

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**ANGELA LOVEJOY,
Grievant,**

v.

Docket No. 2023-0140-TayED

**TAYLOR COUNTY BOARD OF EDUCATION,
Respondent.**

DECISION

Angela Lovejoy, Grievant, filed this action against the Taylor County Board of Education on August 25, 2022. Grievant challenges the granting of secretary seniority credit to another employee, which placed that employee ahead of Grievant on the seniority list for that classification. Grievant seeks a review of the seniority list for the service classification of secretary pursuant to the applicable law. Grievant also requests that the seniority of the coworker be adjusted to the date that she began working as a service personnel in the secretarial classification.

This grievance was denied by Superintendent Christy Miller following a conference by letter dated September 23, 2022. The level two mediation was conducted on December 16, 2022. A level three evidentiary hearing was conducted on May 25, 2023, before Administrative Law Judge Joshua S. Fraenkel at the Grievance Board's Westover office. Grievant appeared in person and by her counsel, Rebecca A. Roush, West Virginia School Service Personnel Association. Respondent appeared by its counsel, Denise M. Spatafore, Dinsmore & Shohl, LLP. This case was reassigned on July 18, 2023, for administrative reasons. This case became mature for consideration upon receipt of the last of the parties' Findings of Fact and Conclusions of Law on July 24, 2023.

Synopsis

Grievant claims that Respondent lacked authority to award seniority to another employee who had been misclassified. This action placed that employee ahead of Grievant on the seniority list for that classification. Boards of education are obligated to properly classify its employees, and correction of misclassification also requires the granting of seniority credit. Grievant failed to prove by a preponderance of the evidence that the reclassification of another employee, with the associated seniority, was contrary to law or public policy. This grievance is denied.

The following Findings of Fact are based on the record of this case.

Findings of Fact

1. Grievant is employed by Respondent as a secretary in the central office. Grievant's seniority date in the secretary classification is September 22, 2020, although she had previously been employed by Respondent in other job class positions.
2. In 2019, Superintendent Miller's Executive Secretary took extended leave due to illness and ultimately resigned from employment. When the position was reposted and filled, Superintendent Miller and front office personnel discussed methods to avoid the extensive overtime required by the position. It was decided that the position should be changed to a professional position to avoid overtime requirements.
3. In December of 2019, the former secretary position assigned to the superintendent was posted as "Administrative Assistant", a professional position. The previous secretarial duties were not changed in this posting, but a college degree was required.

4. Amber Sevier, a substitute secretary, was hired as the most qualified applicant for the Administrative Assistant position. Ms. Sevier began working in the position on January 16, 2020.

5. While working in the Administrative Assistant position, Ms. Sevier performed all secretarial/clerical duties previously assigned to the executive secretary. Ms. Sevier did not have any assigned professional responsibilities, had no supervisory duties, and did not direct or manage a department or division. Ms. Sevier attended all board meetings, worked after normal work hours, and was paid a professional salary with no overtime pay.

6. On June 23, 2022, Respondent was notified that Amber Sevier had filed a complaint with the U.S. Department of Labor. The complaint was for additional compensation for overtime hours.

7. During the investigation of Ms. Sevier's overtime complaint, meetings were held with the Department of Labor Wage and Hour Investigator, Assistant Superintendent Allen Laugh, and Respondent's counsel, Denise Spatafore.

8. During the Department of Labor conferences, Respondent was advised by the Department of Labor that Ms. Sevier's position did not qualify as a professional or administrative position, and Ms. Sevier would be entitled to overtime compensation in addition to her regular salary. Respondent was advised by the Department of Labor to correct the situation by either assigning professional duties to the position or changing it to a service personnel position.

9. Respondent determined that Ms. Sevier had been misclassified as a professional the entire time she had served in the Administrative Assistant position. An

agreement was reached with Ms. Sevier to be reclassified to Executive Secretary, the proper title for her position, along with a salary adjustment to the applicable secretary salary.

10. Because Ms. Sevier had worked in the position since the beginning of her regular employment and performed the duties of a secretary the entire time, Respondent provided Ms. Sevier seniority credit in the secretary classification, retroactive to January 16, 2020.

11. The placement of Ms. Sevier on the secretary seniority list gave her a higher seniority date than two other employees, one of whom is Grievant, who is now the next person in line after Ms. Sevier on the secretary seniority list.

Discussion

As this grievance does not involve a disciplinary matter, Grievant bears the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Board, 156 C.S.R. 1 § 156-1-3 (2018); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). See *W. Va. Code* § 29-6A-6. See also *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). "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 & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

Grievant asserts that Respondent lacked the authority to award seniority to another employee who had been misclassified. Grievant also alleges that she has been harmed

by the placement of Ms. Sevier on the secretary seniority list. While it is unfortunate that the settlement agreement with Ms. Sevier places her ahead of Grievant on the seniority list, these arguments must fail. It is well settled that the “law favors and encourages the resolution of controversies by contracts of compromise and settlement rather than by litigation; and it is the policy of the law to uphold and enforce such contracts if they are fairly made and are not in contravention of some law or public policy.” Syl. Pt. 1, *McDowell County Bd. of Educ. v. Stephens*, 191 W.Va. 711, 447 S.E.2d 912 (1994). “This Grievance Board has recognized the principle that . . . settlements should be upheld unless it is proven by a preponderance of the evidence that the settlement was not fairly made or was in contravention of some law or public policy. *Adkins v. Logan County Bd. of Educ.* Docket No. 95-23-190 (Sept. 29, 1997); *Vance v. Logan County Bd. of Educ.*, Docket No. 95-23-190 (Mar. 15, 1996).” *Fiorini v. W. Va. Div. of Highways*, Docket No. 98-DOH-001` (Aug. 17, 1998).

The record established that Amber Sevier was misclassified through no fault of her own but based upon an error committed by Respondent. Superintendent Miller acknowledged that when the position was posted, there was a desire to avoid large amounts of overtime customarily accrued by the superintendent’s secretary. As a result, the decision was made to call it “professional.” The suggestion was made at level three that there were intentions to assign professional duties to the position, for whatever reason that never occurred. After the superintendent’s secretary position was retitled and posted as an Administrative Assistant, the job duties and role of that employee never changed. This certainly was not Ms. Sevier’s fault, who applied for and was selected to fill a job that was incorrectly title as professional.

Ms. Sevier's complaint with the Department of Labor resulted in her being awarded overtime pay, along with directives to the Taylor County Board of Education to correct the situation. This could only be accomplished by changing the position's job duties or correcting the job title and associated benefits. The resulting agreement with Ms. Sevier corrected Respondent's error in classifying her as a professional employee. The undersigned recognizes that this type of situation happens in the event an employee is misclassified, subsequently having the classification corrected, and the associated salary and benefits being provided to correspond with the proper classification title.

The Grievance Board has long recognized that boards of education should be encouraged to correct their errors. *Toney v. Lincoln County Bd. of Educ.*, Docket No. 2008-0533-LinED (Oct. 31, 2008); *Conners v. Hardy County Bd. of Educ.*, Docket No. 99-16-459 (Jan. 14, 2000). In addition, the action of a board of education in correcting errors, specifically with regard to proper classification and pay, has been upheld. *Mullins v. McDowell County Bd. of Educ.*, Docket No. 07-33-076 (Oct. 20, 2008).

Concerning Respondent's authority to correct the misclassification error, it has long been recognized that a board of education is obligated by law to properly classify its employees, and correction also requires the granting of associated benefits. Syl. Pt. 5, *Martin v. Randolph County Bd. of Educ.*, 195 W. Va. 297, 465 S.E.2d 399 (1995); *Lilly v. Harrison County Bd. of Educ.*, Docket No. 97-17-330 (Apr. 13, 1998). As Grievant's counsel aptly points out in her brief, service employees earn seniority when they begin performing their assigned duties within a job classification. W. VA. CODE § 18A-4-8g. When an employee has been placed in the wrong classification, the correction of their misclassification also entitles the employee to seniority credit earned while performing the

duties of the proper job title, in this instance, an executive secretary. The West Virginia Supreme Court of Appeals has recognized that, even when an employee has been placed in a position incorrectly, they are entitled to seniority earned while working in that position. *Hall v. Bd. of Educ. of the County of Mingo.*, 541 S.E.2d 624, 208 W. Va. 534 (W. Va. 2000).

Grievant argues that Respondent cannot use a Wage and Hour Complaint to confer seniority rights on an employee. In addition, the U.S. Department of Labor had no authority to review the job classification or confer seniority on an employee. This point is undisputed; however, regardless of the way Respondent's improper classification was discovered, it was obligated to correct this error upon having knowledge of it. The record is clear that Ms. Sevier worked in the position for over two years under an improper job title and classification, and absent Respondent's error, she would have been paid and credited with seniority as an Executive Secretary for that time. "There exists an affirmative duty to correct an error in classification when a superintendent becomes aware of sufficient information to make him aware that such an error has occurred. The action to reclassify . . . was not arbitrary and capricious. That action was required. *Dillion v. Mingo County Bd. of Educ.*, Docket No. 05-29-413 (Apr. 28, 2006); *Samples v. Raliegh County Bd. of Educ.*, Docket No. 98-41-391 (Jan. 13, 1999)." *Mullins, supra*. For all the above reasons, this grievance is denied.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant bears the burden of proving her grievance by a preponderance of the evidence. Procedural Rules

of the W. Va. Public Employees Grievance Board, 156 C.S.R. 1 § 156-1-3 (2018); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). See *W. Va. Code* § 29-6A-6. See also *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). "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 & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

2. It is well settled that the "law favors and encourages the resolution of controversies by contracts of compromise and settlement rather than by litigation; and it is the policy of the law to uphold and enforce such contracts if they are fairly made and are not in contravention of some law or public policy." Syl. Pt. 1, *McDowell County Bd. of Educ. v. Stephens*, 191 W.Va. 711, 447 S.E.2d 912 (1994). "This Grievance Board has recognized the principle that . . . settlements should be upheld unless it is proven by a preponderance of the evidence that the settlement was not fairly made or was in contravention of some law or public policy. *Adkins v. Logan County Bd. of Educ.* Docket No. 95-23-190 (Sept. 29, 1997); *Vance v. Logan County Bd. of Educ.*, Docket No. 95-23-190 (Mar. 15, 1996)." *Fiorini v. W. Va. Div. of Highways*, Docket No. 98-DOH-001` (Aug. 17, 1998).

3. The Grievance Board has long recognized that boards of education should be encouraged to correct their errors. *Toney v. Lincoln County Bd. of Educ.*, Docket No. 2008-0533-LinED (Oct. 31, 2008); *Connors v. Hardy County Bd. of Educ.*, Docket No. 99-16-459 (Jan. 14, 2000). In addition, the action of a board of education in correcting errors,

specifically with regard to proper classification and pay, has been upheld. *Mullins v. McDowell County Bd. of Educ.*, Docket No. 07-33-076 (Oct. 20, 2008).

5. It has long been recognized that a board of education is obligated by law to properly classify its employees, and correction also requires the granting of associated benefits. Syl. Pt. 5, *Martin v. Randolph County Bd. of Educ.*, 195 W. Va. 297, 465 S.E.2d 399 (1995); *Lilly v. Harrison County Bd. of Educ.*, Docket No. 97-17-330 (Apr. 13, 1998).

6. “There exists an affirmative duty to correct an error in classification when a superintendent becomes aware of sufficient information to make him aware that such an error has occurred. The action to reclassify . . . was not arbitrary and capricious. That action was required. *Dillion v. Mingo County Bd. of Educ.*, Docket No. 05-29-413 (Apr. 28, 2006); *Samples v. Raliegh County Bd. of Educ.*, Docket No. 98-41-391 (Jan. 13, 1999).” *Mullins, supra*.

7. Grievant failed to prove by a preponderance of the evidence that the reclassification of another employee, with the associated seniority, was contrary to law or public policy. The record established that Respondent’s correction of this error was appropriate and required by applicable law.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Intermediate Court of Appeals.¹ Any such appeal must be filed within thirty (30) days of receipt of this Decision. W. VA. CODE

¹On April 8, 2021, Senate Bill 275 was enacted, creating the Intermediate Court of Appeals. The act conferred jurisdiction to the Intermediate Court of Appeals over “[f]inal judgments, orders, or decisions of an agency or an administrative law judge entered after June 30, 2022, heretofore appealable to the Circuit Court of Kanawha County pursuant to §29A-5-4 or any other provision of this code[.]” W. VA. CODE § 51-11-4(b)(4). The West Virginia Public Employees Grievance Procedure provides that an appeal of a Grievance Board decision be made to the Circuit Court of Kanawha County. W. VA. CODE § 6C-2-5. Although Senate Bill 275 did not specifically amend W. VA. CODE § 6C-2-5, it appears an

§ 6C-2-5. Neither the West Virginia Public Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be named as a party to the appeal. However, the appealing party is required to serve a copy of the appeal petition upon the Grievance Board by registered or certified mail. W. VA. CODE § 29A-5-4(b).

Date: August 31, 2023

Ronald L. Reece
Administrative Law Judge

appeal of a decision of the Public Employees Grievance Board now lies with the Intermediate Court of Appeals.