LAURA O'NEAL,

Grievant,

v. **DOCKET NO. 02-10-369**

FAYETTE COUNTY BOARD

OF EDUCATION,

Respondent.

DECISION

Laura F. O'Neal filed this grievance on May 24, 2002, stating:

> I am classified as a Secretary III/Receptionist/Switchboard Operator/Mail Clerk in the Central Office of Fayette County Schools. I contend that my duties and responsibilities entitle me to the additional titles of Executive Secretary, Accountant II and Coordinator (see attached sheets). I allege a violation of WV Code [§§] 18A-4-8 and 8a.

As relief, she seeks reclassification and back pay and benefits retroactive to July 1, 2001, and interest on any sum to which she is entitled. Grievant's immediate supervisor was without authority to grant the grievance at Level I, and a Level II hearing was held on September 25, 2002. The grievance was granted in part (See footnote 1) and denied in part at that level and Level III was waived. The parties agreed to submit the matter for decision at Level IV based on the foregoing record, and to submit their proposed findings of fact and conclusions of law by February 13, 2003, whereupon the matter became mature fordecision. Grievant is represented by John E. Roush, Esq. of the W. Va. School Service Personnel Association, and Respondent is represented by Erwin L. Conrad, Esq.

Based on a preponderance of the credible evidence contained in the record, I find the following material facts have been proven:

FINDINGS OF FACT

1. Grievant is a 27-year employee of Respondent, and at the time relevant to this grievance

held the multiclassification title of Secretary III/Receptionist/Switchboard Operator/Mail Clerk.

2. For the eight years prior to the retirement on June 30, 2001, of K. Ray Carson, an Associate Superintendent of Finance and Administration, Grievant served as his secretary. Mr. Carson supervised the accounting department, food service, maintenance and transportation, as well as having various other duties such as budget preparation, School Building Authority projects, and overseeing the financial reports of the schools. He was also the Treasurer.

3. Upon Mr. Carson's resignation, Superintendent Harry Hoffer took over responsibility for most of his duties. During this time, Grievant continued her previous duties but reported directly to Dr. Hoffer. At the same time, Dr. Hoffer's Executive Secretary, Joyce Lambert, continued to report to him and perform her normal duties.

4. No new duties were added to Grievant's position when Mr. Carson retired, but she did assume greater responsibility for some of the duties associated with Mr. Carson's position, such as advising Dr. Hoffer on those duties and ensuring completion of School Building Authority paperwork, reviewing school financial reports, preparing Boardmeeting agendas, and distributing faculty senate funds. She also filled in for Ms. Lambert when she was off, including attending one Board meeting.

5. From July 1, 2002, through April 2002, Grievant received a $200 per month salary supplement granted by Dr. Hoffer without official action of the Board, in recognition of her increased work load. When other central office secretaries complained, Dr. Hoffer discontinued the supplement.

6. Dr. Hoffer resigned on or about March 1, 2002, and was replaced by an interim Superintendent, who was in turn replaced by Superintendent Manuel Domingues on a date not contained in the record. On or about August 26, 2002, Grievant was temporarily assigned to the Associate Superintendent of Curriculum and Instruction as her immediate supervisor until a Director of Operations can be hired. The Director of Operations position will replace Mr. Carson's position, and Grievant will be assigned to that new Director then.

DISCUSSION

This is a non-disciplinary grievance in which Grievant bears the burden of proof. Grievant's allegations must be proven by a preponderance of the evidence. *See*, W. Va. Code § 18-29-6, 156 W. Va. C. S. R. 1 § 4.21. Grievant contends that she should be reclassified by adding the titles Executive Secretary and Coordinator of Services to her already very multiclassified title. “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. . . . A school service employee who establishes, by a preponderance of the evidence, that [she] is performing the duties of a higher W. Va. Code § 18A-4-8 classification than that under which [she] is officiallycategorized, is entitled to reclassification. [Citations omitted.] However, simply because an employee is required to undertake some responsibilities normally associated with a higher classification, even regularly, does not render [her] misclassified *per se*." Carver v. Kanawha County Bd. of Educ., Docket No. 01-20-057 (Apr. 13, 2001).

Service personnel classification titles are defined in W. Va. Code § 18A-4-8(i). Those relevant to this discussion are as follows:

> (34) "Director or coordinator of services" means personnel who are assigned to direct a department or division. Nothing in this subdivision may prohibit professional personnel or professional educators as defined in section one, article one of this chapter, from holding this class title, but professional personnel may not be defined or classified as service personnel unless the professional personnel held a service personnel title under this section prior to holding class title of "director or coordinator of services." Directors or coordinators of service positions shall be classified as either a professional personnel or service personnel position for state aid formula funding purposes and funding for directors or coordinators of service positions shall be based upon the employment status of the director or coordinator either as a professional personnel or service personnel;
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> (40) "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;
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> (77) "Secretary III" means 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;

In addition to the statutory definitions, "'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 (July31, 1992)." Beahm and Hines v. Randolph

County Bd. of Educ., Docket No. 98-42-241 (Jan. 7, 1999).

The first issue to be considered is the distinction between Grievant's current “Secretary III” title and her desired “Executive Secretary” title. The Grievance Board had previously defined the distinction as one based on administrative duties and responsibilities. “In determining whether Grievants should be classified as Executive Secretaries, the key inquiry is whether their positions are characterized by 'significant administrative duties.' In applying this standard, this Grievance Board has looked at whether the grievant exercises independent judgment and is solely responsible for the completion of tasks or projects. Midkiff v. Lincoln County Bd. of Educ., Docket No. 95-22- 262 (Mar. 19, 1996); Ziler v. Berkeley County Bd. of Educ., Docket No. 02-88-221 (June 30, 1989).” Beahm, *supra*. However, that distinction has been more recently drawn a little narrower, as Grievant points out, by focusing on the administrative duties and responsibilities of the person to whom the secretary is assigned. “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.” Sanders v. Putnam County Bd. of Educ., Docket No. 01-40- 630 (Mar. 28, 2002). To the extent Sanders and Beahm and Hines and its predecessors conflict, Sanders overrules the previous cases. Grievant contends that her assignment as secretary to the superintendent elevated her classification to Executive Secretary. However, in reality her position never really changed - the Superintendent's did. For the few months Grievant reported directly to the Superintendent, it was because he was filling in for the missing Associate Superintendent. The duties of the position to which she was assigned did not change, they were simply assumed by a person of higher rank. Since the duties are controlling, not just the mere job title of the person holding the position, Grievant's classification did not change.

Grievant's request to have Coordinator of Services added to her multiclassification title is more clear. That service personnel title is reserved for “personnel who are assigned to direct a department or division.” W. Va. Code § 18A-4-8(i)(34). Although Grievant contends she met this requirement because she “filled in for the retired Mr. Carson on behalf of the Superintendent,” that brief and impermanent undertaking of some of the duties of the position to which she was assigned did not

equate to an assignment to “direct a department or division.”

CONCLUSIONS OF LAW

1. This is a non-disciplinary grievance in which Grievant bears the burden of proof. Grievant's allegations must be proven by a preponderance of the evidence. *See*, W. Va. Code § 18-29-6, 156 W. Va. C. S. R. 1 § 4.21. "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." Leichliter v. W. Va. Dep't. of Health and Human Resources, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the party bearing the burden has not met its burden. Id.

2. “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*.” Carver v. Kanawha County Bd. of Educ., Docket No. 01-20-057 (Apr. 13, 2001).

3. “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.” Sanders v. Putnam County Bd. of Educ., Docket No. 01-40-630 (Mar. 28, 2002).

4. The Coordinator of Services title is reserved for “personnel who are assigned to direct a department or division.” W. Va. Code § 18A-4-8(i)(34). A brief and impermanentundertaking of some

of the duties of a position with such responsibility does not equate to an assignment to “direct a department or division.”

For the foregoing reasons, this grievance is hereby **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or to the Circuit Court of Fayette 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 Grievance Board with the civil action number so that the record can be prepared and transmitted to the circuit court.

Date: February 6, 2003 _____

M. Paul Marteney

Administrative Law Judge

Footnote: 1

Prior to the Level II hearing, Grievant was granted the classification of Accountant II as Respondent conceded it should have been assigned to Grievant. Accordingly, that issue will not be considered further.