IRENE SANDERS,

Grievant,

v.

DOCKET NO. 01-40-630

PUTNAM COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Marilan Irene Sanders, filed this grievance against her employer, the Putnam County Board of Education ("Board') on August 14, 2001:

> The grievant requested to be reclassified to an Administrative Secretary which would be an "G" Pay Grade. The grievant feels that her job duties fall within the job classification of an Executive Secretary and, therefore, should be reclassified. This is a violation of WV Code 18A-4-8.
>
> Relief sought: Reclassification to Administrative Secretary - Pay Grade "G".

The grievance was denied at level one, and a level two hearing was held on November 13, 2001. Grievance Evaluator Harold Hatfield denied the grievance by decision dated December 10, 2001, and Grievant appealed to level four on December 18, 2001. A level four hearing was held in the Grievance Board's Charleston, West Virginia, office on February 13, 2002, and this matter became mature for decision on March 13, 2002, the deadline for the parties' submission of proposed findings of fact and conclusions of law. Grievant was represented by Rosemary Jenkins, West Virginia Federation of Teachers, and the Board was represented by John A. Grafton, Esq., Grafton Law Offices.

SUMMARY OF EVIDENCE

LII Joint Exhibit

Ex. 1 -

Grievance documents.

LII Grievant's Exhibits

Ex. 1 -

June 12, 2001 letter from Grievant to Harold “Chuck” Hatfield.

Ex. 2 -

August 2, 2001 letter from John Grafton to Harold “Chuck” Hatfield (lst page only).

Ex. 3 -

Putnam County Schools Bus Operator's Trip Report; Putnam County Schools Transportation Department trip report; Putnam County Schools Pre/Post Trip Inspection Form.

Ex. 4 -

Monthly Transportation Report; Monthly School Bus Safety Inspection and Maintenance Report.

Ex. 5 -

2001-02 Service Personnel Daily Salary Schedule Effective Second Quarter.

Ex. 6 -

October 10, 2001 letter from Jerry R. Goff to Whom It May Concern.

LIV Grievant's Exhibits

Ex. 1 -

EMSI Location Code and Client List.

Ex. 2 -

Child Care Food Program Verification Form.

LII Board Exhibit

Ex. 1 -

Putnam County Schools Job Description for Secretary/Accountant to the Assistant Superintendent for Services.

Testimony

Grievant testified in her own behalf, and presented the testimony of John Cunningham, Roger Doneff, and John Hathaway. The Board presented the testimony of Paul Callahan.

FINDINGS OF FACT

Based on the testimony and evidence of record in this matter, I find the following facts have been proven by a preponderance of the evidence.

1. Grievant is employed by the Board as a full-time Secretary III/Accountant, Pay Grade F. She has been employed by the Board for 28 years.

2. Grievant works directly for Paul Callahan, the Assistant Superintendent in charge of Food Services, Maintenance, and Transportation.

3. On June 12, 2001, Grievant sent a request to Harold “Chuck” Hatfield, Personnel Director, for reclassification to an Executive Secretary, Pay Grade G, position. LII G. Ex. 1.

4. On August 2, 2001, the Board's counsel, John Grafton, wrote to Mr. Hatfield that Grievant was properly classified as a Secretary III because, in his opinion, she did not engage in significant administrative duties. LII G. Ex. 2.

5. On August 14, 2001, Grievant met with Superintendent Sam Sentelle, who denied her request for reclassification.

6. Mr. Grafton has never observed Grievant in any significant particular in the performance of her job.

7. Grievant gave the following as her responsibilities:

(a)

Performs multiple tasks on a daily basis without continuous direct supervision;

(b)

Required to make immediate decisions regarding emergency situations and the assignment of appropriate drivers and vehicles to transport passengers;

(c)

Assists in planning and conducting education programs as needed; (d) Makes presentations before groups of transportation personnel providing instruction and assistance in regard to record documentation, reports, certification, practices, etc.

(e)

Created new forms that have greatly improved the record-keeping procedures.

(f)

Monitors and maintains all records in regard to driver certification applications for approximately 105 bus operators, 25 maintenance workers, and 5 warehouse workers;

(g)

Conducts Department of Motor Vehicle clearances assuring that all of the licenses - WV Drivers Licenses, commercial drivers licenses, Class B Passenger, Airbrake, Class N, Class D, as well as WV Department of Education school bus operator certifications are current;

(h)

Acts as liaison with the School Building Authority of West Virginia, business representatives, architects, builders, school administrators, parents, etc.;

(i)

Operates as the head of the call center. Monitors FM 2-way radio frequencies, emergency paging system, Putnam County Ambulance Service, Sheriff's Department, State Police, Putnam Board maintenance;

(j)

Receives all telephone requests for maintenance repairs from 22 schools and follows-up on dispatching the assignments. (Until 2 years ago this was done by Virgil Erskine, maintenance worker with a G classification);

(k)

Processes payments to bus operators and bus aides for all county paid curricular and extra-curricular bus trips;

(l)

Processes all bus vehicle accident reports;

(m)

Prepares and submits Putnam County's transportation reports to the State Department of Education which determine the county's funding allotment;

(n)

Acts as contact person for Health Research Systems which does county's random drug testing;

(o)

Travels to doctors' offices of Putnam County School's designated physicians to review forms at their offices;

(p)

Dispatches unscripted, spontaneous information over FM 2-way radios at any given time;

(q)

Manages and maintains tracking system for county school buses;

(r)

Acts as contact person for River Valley Family Day Care Food Program.

8. The above duties are encompassed by the Board's written Job Description for Secretary/Accountant to the Assistant Superintendent for Services. LII Board Ex. 1.

9.

Grievant does not supervise other employees. 10. When Grievant is absent from work, her duties and responsibilities are carried out by the Assistant Superintendent for Services, Director of Transportation, Supervisor of Transportation or the Supervisor of Maintenance.

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 her position is currently misclassified as a Secretary III/Accountant, Pay Grade F, and wishes to be reclassified to an Executive Secretary, Pay Grade G. The Board asserts Grievant's duties and responsibilities properly fall within her current classification and pay grade.

W. Va. Code § 18A-4-8 places a burden on county boards of education to see that the duties of a particular service personnel 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). A school service employee who establishes, by a preponderance of the evidence, that he or she is performing the duties of a higher W. Va. Code § 18A-4-8 classification than that under which he or she 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. 89-25-276 (Nov. 30, 1989); Scarberry v. Logan County Bd. of Educ., Docket No. 89-23-63 (Oct. 30, 1989). 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” in this section for eight years.

W. Va. Code § 18A-4-8 defines “Executive Secretary” as:

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

Thus, the burden of proof is upon Grievant to establish, by a preponderance of the evidence, that her duties more closely match those of another 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, supra. Grievant is currently assigned to the Assistant Superintendent in charge of food services,

maintenance, and transportation, and on its face, her position falls squarely within the definition of a Secretary III. However, Grievant contends her duties are characterized by significant administrative duties, as set forth in the Executive Secretary definition, and her position more closely matches that classification.

A close look at Secretary III and Executive Secretary classifications reveals that the classification is dependent upon the duties and responsibilities of the individual the secretary is assigned to, rather than the duties of the secretary. Thus, the analysis of the Executive Secretary classification falls on whether the individual Grievant is assigned tois in a position characterized by significant administrative duties, as opposed to whether Grievant's own position is thus characterized. Furthermore, since the legislature has separated “a position characterized by significant administrative duties” from “county board administrators in charge of various . . . programs and departments”, the Assistant Superintendent of food services, maintenance, and transportation, in this case, would not be included in that category.

It is understandable that Grievant would interpret the statutory language of Executive Secretary to mean a secretary who is assigned significant administrative duties, however, when reading it in pari materia with the other Secretary classifications, it becomes clearer that the distinction depends upon the individual to whom the secretary is assigned.

Finally, when dealing with classifications, it is the position, not the person, that is controlling. There is no doubt that Grievant, over the years, has acquired and taken on significant duties in managing her areas of responsibility, and deserves recognition for her efforts. Unfortunately, the undersigned cannot grant her the relief she seeks in this grievance.

CONCLUSIONS OF LAW

1. 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. 2. The burden of proof is upon Grievant to establish, by a preponderance of the evidence, that her duties more closely match those of another 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, supra.

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).

4. A school service employee who establishes, by a preponderance of the evidence, that he or she is performing the duties of a higher W. Va. Code § 18A-4-8 classification than that under which he or she 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. 89-25-276 (Nov. 30, 1989); Scarberry v. Logan County Bd. of Educ., Docket No. 89-23-63 (Oct. 30, 1989).

5. 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” in this section for eight years.

6. W. Va. Code § 18A-4-8 defines “Executive Secretary” as:

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

7. The distinction between the Secretary III and Executive Secretary classifications depends upon the duties and responsibilities of the individual to whom the secretary is assigned, not the secretary's own duties and responsibilities. Thus, the language in the Executive Secretary classification referring to “a secretary who is assigned to a position characterized by significant administrative duties” refers to the administrator or superior to whom the secretary is assigned, not the secretary.

8. While Grievant has clearly taken on many additional duties and responsibilities in her position over the years, it is nevertheless her position that is classified, not her, and her position falls squarely within the Secretary III classification category of employment.

Accordingly, this grievance is **DENIED**.

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

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MARY JO SWARTZ

Administrative Law Judge

Dated: March 28, 2002