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EMPLOYEES GRIEVANCE BOARD**

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RUTH M. HURT

v.

Docket No. 41-86-166-1

RALEIGH COUNTY BOARD OF EDUCATION

DECISION

Grievant, Ruth M. Hurt, has been employed by the Raleigh County Board of Education for seventeen years. In October, 1982 she applied for and was awarded a position as switchboard operator/receptionist, salary schedule D, at the board of education office.¹ Prior to October, 1982 the position had been classified as a secretary III/switchboard operator position, salary schedule F. On July 1, 1985 she left the switchboard operator/receptionist position for her present position as accountant III and her previous job remained vacant until October, 1985 when it was posted as switchboard operator/secretary III. She filed a grievance alleging that she was entitled

¹ The position she left was as a secretary at Mabscott elementary school and she changed jobs because the board office position was a twelve month job. The posting, dated September 15, 1982 was as follows:

"1 Switchboard Operator/Receptionist
Typing and office skills required and
ability to communicate with the public.
(Salary Schedule D)"

to the difference in pay between the D and F pay scale for the period of time she worked as switchboard operator/receptionist, i.e., \$110.00 per month from October, 1982 until July 1, 1985. A level two hearing was conducted on January 8, 1986 by the superintendent of schools and a level three hearing was conducted by the board of education on March 24, 1986.²

The evidence is that in her position as switchboard operator/receptionist she took incoming calls and performed clerical and secretarial duties as requested, such as typing, sorting invoices, proof reading and generally any task which she could coordinate with her switchboard and telephonic duties. Grievant was aware that the lady who had occupied the position previously, Mrs. Bartlett, had worked that position for a number of years and was classified as secretary III/retirement clerk. In June, 1985 grievant had requested ex-superintendent Baker to reclassify the position to the higher classification and had received no response. Accordingly, when the accountant III position became available she applied for and received

²At least two members of the board of education felt that the grievant should be paid but that the board did not have the legal authority to do so; that it had been an "administrative mistake" and that there was nothing that could be done. (Level III transcript, p.40).

it. It was not until the position was posted at the switchboard operator/secretary III position that grievant became upset because the job duties had not changed and she would have remained at the job had it been reclassified when she requested. She contends that it was favoritism and that it was unfair for her to receive less pay for the same work. Grievant further relied upon a 1984 decision of State Superintendent of Schools Roy Truby.³

The position of the school officials throughout this grievance has been that the position had been correctly posted in 1982 and grievant applied for and accepted the position under the posted classification and pay schedule; that grievant's predecessor, Mrs. Bartlett, had been in that position at least twenty years and had other assigned duties. It is further contended that the employee who succeeded grievant had other assigned duties such as performing secretarial duties for two supervisors and differs from the duties grievant had; that if the position had been reclassified and posted when

³ The decision, Saunders v. Board of Education of Marion County, April 20, 1984 is analogous to the instant grievance. There, as here, the county board of education was of the opinion that back pay could not be paid for duties performed under an erroneous classification and Superintendent Truby held that it could under Code, 18A-4-8. This decision is "persuasive" authority on the issue herein. Smith v. Board of Education of Logan County, 341 S.E.2d 685, 689 (W.Va. 1985).

the grievant requested it is possible that she might not have been the successful applicant.⁴

In addition to the foregoing factual recitation the following specific findings of fact are appropriate.

FINDINGS OF FACT

1. Grievant has been employed by the Raleigh County Board of Education and in October, 1982 grievant accepted a position as switchboard operator/receptionist, salary schedule D, at the office of the board.

2. In that position grievant took incoming calls, did receptionist duties, performed secretarial and clerical work,

⁴ There is some evidence that Mrs. Barlett, grievant's predecessor, also performed some custodial duties but this would present no rational basis for distinguishing the positions and is completely inconsistent with the job descriptions contained in the exhibits submitted by the board. As to grievant's successor, grievant responds that since she filed the grievance another full time employee had been hired to relieve her successor of the switchboard so she could perform the secretarial work; that there are now two employees doing the secretarial and switchboard duties. (Level III hearing, T. 35, 36). The record is unclear on some of these matters and is complicated by the absence of a written decision containing findings of fact and conclusions of law as required by Code, 18-29-6. Much of grievant's testimony is uncontroverted and must be taken as proved. Cf. Christopher v. City of Fairmont, 280 S.E.2d 284 (W.Va. 1981).

including typing and generally any other of similar duties and tasks which she could coordinate efficiently with her switchboard and telephonic duties.

3. Prior to October, 1982, when grievant was employed, the position had been classified as a secretary III/switchboard operator position, salary schedule F. The statutory pay scale differential for schedule D and schedule F is \$110.00 per month.

4. In June, 1985 and perhaps earlier, grievant had requested that the position be reclassified to conform to the duties being performed and the request was denied.

5. Accordingly, on July 1, 1985 grievant left the switchboard operator/receptionist position and accepted a position as accountant II at the board office.

6. The switchboard operator/receptionist position remained vacant for approximately three months during which time other secretary III employees in the office performed and shared the duties. In October, 1985, after grievant had commenced working in her position as accountant III the former position she had held was posted as secretary III/switchboard operator.

7. The evidence is conflicting as to the duties imposed by the reclassification but the probative evidence is that the duties of the job have not changed; instead there are now two employees performing the duties of the reclassified position. This and other evidence gives rise to the inference that the duties before and after grievant's tenure were primarily the same as performed by grievant.

8. The grievant performed the same duties as her predecessor and successor(s) and grievant was entitled to the salary scale of her predecessor and/or successor.⁵

CONCLUSIONS OF LAW

1. Code, 18A-4-8 requires a county board of education to annually review service personnel job classifications to reclassify where necessary.

2. Code, 18A-4-8 requires a change in classification upon meeting the requirements of an advanced classification and requires that the salary shall be made to comply with the requirements of Article 4.

⁵ This grievance is analogous to Casto v. Kanawha County Board of Education, Docket No. 20-86-014 (February 25, 1986), involving custodians III who had been performing custodian IV duties. The circuit court of Kanawha County had ordered their reclassification and back pay. The Casto grievance was a follow-up to the circuit court action and is pertinent here.

3. School personnel regulations and laws are to be strictly construed in favor of the employee.

4. Interpretations of statutes and school laws made by the State Superintendent of Schools prior to July 1, 1985 are persuasive authority in a grievance proceeding filed pursuant to Code, 18-29-1, et seq.

For the foregoing reasons the grievance is granted and the grievant is entitled to an award of back pay in an amount equal to the difference in her salary from October, 1982 until July, 1985.

Either party may appeal this decision to the Circuit Court of Kanawha County or Raleigh County and such appeal must be filed within thirty days of receipt of this decision. (Code, 18-29-7). Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the Court.



LEO CATSONIS
Chief Hearing Examiner

Dated: July 25, 1986