



Members
James Paul Geary
Orton A. Jones
David L. White

**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

ARCH A. MOORE, JR.
Governor

Offices
240 Capitol Street
Suite 508
Charleston, WV 25301
Telephone 348-3361

MARY OLA TAFLAN

v.

Docket No. 15-86-099-2

HANCOCK COUNTY BOARD OF EDUCATION

DECISION

Grievant, Mary Ola Taflan, is employed as a substitute Secretary II by the Hancock County Board of Education. She claims that for the past several years she has been assigned to work at various county administrative offices but was not reclassified to Secretary III according to the provisions of W.Va. Code, 18A-4-8.

Grievant has pursued her administrative remedies through levels one, two and three and the case properly comes on for a level four decision based on the record and brief submitted by grievant's WVSSPA representative.¹

¹ John Roush, counsel for WVSSPA assumed the case on grievant's behalf sometime after appeal was made to this board in late January, 1986. His brief was filed with the Elkins examiner in early June, 1986 and the case was subsequently assigned to the undersigned hearing examiner.

The record reflects that grievant was employed by the school board in August, 1980 as a Senior (II) Secretary and was assigned to Weir High School. The board reduced the secretarial staff at Weir High with the close of the 1982-83 school year and grievant was placed on the transfer list and then reclassified as a Permanent Substitute, Senior Secretary, Countywide as reflected in the board's minutes of June 29, 1983.

Grievant testified on her own behalf at the level two evidentiary hearing.² She stated that she felt the board was in violation of W.Va. Code, 18A-4-8 in that she worked in administrative offices and performed the same work as other secretaries assigned to those offices, who were classified as Secretary III's. She also stated that at several schools she substituted for a Secretary III. Listed below are the locations that grievant worked:

1983-84 - Board Office: 3 weeks -- 2 weeks secretarial
duties, 1 week substitute
for Executive Secretary.

Junior High: 6 weeks

Vo-Tech Center: 2 days

Transportation: Remainder of school year

² It is noted that the level two hearing was conducted December 17, 1985. A local school service personnel representative was present at the hearing but apparently did not assist grievant in the presentation of her case. The board was represented by its counsel, James W. Davis, Jr. The record reflects grievant's concern about the situation.

1984-85 - Curriculum,	8:00 - 12:00
Purchasing and IMC	
and	
Transportation	12:00 - 4:00
1985-86 - Curriculum,	All day.
Purchasing and IMC	

Grievant recited the many various specific duties and tasks she performed at the administrative offices.

Grievant asks that she be reclassified retroactively to Secretary III with all of the rights, privileges and benefits thereto; and that she receive back wages for the time she worked in administrative offices or substituted for Secretary IIIs from 1983 until the present.

Respondent does not dispute that grievant worked at administrative office sites but asserts that she performed the clerical tasks of a Secretary I at the various locations and, therefore, was not entitled to reclassification. Grievant did acknowledge that when she substituted at school locations for absent secretaries classified as III's she was in fact only performing Secretary II work since those persons had attained the higher level classification upon meeting a tenure requirement.

In support of their respective positions in this dispute, both grievant and respondent relied on W.Va. Code, 18A-4-8 and an opinion from the State Superintendent of Schools. The relevant portions of Code, 18A-4-8 are as follows:

"Secretary I" means personnel employed to transcribe from notes or mechanical equipment, receive callers, perform clerical tasks, prepare reports and operate office machines.

"Secretary II" means personnel employed in any... school as a secretary. The duties may include performing general clerical tasks, transcribing... preparing reports, receiving callers and referring them to proper persons, operating office machines, keeping records and handling routine correspondence. There is nothing implied herein that would prevent such employees from holding or being elevated to a higher classification.

"Secretary III" means personnel assigned to...office administrators in charge of various...departments... or any personnel who have served in a position which meets the definition of "secretary II" herein for twelve continuous years.

There appears to be little distinction between the listed chores of Secretary I and II, the latter adding the words "duties may include performing" the same tasks as listed in I, but adding other responsibilities such as showing callers to proper persons, keeping records and handling routine correspondence. Secretary II refers specifically to persons working in a school while Secretary III refers to personnel assigned to administrators, and Secretary IIs with twelve-year tenure. No duties are specifically described for the position of Secretary III.

The October 14, 1983 opinion of the State Superintendent simply declares that it is not legal to assign a Secretary II to an (administrative) office, but that an administrative office may employ other office clerics such as a Secretary I or Executive Secretary.

The respondent board attempted to establish that the clerical duties grievant performed were those listed in the Secretary I category.

Superintendent Slack testified and reviewed the circumstances leading to grievant's reclassification as a substitute.³ He stated, "...the idea was to use her in a school. We put her on substitute, but we don't have any work." (T. 50). Mr. Slack spoke of grievant's assignments as being temporary until "something comes up" and "we don't have any place else to assign her to." (T. 50). His view was that she is a Secretary II based on her original employment contract but she is performing Secretary I duties at administrative offices where other secretaries are classified III. He stated she did not perform his secretary's tasks when she substituted at the board office.⁴

³ Mr. Slack stated that when the reduction of the secretarial staff occurred at Weir High he did not need grievant as a secretary II but did not want to "get into layoff", nor reclassify her as a secretary I. His rationale was, "rather than to get into reduction in pay, just pay them the same money and then use them wherever you needed them." (T. 45). This benevolent gesture has little bearing on what in fact transpired when grievant began her duties as a substitute secretary.

⁴ At one point counsel for the board asked Mr. Slack if the county currently employed any secretary Is in the county offices but the superintendent could not remember whether there were any or not. Still, he insisted that grievant performed only secretary I duties.

The board's remaining witnesses provided little to support Mr. Slack's perceptions as to the need of grievant's services and the nature of the work she actually performed. Charles Pew, Supervisor of Transportation, stated that he had originally requested assistance in his department as he had no one to cover the phone after his regular secretary departed for the day at 2:00 p.m. He stated that the need went beyond just having someone to answer the phone, but having that person perform any necessary tasks precipitated by the business nature of the call. The gist of his testimony was that, generally, office matters were not routine or static at any given time of the day. In describing his use of grievant's work hours, he "starting working with her" to train her for the responsibilities of the office shortly after she assumed her duties in the Transportation Department. (T. 58, 59, 60). Mr. Pew's need of extra personnel ceased upon an adjustment of his full-time cleric's work hours and a telephone connection with the central office to receive late-day calls.

Mary Ann Bussi, Director of Curriculum, Purchasing and I.M.C. office, testified that she had two regular clerics and two "temporary", one being grievant. Little difference existed between grievant's duties and the regular secretaryps' except that one of the two regular employees, Dorothy Herkle, had primary responsibility for typing and sending purchase bids. The other regular would compile them when Ms. Herkle was not there. Ms. Bussi stated that grievant could do the work --type up the bids --

but she did not think she had ever done so. (T. 65).

The board has established that all secretaries I, II or III, and grievant herself, perform basically the same type of clerical duties such as typing, answering the phone, preparing reports and the like. Conversely, the grievant has established that she performed not only the same type of clerical work but also essentially the same nature of clerical tasks as those performed by secretary IIIs with whom she worked at the various administrative offices.

Counsel for the board raised the issue of timeliness and pointed out that grievant, who claimed the misclassification began in 1983, had not filed her grievance until late 1985. Grievant stated she was not aware of the provisions of the grievance procedure and had never been given a copy of the county's grievance policy. Grievant did agree that she had access to provisions of the West Virginia Code relating to service personnel but only recently. While researching another employment matter she became aware that her classification status may constitute a grievable matter.⁵ (T. 28).

⁵ Grievant is involved with another grievance pertaining to salary inequities among Secretary IIs in Hancock County. Issues of that dispute are different from those in this case and are detailed and dealt with in a separate decision.

The timeliness issue argued by respondents in this grievance deserves some consideration. It is true that an employee must assume some responsibility in regard to her employment status and grievant's present situation has existed for several years. However, according to Code, 18-29-4(a)(1), an employee may file "within fifteen days of the date on which the event became known to the grievant," and grievant has testified that she only recently learned of her rights.

Moreover, the board has a far greater duty than grievant in this matter. W.Va. Code, 18A-4-8 provides in relevant part:

The county boards of education shall review each service personnel employee job classification annually and shall reclassify all service employees as required by such job classifications. The state superintendent of schools is hereby authorized to withhold state funds appropriated pursuant to this article for salaries for service personnel who are improperly classified by such county boards. Further, he shall order county boards to correct immediately an improper classification matter and with the assistance of the attorney general shall take any legal action necessary against any county board to enforce such order.

Whether or not grievant's ongoing substitute work is temporary or not, applicable law in W.Va. Code, 18A-4-15 provides:

The salary of a substitute service employee shall be based upon his years of employment as defined in section eight of this article and as provided in the state minimum pay scale set forth in section eight-a of this article and shall be in accordance with the salary schedule of persons regularly employed in the same position in the county in which he is employed.

FINDINGS OF FACT

1. Grievant, Mary Ola Taflan, was employed by the Hancock County Board of Education in August, 1980, as a Secretary II.

2. Grievant was assigned to Weir High School until the end of the 1982-83 school year when her job was terminated due to reduction in forces.

3. Grievant entered into a new contract with the board as a Permanent Substitute Secretary II assigned countywide.

4. Sometime after the beginning of the 1983-84 school term, grievant was regularly assigned to work at administrative offices, but was not reclassified to Secretary III.

5. According to her supervisor's testimony, grievant performed nearly all or all the same duties as Secretary IIIs while employed at the Transportation Department and Curriculum, Purchasing and IMC.

CONCLUSIONS OF LAW

1. A county board of education must classify and compensate school service personnel including substitutes according to the duties performed by said employees. W.Va. Code, 18A-4-8; Code, 18A-4-15.

2. A substitute secretary assigned to an administrative office and performing the same duties as a Secretary III in that office shall be classified as a Secretary III. Code, 18A-4-8.

Grievant has proven her allegation that she has been improperly classified as a Secretary II from the time she assumed her duties at Transportation in the 1983-84 school term and continuing through her present assignment at Curriculum, Purchasing and IMC.

Accordingly, this grievance is GRANTED in its entirety and the Hancock County Board of Education is directed to reclassify grievant to Substitute Secretary III retroactive to her initial placement in Transportation with appropriate salary adjustments and back wages.

Either party may appeal this decision to the Circuit Court of Kanawha County or Hancock County and such appeal must be filed within thirty days of receipt of this decision. (W.Va. 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.

Nedra Koval

NEDRA KOVAL

Hearing Examiner

Dated: January 12, 1987