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CORA WYATT

v.

DOCKET NO. 89-38-301

POCAHONTAS COUNTY BOARD OF EDUCATION

DECISION

Grievant, Cora Wyatt, has been employed by the Pocahontas County Board of Education (Board) as an accountant for the past fifteen years. Ms. Wyatt filed a level one grievance on April 4, 1989 in which she alleged violations of W.Va. Code §§18A-2-5, 18A-2-6, 18A-4-8, and 18A-4-8b when her employment was reduced to half-time as a result of a reduction in force. Consideration of the grievance was waived at levels one and three; the matter was denied following a hearing at level two. A level four appeal was filed on July 5, 1989 and a hearing was convened on August 11 at which time the parties agreed that the matter could be submitted on the record. Proposed findings of fact and conclusions of law were subsequently filed by September 16, 1989.

The facts of this matter are not in dispute. The grievant has been employed by the Board since 1974 as an

accountant II assigned to Pocahontas County High School. She is the only employee of the Board classified solely as an accountant although several employees assigned to the central office are multi-classified as secretary III/accountant II's. Sometime during the spring of 1988 the administration advised the employees of the possible necessity for a future reduction in force. Due in part to this notification the grievant requested, by letter directed to Superintendent Curry and dated November 8, 1988, that she be reclassified as a secretary III/accountant II. Sometime later, having received no response to her request, the grievant inquired of Mr. Vance, principal of Pocahontas County High School, as to whether he had been notified of any changes in her classification. Mr. Vance advised her that he had received a request from Superintendent Curry for information relating to her duties and that he had provided the requested information but had received no follow-up communication regarding her reclassification. The grievant took no further action in pursuing her reclassification after this discussion with her principal. In the spring of 1989 the Board implemented a reduction in force which included a reduction in the grievant's employment from full-time to part-time status. On April 4, 1989, following the Board's action to reduce her employment, the grievant initiated the present grievance.

The grievant asserts that her classification should properly be secretary/accountant to accurately reflect the duties of her position which she describes as follows:

since I am the accountant I am responsible for keeping all the books, writing the checks, writing the receipts. I do this for the hot lunch program as well as the general fund program. We also keep the athletic program separate from the general fund. I am responsible for doing the lunch applications for the whole school as to determining whether they are free or reduced and anything else that comes under the lunch program. I'm responsible each day for the girls who work in the concession stand--getting them set up with their change each day. Of course, I count hot lunch money each day also. When the secretary is not available to type a letter from Mr. Vance I do this and of course I go to lunch first each day and then when I'm on lunch--when I come back from lunch duty, Nancy goes to lunch so I assume whatever responsibilities that are necessary in her position in the outer office which could be anywhere from getting change for students, welcoming visitors, taking care of phone calls, selling lunch tickets. There are a whole lot of things that usually occur at lunch time. I'm also responsible for the carry over of telephone calls. If there's already one phone call coming in and Nancy is not available to answer the phone then I do all that. I take care of the inventories [textbooks, supplies and equipment] at Pocahontas County High School.

T. p. 5. In addition to these duties performed during the instructional term the grievant, who has a 261-day employment term, testified that:

During the summer I assume the role as the secretary and if Mr. Vance is gone the principal as far as you can go with being the principal. Of course, I can't take care of any duties that he would have to--where he would have to get permission to do something but I handle as much as I can and sometimes I take the place of the guidance counselor during the summer.

T. p.6.<sup>1</sup> Had she been properly classified in the spring of 1989, the grievant argues, she would have been protected from the reduction in employment due to her greater seniority than other secretary III/accountants II's.

The Board argues that the position of secretary/accountant is a wholly separate, independent and distinct classification from either secretary or accountant and that the grievant is entitled to bumping rights only within her classification of accountant. It asserts secondly, that while the grievant may perform some duties which could also be considered secretarial in nature, her responsibilities are principally related to accounting and do not include the considerable secretarial duties performed by the secretary/accountants. The Board's final point is that the grievant is now barred from raising the claim of misclassification in that she failed to file a grievance regarding that issue within the time limits set forth in W.Va. Code §18-29-4.

The grievant's attempt to escape the effects of a reduction in force by seeking a retroactive reclassification cannot be upheld. Misclassification is an ongoing grievable issue; however, once recognized by an employee it is her

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<sup>1</sup>The grievant's testimony was that the secretary works a 220 day term or eleven months while she, the grievant, works 261 days, or twelve months, which includes approximately twenty vacation days so it is unclear how long the grievant may work without the secretary being present but it would not appear to be the entire summer.

responsibility to pursue her rights in a timely fashion. Ms. Wyatt did inquire, or request, that she be reclassified but when she received no response from the superintendent she failed to take any further action until after half of her position was eliminated. The issue of reclassification must be considered in light of circumstances in effect on the date the grievance was filed and will not be applied retroactively in order to change the outcome of intervening personnel actions.

The grievant's testimony establishes that she does perform, in a very limited manner, some duties which are generally considered secretarial in nature. While the record indicates that the school principal may have estimated that the grievant spends twenty percent of her time attending to secretarial functions, neither he nor she provided an adequate explanation substantiating that figure.<sup>2</sup> Further, the grievant did not show what percentage of time those employees classified as secretary/accountant spent within each designation making it impossible to determine whether she is in fact similarly-situated. In consideration of the available information, Superintendent Curry's decision that those duties performed by the grievant

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<sup>2</sup>On the contrary, the grievant's testimony indicates that other than filling in for the secretary during her lunch break the only other secretarial duties she performs regularly are answering the telephone and typing, perhaps as much as one letter every two weeks.

would not merit multi-classification cannot be judged incorrect, arbitrary or capricious.

In addition to the foregoing narration it is appropriate to make the following specific findings of fact and conclusions of law.

### Findings of Fact

1. The grievant has been employed as an accountant II by the Board since 1974 and is assigned to Pocahontas County High School. She is the only employee of the Board classified solely as an accountant.

2. The grievant's duties primarily entail maintaining textbook and equipment inventories, ordering supplies, bookkeeping and check-and receipt-writing for various school programs including hot lunch, athletics and the general fund. She occasionally types a letter for the principal, answers the telephone and covers the office when the secretary is not there.

3. By letter dated November 8, 1988 the grievant requested that Superintendent Curry reclassify her from accountant II to secretary III/accountant II.

4. The grievant received no response from Superintendent Curry regarding her request for reclassification and she engaged in no further effort at that time to secure what she now asserts is her proper classification.

5. In the spring of 1989 the Pocahontas County Board of Education implemented a reduction in force which resulted in the grievant's position being reduced from full-time to half-time.

6. The grievant promptly initiated this grievance following the Board's action reducing her employment to half-time.

### Conclusions of Law

1. It is incumbent upon a grievant seeking relief pursuant to W.Va. Code §§18-29-1, et seq. to prove all of the allegations constituting the grievance by a preponderance of the evidence. Christian v. Mingo County Board of Education, Docket No. 89-29-514 (Jan. 31, 1990); Reed v. Department of Corrections, Docket No. CORR-88-028 (Jan. 31, 1989).

2. The grievant has failed to prove by a preponderance of the evidence that she performs duties comparable to other multi-classified secretary/accountants in either quality or quantity or that she is entitled to the additional designation of secretary III as it is defined in W.Va. Code §18A-4-8.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Pocahontas County or to the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. (W.Va. Code §18-29-7) Neither the West Virginia Education and State Employees Grievance Board nor any of its Hearing Examiners is a party to such appeal, and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate Court.

DATED: February 28, 1990

Sue Keller

SUE KELLER

SENIOR HEARING EXAMINER