SUSAN CARVER,

Grievant,

v.

DOCKET NO. 01-20-057

KANAWHA COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Susan Carver, filed this grievance against her employer, the Kanawha County Board of Education ("Board") on January 24, 2001, alleging as follows:

> I feel KCS was in violation of WV Code 18A-4-8 because I had continuously asked that my clerk position be reclassified or my job duties be made less secretarial but, was always told because of staffing and funding this was not possible. However, they continued to increase my secretarial duties until my duties were in some instances exceeding that of the secretaries in the department.
>
> Relief sought: I would like my secretary seniority date changed to reflect the time I, although classified as a Clerk II, was performing secretarial duties while employed in the Personnel Department.

The grievance was denied at level one by Grievant's immediate supervisor, Linda K. Winter, on January 24, 2001. A level two hearing was held on January 31, 2001, and the grievance was denied on February 14, 2001, by the level two grievance evaluator, Pamela Padon. Grievant by-passed level three of the grievance procedure, and appealed to level four on February 20, 2001. A level four hearing was held in the Grievance Board's Charleston, West Virginia office on March 29, 2001, at which time this case became mature for decision. Grievant appeared pro se at level two, and was represented by Steve Angel, West Virginia Federation of Teachers, at level four; the Board was represented by James Withrow, Esq.

SUMMARY OF EVIDENCE

Level II Evaluator's Exhibits

Ex. 1 -

Grievance forms.

Level II Grievant's Exhibits

Ex. 1 -

Kanawha County Schools Job Descriptions, Secretary IIIA; Clerk II.

Level II Board Exhibits

Ex. 1 -

List of Assignments for Susan Carver.

Testimony

Grievant testified in her own behalf. The Board presented no additional witnesses.

FINDINGS OF FACT

After careful review of the testimony and evidence presented in this grievance, I find the following facts have been proven by a preponderance of the evidence.

1. Grievant is currently employed as a Secretary IIIA in the Office of Student Affairs, Alternative Schools and Drug Education, in the Board's Central Office. Grievant received this position effective January 19, 2001. From February 1997 to January 2001, she worked as a Clerk II in the Human Resources Office.

2. W. Va. Code § 18A-4-8 defines “Clerk II” as “personnel employed to perform general clerical tasks, prepare reports and tabulations and operate office machines;...”. 3. W. Va. Code § 18A-4-8 defines “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;...".

4. Grievant's job duties from February 1997 through September 1998 included, but were not limited to, scanning documents; opening and distributing all mail; processing all employment verifications; answering all phone lines in the Personnel Department; accepting all service applications; checking applications for completeness; selecting applicants for testing; scheduling testing and instructors, notifying applicants of test scores, ranking all service job openings and compiling lists of top applicants for the positions.

5. In September 1998, Grievant was assigned Workers' Compensation, unemployment, and employee evaluation duties. Grievant's duties with Workers' Compensation included, but were not limited to, regularly composing and typing her own letters and reports; general transcription duties; contacting outside agencies such as the Regulatory Training Center, Acordia Insurance Company; contacting physicians and rehabilitation counselors; processing physician statement forms; and acting as liaison between the Personnel Department and Acordia. 6. Grievant's duties with Unemployment Compensation included, but were not limited to, verifying work status and wages of employees; reviewing payroll histories; and researching employment histories.

7. Grievant's duties with employee evaluations included, but were not limited to, contacting principals and supervisors; inputting evaluation information into computer system; and contacting other departments for information to complete evaluations.

8. Grievant was responsible for taking pictures and issuing identification badges to all employees.

9. Grievant received special assignments from time to time such as converting files to the WVEIS computer system; reviewing and correcting insurance premiums; and researching and correcting seniority dates.

10. Grievant passed the Secretary competency test on September 18, 1997.

11. Grievant's immediate supervisor from 1997 through 2001 was the Director of Personnel for the Board, most recently Mr. Bill Courtney.

12. Grievant worked independently and set up many of the systems she worked with herself.

DISCUSSION

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 § 4.21 (2000); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88- 130 (Aug. 19, 1988). See W. Va. Code § 18-29-6. Grievant alleges she has beenmisclassified as a Clerk II from 1997 through January 2001, and seeks Secretary III seniority for the entire time of misclassification.

In order to prevail in a misclassification grievance, an employee must establish that her duties more closely match those of another classification than that under which her position is categorized. Sammons/Varney v. Mingo County Bd. of Educ., Docket No. 96- 29-356 (Dec. 30, 1996); Savilla v. Putnam County Bd. of Educ., Docket No. 89-40-546 (Dec. 21, 1989). A school service employee who establishes, by a preponderance of the evidence, that he is performing the duties of a higher W. Va. Code 18A-4-8 classification than that under which he is officially categorized, is entitled to reclassification. Gregory v. Mingo County Bd. of Educ., Docket No. 95-29-006 (July 19, 1995); Hatfield v. Mingo County Bd. of Educ., Docket No. 91-29-077 (Apr. 15, 1991); Holliday v. Marshall County Bd. of Educ., Docket No. 89-25-376 (Nov. 30, 1989); Scarberry v. Logan County Bd. of Educ., Docket No. 89-23-63 (Oct. 30,1989). However, simply because an employee is required to undertake some responsibilities normally associated with a higher classification, even regularly, does not render him misclassified per se. Hatfield, supra.

W. Va. Code § 18A-4-8 places a burden on county boards of education to see that the duties of a particular service position coincide with the classification and paygrade to which it is assigned. Robinson v. Nicholas County Bd. of Educ., Docket No. 93-34-197 (Mar. 25, 1994). Simply stated, the statute requires the board to call the position what it is. Gosnell v. Raleigh County Bd. of Educ., Docket No. 94-41-112 (Apr. 21, 1995).

W. Va. Code § 18A-4-8 defines “Clerk II” as “personnel employed to perform general clerical tasks, prepare reports and tabulations and operate office machines;...”. W. Va.Code § 18A-4-8 defines “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;...".

Grievant has proven by a preponderance of the evidence that from almost the beginning of her tenure with the Personnel Department of the Board, she was responsible for the implementation and maintenance of many of the systems currently being employed by that Department. She has proven that she acted independently and with little or no supervision in these tasks, and was responsible for the Workers' Compensation, Unemployment Compensation, and employee evaluation systems for the County. Therefore, Grievant has proven she was misclassified as a Clerk II and that her job duties fit the classification description of a Secretary III.

The Board does not really dispute Grievant's recitation of her job duties, but asserts the grievance is untimely, and that she is limited in the relief she is seeking to fifteen days prior to the filing of her grievance, based upon the holding in Martin v. Randolph County Bd. of Educ.,195 W. Va. 297, 465 S.E.2d 399 (1995), where the Court stated in Syl. Pt. 5 that, "W. Va. Code, 18-29-2 (1992), allows an employee to contest a misclassification at any time (although only once). As with a salary dispute, any relief is limited to prospective relief and to back relief from and after fifteen days preceding the filing of the grievance." In the instant case, Grievant is not seeking backpay, but wants Secretary seniority from the date of misclassification. She points to several Grievance Board cases in which reclassification, with full back pay was granted, but a review of those cases indicates that a timeliness defense was not raised in any of them. See, e.g., Gregory, supra; Sammons/Varney, supra; Scarberry; supra. In this case, the Board successfully raised the timeliness issue, and I find the language of Martin is sufficiently explicit in stating that, when timeliness is raised in a misclassification grievance, "any relief" is limited to fifteen days prior to the date of the filing of the grievance, which in this case, includes Grievant's relief of retroactive seniority.

CONCLUSIONS OF LAW

1. In order to prevail in a misclassification grievance, an employee must establish that his duties more closely match those of another classification than that under which his position is categorized. Sammons/Varney v. Mingo County Bd. of Educ., Docket No. 96-29-356 (Dec. 30, 1996); Savilla v. Putnam County Bd. of Educ., Docket No. 89-40-546 (Dec. 21, 1989).

2. A school service employee who establishes, by a preponderance of the evidence, that he is performing the duties of a higher W. Va. Code § 18A-4-8 classification than that under which he is

officially categorized, is entitled to reclassification. Gregory v. Mingo County Bd. of Educ., Docket No. 95-29-006 (July 19, 1995); Hatfield v. Mingo County Bd. of Educ., Docket No. 91-29-077 (Apr. 15, 1991); Holliday v. Marshall County Bd. of Educ., Docket No. 89-25-376 (Nov. 30, 1989); Scarberry v. Logan County Bd. of Educ., Docket No. 89-23-63 (Oct. 30,1989). 3. W. Va. Code § 18A-4-8 places a burden on county boards of education to see that the duties of a particular service position coincide with the classification and paygrade to which it is assigned. Robinson v. Nicholas County Bd. of Educ., Docket No. 93-34-197 (Mar. 25, 1994). Simply stated, the statute requires the board to call the position what it is. Gosnell v. Raleigh County Bd. of Educ., Docket No. 94-41-112 (Apr. 21, 1995).

4. Grievant has proven by a preponderance of the evidence that she has been misclassified as a Clerk II almost from the beginning of her employment with the Board, and that her job duties best fit within the Secretary III classification.

5. "W. Va. Code, 18-29-2 (1992), allows an employee to contest a misclassification at any time (although only once). As with a salary dispute, any relief is limited to prospective relief and to back relief from and after fifteen days preceding the filing of the grievance." Martin v. Randolph County Bd. of Educ.,195 W. Va. 297, 465 S.E.2d 399 (1995).

6. The Board successfully raised the timeliness issue, thus limiting Grievant's relief, including seniority, to fifteen days prior to the filing of her grievance.

Accordingly, the Board is hereby **ORDERED** to adjust Grievant's Secretary III seniority to fifteen working days prior to January 24, 2001, the date she filed her grievance.

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

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MARY JO SWARTZ

Administrative Law Judge

Dated: April 13, 2001