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**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**

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RUTH CRAIGO

v.

Docket No. 20-88-064

KANAWHA COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Ruth Craigo, is currently employed by the Kanawha County Board of Education as a Secretary I assigned to the Carver Career and Technical Education Center. She filed a grievance on January 13, 1988 alleging her duties and responsibilities at the Center were those of a Secretary II and she should be classified as such. A Level II hearing was held March 16, 1988 and a subsequent decision was adverse to the grievant. A Level IV hearing was held July 29, 1988.¹

¹No evidence was submitted at the Level IV hearing and the parties initially agreed that the decision could be made on certain factual stipulations but subsequently forwarded a transcript of the Level II hearing (T.__) as part of the record.

There is essentially no dispute over the facts giving rise to the grievance. Grievant was a clerk at the Center in 1980 and was successful in her attempt during that year to be reclassified as a Secretary I. She has worked since then under the direct supervision of Vice Principal Don J. Hunt and serves as the secretary for the adult education program. In February 1985 grievant filed a request with the Board's Job Appeal and Analysis Committee to be reclassified as a Secretary II and her request was rejected. Ms. Craigo contends her duties at the time of that request were those of a Secretary II and, with little change, she has continued performing the same duties to the present. She requests reclassification and backpay to the date of her appeal to the committee as relief.²

The Board contends the definition of Secretary II contained in W.Va. Code, 18A-4-8 is one of a general school secretary and grievant does not meet that definition since she only serves as secretary for the adult education division of the Center.

²It should be noted that over two years elapsed between the date of the committee's decision and the filing of the grievance and grievant's only explanation for the delay was an inadequate knowledge of the law (T.17). The Board, however, did not contest the timeliness of the filing and the West Virginia Education and State Employees Grievance Board will not anticipate issues not fairly raised by either party. See, Harrison v. Kanawha County Board of Education, Docket No. 20-87-134-1.

The Board does not dispute grievant's claim that she performs the duties enumerated in the definition but maintains she is barred from complaining of her classification because she requested and was granted that classification in 1980.

The second argument advanced by the Board is essentially an assertion that the grievant is somehow estopped from objecting to her classification because she initiated the action by which she obtained it. This contention is simply without basis, legal or otherwise. The responsibilities of a given position are subject to change and an employee's request for new classification because of those changes should not be considered a waiver of rights. Moreover, W.Va. Code, 18A-4-8 imposes a duty on county boards of education to annually review each service personnel employee's job classification and reclassify all service employees as required by such job classifications.

The validity of the arguments of the parties concerning the definition of the Secretary II position rests upon an interpretation of the relevant portions of W.Va. Code, 18A-4-8, which provide:

"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 elementary, secondary, kindergarten, nursery, special education, vocational or any other school as a secretary. The duties may include

performing general clerical tasks, transcribing from notes or stenotype or mechanical equipment or a sound-producing machine, 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 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" or "secretary III" herein for twelve years.

Grievant contends a careful reading of these provisions would indicate the definitions of these three positions could be simplified as follows:

Secretary I - A secretary assigned to the central office but who is not directly responsible to the director of a division or department.

Secretary II - A secretary employed in a school.

Secretary III - A secretary assigned to the central office who is directly responsible to the director of a division or department.

In support of this assertion grievant cites State Superintendent of Schools Opinions dated October 29, 1980 and October 14, 1983 which adopt this interpretation of the classification definitions

and emphasize the language of W.Va. Code, 18A-4-8 to the effect that Secretary II's are employed "in a school".

The Board's argument that the assignment of a secretary to a school does not entitle one to the classification Secretary II unless the assignment is to the position of general secretary of that school is not persuasive and places an unwarranted and unreasonable qualification on the provisions of W.Va. Code, 18A-4-8. The Board's reasoning is particularly untenable in the grievant's circumstances since she does not serve in the capacity of an assistant secretary at the Center but works as the sole secretary for one of the major divisions within the school. The opinion of the State Superintendent of Schools is the more reasonable interpretation and is entitled to great weight. Smith v. Board of Education of the County of Logan, 341 S.E.2d 685 (W.Va. 1985); Dillon, et al. v. Board of Education of the County of Mingo, 301 S.E.2d 588 (W.Va. 1983); James v. Gilmer County Board of Education, Docket No. 11-87-181-3; Martin v. Mason County Board of Education, Docket No. 26-87-156-3.

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

FINDINGS OF FACT

1. Grievant is currently employed by the Kanawha County Board of Education as a Secretary I assigned to the adult education program at the Carver Career and Technical Education Center.

2. In February 1985 grievant made a request to the Board's Job Appeal and Analysis Committee to be reclassified from a Secretary I to a Secretary II and the request was denied.

3. Since that time grievant, in her position at the Center, has performed the duties enumerated in the definition of Secretary II contained in W.Va. Code, 18A-4-8.

CONCLUSIONS OF LAW

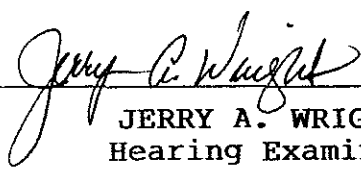
1. Interpretations of the State Superintendent of Schools must be given great weight unless they are clearly erroneous. Smith v. Board of Education of the County of Logan, supra; Dillon, et al. v. Board of Education of the County of Mingo, supra; James v. Gilmer County Board of Education, supra; Martin v. Mason County Board of Education, supra.

2. The State Superintendent of Schools' Opinion that a secretary assigned to a school must be classified as a Secretary II is not erroneous and is consistent with the definition of that position contained in W.Va. Code, 18A-4-8.

3. The failure of the Kanawha County Board of Education to reclassify the grievant to the position of Secretary II upon her assumption of the duties of that position was a violation of W.Va. Code, 18A-4-8.

Accordingly, the grievance is **GRANTED** and the Kanawha County Board of Education is hereby **ORDERED** to reclassify the grievant, Ruth Craigo, to the position of Secretary II and to further compensate her for any loss of wages dating back to February 1985.

Either party may appeal this decision to the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of said decision. (W.Va. Code, 18-29-7). Please inform this office of your intent to do so in order that the record can be prepared and transmitted to the Court.



JERRY A. WRIGHT
Hearing Examiner

Dated: October 24, 1988