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CAROL SPENCER

v.

DOCKET NO. 41-86-355-4

RALEIGH COUNTY BOARD OF EDUCATION

DECISION

This grievance comes before the West Virginia Education Employees Grievance Board on appeal from a level two hearing and decision. The grievant appealed the level two decision to level three on October 23, 1986; thereafter, no action was undertaken by the county board and the grievant, pursuant to WV Code §18-29-3(a), appealed to level four.

The grievant, Carol Spencer, is a secretary II employed by the respondent board and assigned to Pettus Elementary School. She complains that in April 1975, due to an incident involving a personal letter belonging to the principal, she was removed from her position as secretary.<sup>1</sup> In May 1975, the Raleigh County Board of Education changed grievant's job classification to full time ESEA teacher aide.

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<sup>1</sup>The grievant was hired on a continuing contract as a "one half time secretary" and "one half time ECE teacher aide" in 1971.

The grievant alleges she was never notified of this change in violation of WV Code §18A-2-7. It is clear, however, that grievant became aware of the changes in the fall of 1975.<sup>2</sup> From the fall of 1975 to 1983, the grievant was employed as a full time ESEA teacher aide assigned to Pettus Elementary School. In 1983, the grievant applied for and was awarded the position of secretary at Pettus Elementary School. On September 18, 1985, the principal recommended that grievant be reclassified to secretary III. The request for reclassification to secretary III was denied because the grievant had not served in the capacity of secretary II for twelve continuous years.

The grievant contends that had she not been wrongfully reclassified/transferred in 1975, she would have been continuously classified as a secretary since 1971.

The record reveals through the grievant's testimony, that she took no formal action to complain about her reclassification in 1975 until she filed this grievance in September 1986.<sup>3</sup>

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<sup>2</sup> According to the grievant's testimony, it appears that shortly after the "incident" with the principal, the grievant was ill and remained absent from school most, if not all, of the remaining school year. When the grievant returned to her job in the fall of 1975, she discovered someone else was to perform the secretarial duties for the principal.

<sup>3</sup> It is noted that grievant did talk with school administrators which ultimately led to some correction in her experience pay in 1985.

WV Code §18-29-4(a), in pertinent part, provides:

(a) Level one.

(1) Before a grievance is filed and within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date on which the event became known to the grievant or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance, the grievant or the designated representative shall schedule a conference with the immediate supervisor to discuss the nature of the grievance and the action, redress or other remedy sought.

Since it is uncontested that the grievant's classification was interrupted in 1975 and she was not reclassified until 1983 when she again became a secretary, the pertinent provisions of WV Code §18A-4-8 would apply. Thus, the grievant would have to meet the requirements of the job definition which is contained in the following provisions of WV Code §18A-4-8:

"Secretary III" means personnel assigned to the county board of education 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 of any personnel who have served in a position which meets the definition of "secretary II" herein for twelve continuous years.

In computing the continuous service of the grievant, in a secretarial classification, it appears that she has only those years beginning in 1983.

In addition to the foregoing, the following findings of fact and conclusions of law are incorporated herein.

### FINDINGS OF FACT

1. The grievant, Carol Spencer, is a secretary II employed by the Raleigh County Board of Education and assigned to Pettus Elementary School.

2. The grievant first held a secretarial classification in 1971 but was reclassified in May 1975 and was then assigned the <sup>5</sup>classification of ESEA teacher aide.

3. The grievant remained classified as an ESEA teacher aide until 1983.


4. In 1983, the grievant applied for and was awarded the position of secretary II at Pettus Elementary School, which is the position she has held through the present.

### CONCLUSIONS OF LAW

1. The grievant failed to prove by a preponderance of the evidence that she met the criteria for reclassification, which criteria are provided for in the class title of secretary III as contained in WV Code §18A-4-8.

For all of the foregoing, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Raleigh County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. (WV 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.

  
JOHN M. RICHARDSON  
Hearing Examiner

DATED: April 20, 1987