DOTTIE ADKINS,

Grievant,

v. **Docket No. 98-22-398**

LINCOLN COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Dottie Adkins, contends the Lincoln County Board of Education ("LCBOE" or "Board") violated W. Va. Code § 18A-4-8 when it denied her request to be reclassified from a Secretary III to an Executive Secretary. Grievant also avers LCBOE violated W. Va. Code §§ 18-29-2(m) and discriminated against her by failing to reclassify her as an Executive Secretary. The relief sought is to be reclassified to an Executive Secretary and to receive compensation and benefits from July 1, 1998. This grievance was denied at all lower levels, and then appealed to Level IV. A hearing was held on January 7, 1999. This case became mature for decision on February 3, 1999, after receipt of the parties' proposed findings of fact and conclusions of law. (See footnote 1)

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 by LCBOE as a secretary for 21 years. She is currently employed as a Secretary III at Harts High School. 2. All Executive Secretaries employed by LCBOE work in the Central Office, and are under the direction of a Superintendent, Assistant Superintendent, or Department Head.

3. Grievant identified her duties as: answering the phone, completing attendance reports, maintaining various accounts, completing the master school schedule, receiving and directing callers, preparing scan sheets and grading reports for the teachers, supervising student workers, handling student excuses, ordering supplies for the school and custodial staff, notifying staff if school is delayed or canceled, filing, and typing.

4. At times, students sit in Grievant's office while they wait to speak to the Dean of Students or the Principal about a disciplinary action.

5. Grievant has represented the Principal and the school at several workshops including one in Boston and another in Atlanta. Grievant noted she had volunteered to attend these workshops.

6. The Principal has delegated to Grievant the task of asking teachers to fill in for absent teachers when a substitute is not available. Grievant utilizes a list of teachers approved by the Principal, and then calls these teachers to ask them to fill in during their free periods. Grievant has no authority to require these teachers to accept this assignment.

7. Grievant does not supervise any school employees.

8. Grievant is responsible for the completion of multiple routine tasks, but these duties are assigned to her by her Principal.

9. Grievant exercises some independent judgement in the completion of some of her various tasks, such as completing the Master schedule and dealing with student excuses. 10. Grievant was unsure which of her duties are administrative and which are secretarial. Grievant has never worked in the Central Office or for a Department Head.

11. Grievant works on the WVEIS system and completes reports for the Principal's signature on this system.

Issues and Arguments

Grievant alleges she is misclassified, and she is being discriminated against by this misclassification. She contends she performs "significant administrative duties;" and thus, she should be reclassified as an Executive Secretary. Respondent asserts Grievant is properly classified and is classified the same as all other school secretaries who are considered similarly situated.

Discussion

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). “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 statutorydefinition 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). See Midkiff v. Lincoln County Bd. of Educ., Docket No. 95-22-267 (Mar. 19, 1996), aff'd Kanawha County Circuit Court, Civil Action No. 96-AA -56 (June 6, 1997).

W. Va. Code § 18A-4-8 defines Secretary II, Secretary III and Executive Secretary in the following manner: (See footnote 2)

> "Secretary II" means personnel employed in any elementary, secondary, kindergarten, nursery , special education, vocational or any other school as a secretary. The duties may include performing general clerical tasks, transcribing from notes or stenotype or mechanical equipment or a sound producing machine, preparing reports, receiving callers and referring them to proper persons, operating office machines, keeping records, and handling routine correspondence. There is nothing implied herein that would prevent the employees from holding or being elevated to a higher classification.

> "Secretary III" means personnel assigned to the county board of education 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.

> "Executive Secretary" means personnel employed as the county school superintendent's secretary or as a secretary who is assigned to a position characterized by significant administrative duties.

Although LCBOE stated it would submit the latest copy of the identified Job Descriptions this was not done. However, Grievant did submit a copy of the Executive Secretary Job Description and the pertinent sections of this Job Description identify the following responsibilities and duties.

Job Description

Executive Secretary

A. Responsibilities

1. To serve as a secretary to specific department/department head, assisting to assure that the office operates smoothly and efficiently.

2. Maintain lines of communication with all schools and departments.

3. Handle routine or emergency situations in the absence of the department head or other supervisors as required.

4. To assist department head and/or supervisor in various responsibilities of the department as directed. May include scheduling appointments, correspondence, and reports.

B. Relationship to Others

1. Works under the direct supervision of the department head/director.

2. Works in a cooperative manner with all school personnel and the public toward the attainment of the goals and objectives of the school system.

3. Works cooperatively with others in department to maintain positive environment and to attain goals and objectives of the department.

. . .

E. Functions and Duties

1.

Preparation of correspondence and factual reports which require exercise of judgment and originality.

2.

Participate in in-service training as directed by the department head and as deemed necessary by the Superintendent of schools.

3.

Complete transcription and Dictaphone assignments as required.

4.

Maintain open communication with central offices and schools.

5.

Prepare requisitions and inventories of office supplies and materials.

6.

Perform routine office duties as applicable to assignment, such as filing, placing and receiving phone calls, operation of FAX machines, mail handling, duplication of forms & materials, maintenance of personnel records, scheduling of conferences & interviews, etc. 7.

Perform other duties assigned by department head or as deemed necessary by the Superintendent of Schools or his designee.

Grievant testified she performed many of the above-identified duties and responsibilities for her Principal, but that in order for her to meet the duties identified in the Job Description the term Principal must be substituted for the term department head. Grievant also maintained she performed administrative duties for approximately 60% to 70% of each day. She expressed the belief that working on attendance and the Master schedule, preparing and checking teacher grade sheets, handling excuses, working on accounts, supervising student workers, sitting with students awaiting discipline, notifying teachers of a delay or school closure by the master phone system, ordering supplies, arranging for substitutes, going to workshops, and running reports were duties that were administrative in nature and were not secretarial. (See footnote 3)

W. Va. Code § 18A-4-8 identifies the duties of a Secretary III as performing general clerical tasks, transcribing notes or dictation, preparing reports, receiving callers and referring them to proper

persons, operating office machines, keeping records, and handling routine correspondence. W. Va. Code § 18A-4-4-8 identifies an Executive Secretary as reporting to a top level administrator and requires the employee to perform "significant administrative duties."

Three key aspects of an Executive Secretary's duties have been identified by this Grievance Board. They are the ability to “exercise independent judgment”, to “be solelyresponsible for the completion of any project”, and to "supervise other employees." Ziler v. Berkeley County Bd. of Educ., Docket No. 02-88-221 (June 30, 1989), aff'd Kanawha County Circuit Court, Civil Action No. 89-AA-148 (Aug. 12, 1992).

Although Grievant does complete reports and handle various accounts (See footnote 4), these duties are within her classification. Some of Grievant's work on the Master schedule could be seen as administrative, such as selecting the correct course numbers from a list provided by the State Department of Education, but the rest of the tasks associated with this duty are secretarial in nature. Further, Grievant's task of asking teachers to fill in for an ill teacher could be seen as an administrative task or could be viewed as merely relating a request from the principal. As previously stated, simply being required to undertake some responsibilities normally associated with a higher classification, even regularly, does not render a grievant misclassified, per se. Hamilton, supra. The rest of the tasks identified by Grievant as administrative, while they are very important to the proper functioning of the school, are clearly secretarial or clerical in nature.

Given the above-cited statutory definitions, Grievance Board case law, Grievant's list of duties, and the amount of time she spends in each, it is clear Grievant is not misclassified. Grievant's duties, as well as the extent or area of her responsibility (within only a specific school), fall squarely within the expected duties of a Secretary III.

Grievant also alleges discrimination and contends she is treated differently than similarly situated employees. W. Va. Code §18-29-2(m) defines discrimination as"differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing."

To prove discrimination, a grievant must establish a prima facie case which consists of demonstrating:

(a) that he is similarly situated, in a pertinent way, to one or more other employee(s);

(b) that he has, to his detriment, been treated by his employer in a manner that the other employee(s) has/have not, in a significant particular;

and,

(c) that such differences were unrelated [to] actual job responsibilities of the grievant and/or other employee(s), and were not agreed to by the grievant in writing.

If a grievant establishes a prima facie case, a presumption of discrimination exists, which the respondent can rebut by presenting a legitimate, nondiscriminatory reason for the action. However, a grievant may still prevail if he can demonstrate the reason given by the respondent was pretextual. Steele v. Wayne County Bd. of Educ., Docket No. 89-50-260 (Oct. 19, 1989).

Grievant has failed to establish a prima facie case of discrimination. The evidence reveals that all the secretaries who are similarly situated to Grievant, i.e. are placed in schools, are classified as Secretaries II's or III's. The evidence also demonstrates the only secretaries who are classified as Executive Secretaries are located in the central office, work for top level administrators, and are assigned significant administrative duties. Contrary to Grievant's assertion, not all secretaries in the Central Office are classified as Executive Secretaries. Grievant's reliance on Midkiff, supra, is misplaced as the grievant in that case was the secretary of a department head, the Director of Transportation, andthat grievant performed a myriad of duties normally assigned to the Director of Transportation.

In addition, although Grievant stated she performed the same duties as the secretaries in the Central Office, she presented no evidence to support this contention other than placing the Job Description of the Executive Secretary into evidence. Grievant has never worked in the Central Office and admitted she was not really sure of the duties an Executive Secretary in the Central Office performed. Other general testimony indicated Executive Secretaries performed more administrative duties, with more responsibilities, and with a wider range of people and agencies. Mere allegations alone without substantiating facts are insufficient to prove a grievance. Vickers v. Bd. of Directors/W. Va. State College, Docket No. 97-BOD-112A (June 26, 1998); Baker v. Bd. of Directors/W. Va. Univ. at Parkersburg, Docket No. 97-BOT-359 (Apr. 30, 1998); See Harrison v. W. Va. Bd. of Directors/Bluefield State College, Docket No. 93-BOD-400 (Apr. 11, 1995). Grievant

has not met her burden of proof and demonstrated she performs the duties of an Executive Secretary, and no discrimination is found from the evidence submitted by Grievant.

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

Conclusions of Law

1. Boards of education are required to classify service personnel according to the duties they perform. W. Va. Code §§ 18A-2-5 and 18A-4-8.

2. It is important to consider the duties performed by the individual seeking reclassification compared to the job description and the statutory definition, not a comparison with the duties performed by other employees. 3. "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 classification than that under which [her] position is categorized." Gregory v. Mingo County Bd. of Educ., Docket No. 95-29-006 (June 19, 1995); Hatfield v. Mingo County Bd. of Educ., Docket No. 91-29-077 (Apr. 15, 1991).

4. A school service employee, who establishes that she is routinely performing the duties of a higher classification than the one under which she is currently classified, is entitled to reclassification. Hatfield, supra.

5. Grievant has failed to demonstrate that she performs "significant administrative duties" for an appreciable portion of her work day.

6. Grievant failed to establish that her duties more closely match those of an Executive Secretary than those of a Secretary III.

7. W. Va. Code § 18-29-2(m) defines discrimination as "differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing."

8. To prove discrimination, a grievant must establish a prima facie case which consists of demonstrating:

(a) that he is similarly situated, in a pertinent way, to one or more other employee(s);

(b) that he has, to his detriment, been treated by his employer in a manner that the other employee(s) has/have not, in a significant particular;

and,

> (c) that such differences were unrelated [to] actual job responsibilities of the grievant and/or other employee(s), and were not agreed to by the grievant in writing.

If a grievant establishes a prima facie case, a presumption of discrimination or favoritism exists, which the respondent can rebut by presenting a legitimate, nondiscriminatory reason for the action. However, a grievant may still prevail if he can demonstrate the reason given by the respondent was pretextual. Steele v. Wayne County Bd. of Educ., Docket No. 89-50-260 (Oct. 19, 1989).

9. Grievant has failed to establish a prima facie case of discrimination in that all other employees who are similarly situated are classified the same as she.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Lincoln 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: February 26,1999.

Footnote: 1

Grievant was represented by Anita Mitter, from the West Virginia Education Association, and Respondent was represented by Attorney James Gabehart.

Footnote: 2

Confusingly, Grievant argued she was not expected to perform the duties of a Secretary II because she is a Secretary III. It is noted that school secretaries classified as Secretary III's are expected to perform all the duties listed in the Secretary II classification, but have been promoted to a Secretary III because of their years of service.

Footnote: 3

On subsequent questioning, Grievant expressed some confusion as to whether all these duties were administrative, or whether some were within the expectations of a Secretary III.

Footnote: 4

Grievant does not handle the food service accounts. Another secretary is employed to perform these duties.