BARBARA MILLER,

Grievant,

v. Docket No. 05-39-308

PRESTON COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Barbara Miller ("Grievant"), employed by the Preston County Board of Education ("PCBE") as a Payroll Supervisor, filed a level one grievance on July 27, 2005, in which she alleged that she is misclassified, in violation of W. Va. Code § 18A-4-8. For relief, Grievant seeks reclassification to Coordinator of Services, pay grade H, back pay with interest, and benefits. Grievant's immediate supervisor lacked authority to grant the requested relief. The grievance was denied following a level two hearing, and Grievant elected to bypass consideration at level three, as is permitted by W. Va. Code § 18-29-4(e). Appeal to level four was made on August 30, 2005, and an evidentiary hearing was conducted to supplement the lower-level record on December 1, 2005. Grievant was present and represented by John E. Roush, Esq., of the West Virginia School Service Personnel Association. PCBE was represented by Kimberly S. Croyle, Esq., of Bowles Rice McDavid Graff & Love, LLP. The grievance became mature for decision upon receipt of proposed findings of fact and conclusions of law filed by the parties on or before December 20, 2005.

The following facts have been derived from a preponderance of the credible evidence made part of the record at levels two and four.

Findings of Fact

1. Grievant was first employed by PCBE as an Accountant in the Finance officein 1985. In 1997 she transferred to Preston High School where she remained until July 2003, when she transferred back to the Finance office as a Payroll Supervisor.

2. In her capacity as Payroll Supervisor, Grievant processes payroll functions for extra-curricular and extra-duty assignments, and employee benefits. Grievant also attends

conferences and workshops related to her duties. Other employees in the Finance office process the payroll for regular and substitute employees, and the accounts payable functions. Ken Rodeheaver is the PCBE Treasurer and Grievant's immediate supervisor.

3. Payroll Supervisor is a service personnel position, and Grievant is compensated at pay grade "G".

4. Payroll Coordinators in Tucker and Hampshire counties are compensated at pay grade "H".

5. PCBE employed one individual in salary classification "H" on March I, 1988.

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 (2004); 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. "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 Res., Docket No. 92-HHR-486 (May 17, 1993). Specifically, to prevail on a claim of misclassification, Grievant must establish that her duties more closely match those of a classification defined by West Virginia Code § 18A-4-8, other than that underwhich her current position is categorized. Rogers v. Fayette County Bd. of Educ., Docket No. 03-10-004 (Apr. 29, 2003); Pope v. Mingo County Bd. of Educ. Docket No. 91-28-068 (July 31, 1992).

Grievant argues that she functions at a higher level than her current classification title, as illustrated by the comparison of her duties with those of Coordinators in other counties. PCBE asserts that the Transportation Supervisor is compensated at pay grade "H", and that it is limited to one service personnel position in that pay grade by W. Va. Code 18A-2-5, which states in part:

The board is authorized to employ such service personnel, including substitutes, as is deemed necessary for meeting the needs of the county school system: *Provided*, That the board may not employ a number of such personnel whose minimum monthly salary under section eight-a, article four, of this chapter is specified as pay grade "H", which number

exceeds the number employed by the board on the first day of March, one thousand nine hundred eighty-eight.

Grievant disagrees with PCBE's interpretation of the statute, suggesting that it relates only to the funding a board of education may receive from the state. The undersigned does not find this argument persuasive. While a county board of education may employ beyond the number funded by the state aid formula, the restriction as to the number of pay grade "H" employees references to no such exceptions. The statute is clear and unambiguous; therefore, PCBE's interpretation would be correct.

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.___A board of education may not employ a number of such personnel whose minimum monthly salary is specified as pay grade "H", number exceeding the number employed by the board on March 1, 1988.

2. Because PCBE had only one employee compensated at pay grade "H" in March 1988, and the Director of Transportation is currently compensated at that level, it may not employ any additional employees at pay grade "H".

___Accordingly, the grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County, or to the Circuit Court of Preston 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

DATE: JANUARY 20, 2006

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE