewage plant operation.

"County boards of education may expand upon the W.Va. Code §18A-4-8 classification definitions in a manner which is consistent with those definitions. Brewer v. Mercer Co. Bd. of Educ., Docket No. 91-27-002 (March 30, 1992)." Pope and Stanley v. Mingo County Bd. of Educ., Docket No. 91-29-068 (July 31, 1992). It has been previously recognized by this Grievance Board that taking water samples and the requirement of holding a Class 1D certification are contemplated by W. Va. Code §18A-4-8 as custodial responsibilities. See Snell v. Mingo County Bd. of Educ., Docket No. 97-29-154 (Aug. 13, 1997).

All of Grievant's duties are consistent with or are listed in her current job description and the statutory definition of Custodian IV. Taking water samples and performing basic maintenance and cleaning around the sewage plant are consistent with her responsibilities as a custodian. The simple requirement that Grievant hold a license in order to perform water sampling does not in and of itself constitute employment “for the purpose of operating a water plant.” While a worker may be required to perform occasional "overlap" duties of another distinct class, if the assignments are specified in the worker's job description and are reasonably related to the duties contemplated by the statutorydescription of the presently-held classification, reclassification or multi-classification is not required. See Boyer v. Wood County Bd. of Educ., Docket No. 90-54-196 (Jan. 29, 1991).

Moreover, Grievant does not dispute that she spends approximately thirty-five minutes per day performing all of her responsibilities related to water sampling and sewage plant upkeep. The majority of her duties, and the overwhelming majority of her time, is spent performing traditional custodial duties, such as mopping floors, cleaning bathrooms, and doing minor maintenance. The purpose of Grievant's position is to perform custodial duties, and the evidence does not support the conclusion that she is primarily employed for water or sewage plant operation. Mr. Kidner is employed for the purpose of maintaining and operating the sewage treatment plant and is the only person employed by HCBOE who is licensed to do so. Grievant assists him by performing daily upkeep and cleaning, for which a license is not required. Accordingly, Mr. Kidner is obviously employed for the purpose of operating the sewage treatment plant, not Grievant.

Grievant has not established by a preponderance of the evidence that she is misclassified. All of

her responsibilities are related to custodial duties involving cleaning and maintenance, including her duties related to the water and sewage treatment plants at JJC, and are included within her current job description.

The following conclusions of law support the decision reached.

Conclusions of Law

1. A grievant claiming misclassification must establish, by a preponderance of the evidence, that her duties more closely match those of another W. Va. Code § 18A-4-8 class title than that under which her position is categorized. Pierantozzi v. Brooke CountyBd. of Educ., Docket No. 96-05-061 (May 31, 1996); Porter v. Hancock County Bd. of Educ., Docket No. 95-15-493 (May 24, 1994); Hatfield v. Mingo County Bd. of Educ., Docket No. 91-29-077 (Apr. 15, 1991).

2. Service workers cannot be assigned to perform duties not contemplated by the statutory description of their currently-held classifications or not stated in their official job descriptions. See Britton v. Preston County Bd. of Educ., Docket No. 90-39-015 (Aug. 31, 1990).

3. Grievant's duties are consistent with the statutory definition of Custodian IV and her current job description.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the Circuit Court of Hampshire 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. However, the appealing party is required by W. Va. Code § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

Date: July 7, 1999 _____ **DENISE M. SPATAFORE**

Administrative Law Judge