DEBBIE HISSOM

v. Docket No. 94-15-568

HANCOCK COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, employed by Respondent Hancock County Board of Education (HCBE) as a service worker on a 240-day contract, filed the following level four appeal on September 19, 1994: Two of Grievant's co-workers have had their employment term increased from 240 to 260/261 days. These employees have the same immediate supervisor as Grievant. Grievant seeks an increase of her employ ment term to 260/261 days on the basis of discrimina tion (W.Va. Code 18-29-2) and uniformity (18A-4-5b). Grievant also seeks back pay.

The case became mature for judgment on the day level four fact/law proposals were due, November 28, 1994.1

_____

1Although a level four hearing was requested and set, the parties ultimately agreed to submit the matter for decision based on the lower level record. The record consists of the July 28, 1994 level one decision, the September 8, 1994 level two decision and a copy of the transcript/exhibit of the August 24, 1994 level two hearing. Although the parties initially agreed to a briefing deadline of November 28, 1994, by letter dated November 4, 1994, HCBE waived its right to submit, and Grievant also declined to submit any fact/law proposals by the designated time.

Based on all matters of record, the following findings of

fact are made.

Findings of Fact

1. Grievant is multiclassified and serves as HCBE's sole Warehouse/Mail Clerk. She is one of four service workers supervised by Mary Ann Bucci, a Central Office professional employee who oversees Curriculum and Purchasing (C&P).

2. In mid-1994, Ms. Bucci was promoted from Director of Curriculum to Assistant Superintendent of Curriculum and her employment term was extended from 240 to 261 days.

3. Shortly after Ms. Bucci's promotion, the two secre taries she supervised within C&P were reclassified as executive secretaries and also given extended 261-day contracts.

4. Grievant does not work in the C&P executive office; rather, she and the remaining employee supervised by Ms. Bucci work in a room "at the end of the building" in the Instructional Materials Center (IMC). Grievant spends about twenty-five percent of her work day at IMC, and the rest of the time she is either on the road or on site at one of HCBE's various schools and satellite offices. T.14.

5. HCBE has followed a policy and has adopted a resolu tion that 261-day contracts for service employees would be eliminated over a period of time through attrition, but some exceptions have been made. For example, certain service employ ees receive 261-day job terms, those being mechanics serving within the Transportation Department who maintain school vehi cles throughout the year, the senior or "head" secretary based in each of HCBE's two high schools, and all "executive secretar ies," secretaries who work for the superintendent or assistant superintendents. See Superintendent Daniel Curry's testimony, at T.15-21.

6. Grievant, with approximately twenty-two years' senior ity, agreed that her job had not changed in any significant manner over the past five or more years. T.12.

Grievant does not specifically contest the reclassification of C&P's two secretaries. In Grievant's view, HCBE's actions amounted to discrimination because, "we all should have got it, that they are picking and choosing. That they gave it to two and not the other two." T.10. Grievant also maintains that her services are needed for 261 days so that mail can "be picked up daily, year-round." T.13.

HCBE denies wrongdoing in this matter. It contends that Grievant was not the subject of discrimination because Grievant is not similarly situated to a very small group of specialized service employees who are granted 261-day employment terms, and that, in fact, Grievant is the only employee within the classi fication to which she is assigned. HCBE also maintains that the issue of Grievant's employment term has already been litigated in another grievance in which she and other service workers sought extended contracts, Robb v. Hancock County Bd. of Educ., Docket No. 91-15-356 (Mar. 31, 1992), and that grievance was denied.

HCBE is correct that the issues addressed by Grievant are nearly identical to those previously ruled upon at level four by the Grievance Board. In Robb, Grievant was one of the parties who sought paid vacation days, the same as employees holding an extended, 261-day service contract. Grievants in that case, all 200-, 210- or 240-day service employees, alleged a violation of the "uniformity" provisions of Code 18A-4-5b and discriminatory treatment. The grievants did not prevail on their claims. Robb held that there was no statutory requirement for all service

employees to receive the same employment term and that the grievants did not establish they performed the same duties as the 261-day employees; thus, no uniformity violations or dis crimination was shown.

The holdings in Robb must apply here unless some signifi cant changes have occurred with regard to Grievant's working situation which would compel a different analysis and outcome. Grievant apparently raises the issue of her employment term again because Ms. Bucci's secretaries were upgraded to executive secretaries and their service contracts were upgraded to 261 days, and at least one of them was also a party in Robb seeking such an extended work term. However, HCBE was required to reclassify Ms. Bucci's secretarial staff. W.Va. Code 18A-4-8 defines an executive secretary as a worker "employed as the county school superintendent's secretary...."

Unfortunately for Grievant, her working conditions have not altered. Simply because Ms. Bucci's secretaries have attained executive secretary status does not change Grievant's work status as a warehouse mail clerk, even though Grievant remains one of Ms. Bucci's supervisees. In short, the facts in this case do not support a finding that HCBE has violated any law, regulation or policy or that Grievant is entitled to an extend ed, 261-day contract.

In addition to the foregoing, the following conclusions of law are properly made.

Conclusions of Law

1. "Under W.Va. Code 18A-4-8 and 18A-4-5b there is no requirement that boards of education provide uniform across-the-board or classification-related employment terms to its service personnel. Compare Workman v. Logan County Bd. of

Educ., Docket No. 89-23-287 (Jan. 30, 1990)." Robb v. Hancock County Bd. of Educ., Docket No. 91-15-356 (Mar. 31, 1992).

2. Grievant has failed to prove that she performs like assignments and duties as do her supervisor's two secretaries.

3. It was not discriminatory on HCBE's part to upgrade two secretaries working for a newly-promoted assistant superin tendent and not upgrade Grievant, a clerk who works out of another office and is merely supervised by the new assistant superintendent.

4. Grievant has failed to establish any violations of rules, regulations or statutes on HCBE's part with respect to her employment status or term.

Accordingly, the grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Hancock 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 appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate Court.

_____

NEDRA KOVAL

Administrative Law Judge

Date: January 31, 1995