MARTHA J. DONNELLAN,

Grievant,

v. **Docket No. 02-17-003**

HARRISON COUNTY BOARD OF EDUCATION,

Respondent,

and

SHARON DOUGLAS,

Intervenor.

D E C I S I O N

Grievant, Martha Donellan, employed by the Harrison County Board of Education (HCBE) as a Secretary III, filed a level one grievance on April 20, 2001, after Intervenor, Sharon Douglas, was selected for the position of Director/Coordinator of Food Services. On December 19, 2001, Grievant appealed the Level II decision denying her grievance to Level III. On January 7, 2002, Grievant filed a “Notice of Default”. HCBE appealed to level four, where it was determined that no default had occurred. A level four hearing on the merits of the case was conducted on August 9, 2002. Grievant was represented by Charles G. Johnson, Esquire, HCBE was represented by Basil R. Legg, Jr., Esquire, and Intervenor was represented by John E. Roush, Esquire. This matter became mature for decision upon receipt of the parties' written arguments on or before September 11, 2002.

The following facts are derived from the record in its entirety.

Findings of Fact

___1. Grievant has been employed by HCBE since August 1971. She holds the classification of Secretary III, and has been assigned to the Food Service Department for the past thirteen years. Grievant has never held the classification of Director/Coordinator. 2. In March 2001, Intervenor was employed by HCBE as Director/Coordinator of Services/Secretary III, Title I.

3. Between July 2000 and March 2001, Respondent posted an administrative vacancy for Child Nutrition Services six different times. The position was identified as a professional position on two of the postings, and as a service personnel position on four postings, including the last one in March

2001.

4. In March 2001, Respondent posted the position as Director/Coordinator, with minimum qualifications of an Associate Degree and/or a minimum of five years of successful county management or supervisor experience preferred. Grievant, Intervenor, and a third employee bid on the position.

5. Respondent awarded the position to Intervenor, the applicant with the most seniority who held the classification title of Director/Coordinator.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving 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 argues that both Intervenor and another applicant who held the Director/Coordinator classification title are multi-classified, which is a separate classification title, and they are not entitled to the preference set out in W. Va. Code § 18A- 4-8g. Without the preference, Grievant concludes that as the applicant with the mostseniority, she is entitled to the position. (See footnote 1) Respondent and Intervenor argue that Intervenor was correctly appointed to the position as she was the most senior applicant within the classification title.

W. Va. Code §18A-4-8b provides, regarding the filling of school service personnel positions, that:
A county board of education shall make decisions affecting promotion and filling of any service personnel positions of employment or jobs occurring throughout the school year that are to be performed by service personnel as provided in section eight, article four of this chapter, on the basis of seniority, qualifications and evaluation of past service.

Qualifications shall mean that the applicant holds a classification title in his category of employment as provided in this section and must be given first opportunity for promotion and filling vacancies. Other employees then must be considered and shall qualify by meeting the definition of the job title as defined in section eight, article four of this chapter, that relates to the promotion or vacancy.

With respect to the use of seniority in hiring service personnel, W. Va. Code § 18A-4-8g

mandates that:

(g) Service personnel who are employed in a classification category of employment at the time when a vacancy is posted in the same classification category of employment shall be given first opportunity to fill the vacancy.

(i) School service personnel who hold multiclassification titles shall accrue seniority in each classification category of employment which the employee holds and shall be considered an employee of each classification category contained within his or her multiclassification.

Grievant does not hold the classification of Director/Coordinator, and therefore was not qualified for the position awarded to Intervenor. Neither did the fact that Intervenor holds a multiclassification preclude her from receiving preference for the position. The Grievance Board has held that "[s]ince 'multi-classification' is listed as a separate classification in W. Va. Code § 18A-4-8, an employer may not consider an applicant's possession of one of the required classifications as granting that applicant priority over another applicant who is qualified in the posted multi-classified position. Haer v. Mason County Bd. of Educ., Docket No. 99-26-292 (Nov. 30, 1999); Edmonds v. Kanawha County Bd. of Educ., Docket No. 99-20-023 (Mar. 31, 1999); Vanooyen v. Harrison County Bd. of Educ., Docket No. 96-17-209 (July 25, 1997), aff'd Kanawha County Cir. Court Civil Action No. 97-AA-115 (May 22, 1998); Gandee v. Mason County Bd. of Educ., Docket No. 93-26-476 (Sept. 30, 1994). However, the statutory language is quite clear that an employee holding multiple classifications is to be considered an employee in each classification. Therefore, because one of Intervenor's classifications was Director/Coordinator, she was qualified, and properly given first opportunity to fill the position.

In addition to the foregoing findings of fact and discussion, it is appropriate to make the following formal conclusions of law.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving 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.

2. In filling a service personnel position, a county board of education must consider seniority,

qualifications, and evaluation of past service. W. Va. Code § 18A-4-8b.

3. "Qualifications shall mean that the applicant holds a classification title in his category of employment . . . and must be given first opportunity for promotion and filling of vacancies." Id.

4. Grievant does not hold the classification title of Director/Coordinator, and is not qualified for the position in question.

5. Intervenor holds a multiclassification which includes the title of Director/Coordinator, and as the most senior applicant who was so qualified, was entitled to the position.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Monongalia 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:September 20, 2002 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

Grievant's counsel further alleges discrimination and favoritism in his proposed findings of fact and conclusions of law. Because these issues were not addressed at level two, they will not be considered at level four, except to state that the evidence does not support the claims.