JOHN DILLON, .

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Grievant, .

.

v. . DOCKET NO. 93-06-438

.

CABELL COUNTY BOARD OF EDUCATION, .

.

Respondent. .

D E C I S I O N

This is a grievance by John Dillon (Grievant), employed by the Cabell County Board of Education (CCBE) as its Coordinator of Technical Services, regarding the following specifics:

> Violation of WV Code 18A-4-5b in regard to uniformity of county salary supplement for coordinators. Grievant was denied reclassification to pay (sic) from H-57 to H-61 pay grade. Relief sought is to be reclassified to pay grade and back wages to date of request for said reclassification.

Grievant submitted this grievance on or about June 30, 1993. Following denial at Level I, a Level II hearing was conducted on August 5, 1993. On September 20, 1993 CCBE issued a Level II decision affirming the earlier denial. After a further appeal to Level III was rejected on October 15, 1993, Grievant timely appealed to Level IV on October 20, 1993. Following a series of continuances, each of which was granted for good cause, a Level IV hearing was conducted in this Board's Charleston office on March 8,1994. Upon receipt of post-hearing submissions from both parties, this matter became mature for decision on April 11, 1994. (See footnote 1)

Grievant alleges CCBE is violating W. Va. Code § 18A-4-5b, entitled "County Salary Supplements for School Service Personnel," the pertinent portion of which provides:

> The county board of education may establish salary schedules which shall be in excess of the state minimums fixed by this article.
>
> These county schedules shall be uniform throughout the county with regard to any training classification, experience, years of employment, responsibility, duties, pupil participation, pupil enrollment, size of buildings, operation of equipment or other requirements. Further, uniformity shall apply to all salaries, rates of pay, benefits, increments or compensation for all persons regularly employed and performing like assignments and duties within the county . . . .

Grievant takes particular issue with the fact that another person employed as Coordinator of Systems Development, Mary Adkins, is paid at pay grade H-61, while as Coordinator of Technical Services, Grievant is paid at pay grade H-57. In an earlier decision, Dillon v. Cabell County Board of Education, Docket No. 89-06-702 (Aug. 31, 1990), aff'd Case No. 90-C-427 (Cabell County Cir. Ct. Sept. 10, 1990) (Dillon II), this Board determined that Grievant's job as Coordinator of Technical Services and that of CCBE's Director ofMaintenance were "like assignments and duties within the county" within the meaning of §18A-4-5b, and that Grievant was entitled to compensation on the same wage scale. See also Dillon v. Cabell County Bd. of Educ., Docket No. 89-06-702 (Feb. 28, 1990), remanded for further proceedings Case No. 90-C-427 (Cabell County Cir. Ct. Aug. 6, 1990) (Dillon I). Under Dillon II, a factual analysis is necessary to determine whether the positions at issue require "similar skills, duties and responsibilities of the individuals assigned to them." Dillon II, supra, citing Meadows v. Jefferson County Bd. of Educ., Docket No. 19-88-192 (Dec. 29, 1988).

W. Va. Code § 18A-4-8 defines "[d]irector or coordinator of services" as "personnel not defined as professional personnel or professional educators in section one [§ 18A-1-1], article one of this chapter, who are assigned to direct a department or division." W. Va. Code § 18A-1-1 divides school board employees into two categories: "professional personnel" and "service personnel." The statute defines these two categories of employment as follows:

> (b) "Professional personnel" shall mean persons who meet the certification and/or licensing requirements of the State, and shall include the professional educator and other professional employees.
>
> (e) "Service personnel" shall mean those who serve the school or schools as a whole, in a nonprofessional capacity, including such areas as secretarial, custodial,

maintenance, school lunch, and as aides.

§ 18A-1-1 further divides "professional personnel" into two categories: "professional educators" and "other professional employees," defining the latter category as follows:

> (d) "Other professional employee" shall mean that person from another profession who is properly licensedand is employed to serve the public schools and shall include a registered professional nurse, licensed by the West Virginia Board of examiners for registered professional nurses and employed by a county board of education, who has completed either a two-year (sixty-four semester hours) or a three-year (ninety-six semester hours) nursing program.

CCBE contends that Grievant's pay cannot be compared with that of Ms. Adkins because she is employed in the professional personnel category while Grievant is employed in the service personnel category. While Grievant agrees that he is employed in the service personnel category, he submits that Mary Adkins is likewise a service personnel employee. CCBE specifically contends that Ms. Adkins falls under the "other professional personnel" category as defined in W. Va. Code § 18A-1-1(d), supra. Since the pay uniformity provisions in § 18A-4-5b only apply to service personnel, resolution of this issue may determine the outcome of this grievance.

In support of its position, CCBE presented evidence that Ms. Adkins is reported to the State Department of Education under position code "521" while Grievant is reported under position code "570." Ms. Adkins is one of nine employees reported under the category "director or coordinator of services" while Grievant is one of two employees reported under the category of "supervisor of maintenance." CCBE claims that code 521 is intended to identify non-teaching professional employees who are paid from the service personnel pay scale, these positions being funded by the State.

Grievant counters this evidence by noting that the minutes of a CCBE board meeting show action was taken on Ms. Adkins' hiringunder the heading "Employment - Service Personnel." G Ex 2. Likewise, Ms. Adkins signed an employment contract for service personnel rather than professional personnel. Although Ms. Adkins has been employed by CCBE for four years, CCBE submits that this was simply a "mistake." Grievant further established that Ms. Adkins' position as Coordinator of Systems Development was listed on a "Service Personnel Job Posting" which was posted from July 9

through 13, 1990. G Ex 1. Grievant's position as "Coordinator of Technical Services" was similarly posted on a Service Personnel Job Posting from June 27 through July 3, 1986. G Ex 5. Ms. Adkins testified that she is considered as being in the service personnel category. She has not received any of the annual pay raises awarded to professional personnel. Moreover, she was notified of a possible reduction in force as a service personnel employee. However, she does not appear on either of CCBE's seniority lists for professional or service personnel.

In regard to minimum qualifications, the only apparent difference between these two positions as posted is that the Systems Development position requires a college degree in computer science. Otherwise, the qualifications required are comparable in that both positions require various types of job-related knowledge, skill and experience. Significantly, the Systems Development position does not require any particular license or certification. CCBE's claim that the Coordinator of Systems Development position currently occupied by Ms. Adkins is not a service personnel position cannot withstand minimal scrutiny. W. Va. Code§ 18-1-1(h) defines service personnel as "all nonteaching school employees not included in the . . . definition of 'teacher.'" W. Va. Code § 18A-1-1, quoted previously, further provides: "The definitions in section one [§ 18-1-1], article one of chapter eighteen shall be applicable to this chapter." Thus, the definitions in § 18A-1-1 build upon the definitions in § 18-1-1.

Clearly, the Coordinator of Systems Development is not a teacher. W. Va. Code § 18-1-1(g) defines "teacher" as follows:

> "Teacher" shall mean teacher, supervisor, principal, superintendent, public school librarian; registered professional nurse, licensed by the West Virginia board of examiners for registered professional nurses and employed by a county board of education, who has a baccalaureate degree; or any other person regularly employed for instructional purposes in a public school in this state.

Moreover, when the definitions in §§ 18-1-1 and 18A-1-1 are read in pari materia it becomes apparent that the "other professional employee" category will not accommodate CCBE's interpretation. While § 18A-1-1 does not necessarily restrict the "other professional employee" category to registered nurses, use of the term "properly licensed" to modify "person from another profession" denotes possession of a license as a prerequisite to employment in this category. No license or certification is required of the Coordinator of Systems Development.

While a person may need a college degree to adequately perform the duties of the Systems Development position, possession of such a degree, standing alone, does not dictate that such an employee falls in the other professional employee category rather than the service personnel category. Given that this particular position isnot directed at providing training to students or teachers, but generally supports the infrastructure of the school system, and that CCBE has generally treated this position as a service personnel position, the undersigned concludes that the Systems Development position currently occupied by Ms. Adkins is a service personnel position. See Brewer v. Mercer County Bd. of Educ., Docket No. 89-027-580 (June 29, 1990). Accordingly, the duties of Ms. Adkins' position must be compared with those of Grievant's position, to determine if they involve "like assignments and duties" within the meaning of § 18A-4-5b. See Dillon II, supra.

Grievant's job responsibility as Coordinator of Technical Services primarily involves repair and maintenance of electronic equipment including televisions, computers, video cameras and recorders, radios, sound projectors, intercoms, and similar audiovisual equipment. Grievant reports to CCBE's Assistant Superintendent of School Facilities. Grievant is a high school graduate with three years of technical school. No degree is required for the Technical Service position. Grievant's official job description (G Ex 6) lists the following responsibilities:

1. Supervise, including evaluations, of Technical Department employees.

2. Prepare and assign work orders and schedules.

3. Maintain records, files and inventory of equipment.

4. Utilize computer programs and computer equipment for operation of the Technical Department.

5. Formulate and write bid specifications on electronic equipment.

6. Complete and approve payroll reports.

7. Prepare, submit and control the budget for the Technical Department.

8. Provide training on proper care and usage of electronic equipment.

9. Provide technical assistance on the procurement of electronic equipment.

10. Maintain a preventive maintenance program on electronic equipment and repair such equipment when necessary.

11. Set up electronic equipment for meetings, etc.

12. Other job responsibilities as may be assigned and related to operations of the Technical Department.

Ms. Adkins testified that she supervises programmers and works on developing conversion programs and applications for the various computer systems used by CCBE. Ms. Adkins reports to Margaret Robiteau, CCBE's Coordinator of Computer Services. Consistent with the qualifications for the Systems Development position, Ms. Adkins has a Bachelor of Science degree. The current job description for CCBE's Coordinator of Systems Development (G Ex 4) lists the following responsibilities:

1. Supervise, schedule, and coordinate the development and maintenance of complete data processing systems.

2. Assign the work of computer programmers.

3. Participate in the review and definition of tentative data processing systems.

4. Design, organize, and program complete data processing systems including the development of codes, design of forms, and written procedures.

5. Serve as a technical advisor to the Coordinator (Administrator) of Computer Services on software and hardware limitations and personnel training.

6. Act as the Coordinator (Administrator) of Computer Services in her/his absence.

7. Assist the Coordinator (Administrator) of Computer Services in the selection and evaluation of personnel. 8. Utilize self-appraisal for the improvement of administrative skills.

9. Demonstrate unbiased attitudes in fulfilling administrative responsibilities.

10. Act as a consultant to other departments requesting data processing services.

11. Define procedures for testing and implementing new applications in the data base environment.

12. Define and implement security procedures to ensure the integrity and privacy of the computer systems being utilized.

13. Design, implement, and periodically test the system backup and recovery procedures for all in-house systems.

14. Develop file structures.

15. Document current system operations.

16. Analyze existing program logic to determine the best method of accomplishing required changes or causes of program malfunction.

17. Assist with in-service training of programmers, operators and all end-users. (This should be for all systems including: CIMS, NOVELL, CICS, DOS/VSE, OS/2, MAPNET and ALL OTHERS).

18. Assist county Computer Consultant with his/her Novell installations as needed, as well as, act as a backup source for Novell users.

19. Assist the Coordinator (Administrator) of Computer Services in the management of all student management files.

20. Assist the Coordinator (Administrator) of Computer Services in the coordination and implementation of any/all system conversions.

21. Help coordinate the installation of any/all software upgrades performed by department programmer or RESA Support Staff. This would include overseeing that all end-users affected receive appropriate documentation on new upgraded releases of software. (CICS, DOS/VSE, OS/2, MAPNET, CIMS OR ACS)

22. Assist the Coordinator (Administrator) of Computer Services with defining all system parameters, files, forms, formats, calendars, codes, etc. utilized by the AS/400(CIMS) - Student Management System, as well as, coordinate the ongoing maintenance of these areas throughout each school year.

23. Provide technical support to any users utilizing any of the systems supported by the Computer Services Department.

24. Work with the Coordinator (Administrator) of Computer Services, Curriculum Supervisors, Administrative Assistants and School principals to develop curriculum offerings into the CIMS Student Scheduling System for each new school year.

25. Work with the Coordinator (Administrator) of Computer Services and school administrators to efficiently schedule schools for the next school year.

26. Keep up-to-date on computer technology through reading, attending conferences and working with new hardware and software.

27. Perform other tasks as assigned by the Coordinator (Administrator) of Computer Services, to include assisting in completing and/or meeting deadlines.

Although Grievant and Ms. Adkins are both service personnel who perform work that supports the infrastructure of the school system in Cabell County and hold positions as coordinator of services, Grievant has not demonstrated that his duties and responsibilities are substantially similar to Ms. Adkins'. Review of the duties and responsibilities of the respective positions leads to the conclusion that Ms. Adkins performs classic "white collar" duties relating to computer systems, while Grievant primarily performs traditional "blue collar" work as the chief technician responsible for repair and maintenance of various kinds of electronic equipment, including computers. Ms. Adkins is required to act as the Coordinator of Computer Services in Ms. Robiteau's absence, a task that is not mirrored in Grievant's job description. Grievant's work is substantially more similar to the job performed by a typical Director of Maintenance than an employee involved with developing computer systems applications. See Dillon I. (Both Grievant and the Director of Maintenance report to Assistant Superintendent Thompson while Ms. Adkins reports to Ms. Robiteau.) Not all employees who perform support functions and hold a similar title need to be paid identically under § 18A-4-5b. Wetherholt v. Cabell County Bd. of Educ., Docket No. 93-06-017 (June 30, 1993).

In addition to the foregoing discussion, the following findings of fact and conclusions of law are appropriate in this matter.

FINDINGS OF FACT

1. Grievant is employed by Cabell County Board of Education (CCBE) as its Coordinator of Technical Services and is paid at pay grade H-57.

2. Mary Adkins is employed by CCBE as its Coordinator of Systems Development and is paid at pay grade H-61.

3. The Coordinator of Systems Development position was posted as a school service personnel position. Since her employment, Ms. Adkins has signed a contract of employment as a school service personnel employee, she was given notice of a possible reduction in force as a school service

personnel employee and she has not received the annual pay raises that have been automatically awarded to other professional employees. CCBE lists Ms. Adkins on a roster submitted to the Department of Education to obtain state funds in code 521 with other professional employees but she does not appear on either of the county seniority lists for professional or service personnel.

4. The Coordinator of Systems Development supervises programmers and is responsible for developing programs and applications for the computer systems employed throughout CCBE. This position requires a college degree in computer science and reports to CCBE's Coordinator of Computer Services.

5. Grievant, as Coordinator of Technical Services, is responsible for the repair and maintenance of various kinds of electronic equipment used by CCBE, including computers. He supervises technicians who install, repair and maintain a varietyof equipment ranging from televisions and video recorders to intercoms and radios. This position does not require a specific level of education. Grievant reports to CCBE's Assistant Superintendent for School Facilities.

CONCLUSIONS OF LAW

1. Where a Coordinator of Systems Development position is posted as a service employee position requiring a college degree in computer science but no professional certification or licensure, and the employee selected to fill such position signs a contract for service personnel employees and is notified of a possible reduction in force as a service employee, such position is a school service personnel position for purposes of determining pay uniformity under W. Va. Code § 18A-4-5b. See W. Va. Code §§ 18-1-1; 18A-1-1; Brewer v. Mercer County Bd. of Educ., Docket No. 89-027-580 (June 20, 1990).

2. In order to prevail on a pay uniformity claim under W. Va. Code § 18A-4-5b, a grievant must show that his or her duties are substantially similar to another service employee. See Weimer-Godwin v. Bd. of Educ., 369 S.E.2d 726 (W. Va. 1988); Meadows v. Jefferson County Bd. of Educ., Docket No. 19-88-192 (Dec. 29, 1988).

3. Grievant has failed to demonstrate that his position as CCBE's Coordinator of Technical Services is so substantially similar to CCBE's Coordinator of Systems Development that they are "like assignments and duties" requiring compensation on the same wage scale under W. Va. Code § 18A-4-5b. See Wetherholt v. CabellCounty Bd. of Educ., Docket No. 93-06-017 (June 30, 1993);

Dillon v. Cabell County Bd.of Educ., Docket No. 89-06-702 (Aug. 31, 1990), aff'd Case No. 90-C-427 (Cabell County Cir. Ct. Sept. 10, 1990)

Accordingly, this Grievance is hereby **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Cabell 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 Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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LEWIS G. BREWER

Administrative Law Judge

Dated: August 9, 1994

Footnote: 1Grievant's post-hearing brief was to be mailed not later than March 31, 1994. However, Grievant's brief was hand-delivered on April 5, 1994. Respondent objected to Grievant's brief as untimely. As there was no prejudice shown to the Respondent, Grievant's brief will be considered. However, parties to proceedings before this Board are cautioned that the proper procedure is to contact the representative for the opposing party to ascertain their position on extending the deadline and then formally request an extension of time from the Administrative Law Judge presiding over the case.