

MARY C. PATTERSON,

Grievant,

v. DOCKET NO. 95-DOE-533

WEST VIRGINIA DEPARTMENT OF EDUCATION

WEST VIRGINIA SCHOOLS FOR THE DEAF AND BLIND,

Respondent.

DECISION

Grievant, Mary C. Patterson, filed a grievance against the West Virginia Schools for the Deaf and Blind (Respondent) on October 18, 1995. She alleges "my classification does not coincide with the duties that I perform on a daily basis. I feel that I am misclassified. To resolve this grievance, I request to be reclassified to Coordinator of Services, Pay Grade H, or Supervisor of Maintenance, Pay Grade H or Foreman, Pay Grade H."

Grievant was denied relief at Levels I and II. Pursuant to W.Va. Code §18-29-4(c), this matter was appealed directly to Level IV. On March 5, 1996, a Level IV evidentiary hearing was held. At the conclusion of the hearing the parties agreed not to submit post-hearing briefs, and the case became mature for decision. The following Findings of Fact were derived from the record. [\(See footnote 1\)](#)

FINDINGS OF FACT

1. Grievant, an employee of Respondent, is multi-classified as a laundry worker\general maintenance.
2. Grievant has been a laundry worker since August 16, 1983.
3. In 1983 when Grievant was hired, three full-time employees, including Grievant, and one person who worked forty hours a month, comprised the laundry staff.

4. Currently, Grievant is the only regularly employed full- time employee in the laundry "department". Grievant usually performs the laundry work by herself. A student helps her forty minutes a day. The last time Grievant had a full-time co-worker was approximately two years ago.

DISCUSSION

W.Va. Code §§ 18-29-1 provides, in pertinent part:

The purpose of this article is to provide a procedure for employees of the governing boards of higher education, state board of education, county boards of education, regional educational service agencies and multi-county vocational center and their employer or agents of the employer to reach solutions to problems which arise between them within the scope of their respective employment relationships to the end that good morale may be maintained, effective job performance may be enhanced and the citizens of the community may be better served. Therefore, WVSBOE employees are allowed to participate in the grievance procedure. Furthermore, W.Va. Code § 18-17-1 provides:

The West Virginia schools for deaf pupils and blind pupils heretofore established and located at Romney, in Hampshire County, shall be continued and shall be known as the 'West Virginia schools for the deaf and the blind.' The schools shall be maintained for the care and education of the deaf youth and blind youth of the state. The educational or business affairs of the schools shall be under the control, supervision and management of the state board of education, and the state board shall employ the superintendent, principals, teachers and other employees and shall fix the yearly or monthly salary to be paid to each person so employed.

The minimum salary scale for said principals, teachers and other employees shall be the same as set forth in sections two, three and eight-a [§§ 18A-4-2, 18- 4-3 and 18A-4-8a], article four, chapter eighteen-a of this code.

Therefore, not only are the West Virginia Schools for the Deaf and the Blind (WVSDB) are under the control of the West Virginia State Board of Education (WVSBOE), but the above section of Code also specifically states that W.Va. Code § 18A-4-8A applies to WVSBOE employees. W.Va. Code § 18A-4-8A sets the minimum monthly salaries and pay grades for the class titles found in W.Va. Code § 18A-4-8. It would be illogical to require WVSBOE employees to be paid according to a class title, but then not require the corresponding class title definitions, found in the preceding section, be properly applied.

In this case, the Undersigned will assume arguendo that WVSBOE employees must be classified according to W.Va. Code § 18A-4-8. Therefore, Grievant's claims will be analyzed below as if she were a county board of education employee or enjoyed those same benefits. In order to prevail in a misclassification grievance, an employee must establish, by a preponderance of the evidence, that

the duties performed more closely match those of another classification than that under which her position is categorized. Hatfield v. Mingo County Bd. of Educ., Docket No. 91-29-077 (Apr. 15, 1991); Savilla v. Putnam County Bd. of Educ., Docket No. 89-40- 546 (Dec. 21, 1989). Furthermore, a county board of education is required to classify service personnel according to the duties they perform. W.Va. Code §§ 18A-2-5 and 18A-4-8. See, Porter v. Hancock County Bd. of Educ., Docket No. 93-15-493 (May 24, 1994). County boards of education also have an obligation to ensure that its school service employees' duties coincide with their classification designations. Graham v. Nicholas County Bd. of Educ., Docket No. 93-34-224 (Jan. 6, 1994).

Even though Grievant is alleging she is misclassified, she did not testify that she had been misclassified concerning the areas (laundry and general maintenance) in which she works. The higher of the two of Grievant's class titles is General Maintenance, which is defined by W.Va. Code § 18A-4-8 to mean "personnel employed as helpers to skilled maintenance employees and to perform minor repairs to equipment and buildings for a county school system."

Grievant's desire is to be classified in a supervisory capacity. Class titles to which Grievant desires to be reclassified include foreman and supervisor of maintenance. Foreman is defined by W.Va. Code § 18A-4-8 to mean "skilled persons employed for supervision of personnel who work in the areas of repair and maintenance of school property and equipment," while supervisor of maintenance is defined as

skilled personnel not defined as professional personnel or professional educators as in section one, article one of this chapter. The responsibilities would include directing the upkeep of buildings and shops, issuing instructions to subordinates relating to cleaning, repairs and maintenance of all structures and mechanical and electrical equipment of a board of education.

At the Level II hearing, Grievant failed to provide sufficient evidence to support her claims. Grievant testified that except for forty minutes a day, when a student helps her, she usually does the laundry work by herself. Furthermore, Grievant has not had a regular co-worker for approximately two years, when another laundry worker retired. Grievant further testified that on rare occasions a "substitute" laundry employee will be assigned to help her. However, merely having a student helper and a co-worker on rare occasions does not make one a supervisor.

Grievant's second assertion for being classified in a supervisory capacity was only hinted at during the Level II hearing when she stated the following:

As far as what I do different than what's on this job description, over the years I have

taken charge of, not responsible for, but have been asked to pass messages along or follow through on work. I just recently was needed to be in charge. I was asked by my immediate supervisor to be in charge when he was away, and I have done that in the past before for many different people at times, and I always took it upon myself to be responsible enough to, if there was an emergency, find out who I needed to get in touch with fast, because of the way things are on the campus. Our department used to be contacted initially if there was an emergency, and I always felt it my responsibility to find out who was here and who was available for me to be in touch with in case I needed to respond.

Level II, Tr. 19. Emphasis added.

At the Level IV hearing, Grievant further expounded on the above assertion by testifying that she also "supervised" various maintenance personnel when Mr. Cooper, Director of Maintenance and Grounds, is out of the building. Apparently, the Director does not have a beeper or two-way radio which would allow him to be notified when he leaves the building, so Grievant answers the phone.

Instead of just taking a message and leaving it on the Director's desk, Grievant takes the initiative and voluntarily notifies the appropriate personnel. For example, if the problem relates to plumbing, then Grievant will notify Respondent's only plumber. Being a small educational facility, Respondent has only one person for each vocational area. Specifically, Grievant testified that Billy Mavis performs vehicle maintenance, plumbing and welding tasks; Jason Charlton, maintenance [\(See footnote 2\)](#); Roger Nickelson, refrigeration and electrical; Bobby Shaw, carpentry; and Jim Shoemaker, painting. Therefore, with the exception of Jason Charlton, Grievant is merely relaying messages and does not have to decide who to assign a particular task within a vocational area. However, Director Cooper testified that (1) Grievant is not required to answer the phone; (2) if she does voluntarily decide to answer the phone, she is not required to relay any messages to other personnel and could leave a message on his desk; (3) he has not asked Grievant to supervise any personnel; and (4) she does not supervise any personnel. Grievant admitted that she does not evaluate the performance of any personnel and is not certified in any of the maintenance vocational areas, i.e., skilled.

Besides answering the phone and relaying messages, Grievant also testified she performs inventory tasks, purchases supplies, stocks supplies, and keeps her student helper's time sheet. However, none of these tasks, considered separately or together, suggest or require Grievant be classified in a supervisory capacity.

Moreover, Grievant voluntarily assumes the duty of answering the phone. Therefore, Grievant's claim fails. In Taylor v. Putnam County Bd. of Educ., Docket No. 89-40-429 (Sept. 21, 1989), Ms. Taylor, a teacher, sponsored a student club. Her grievance, requesting to be paid for these duties,

was denied because she accepted the position voluntarily, at her "own behest". Similarly, in Bailey v. Morgan County Bd. of Educ., Docket No. 91-22-150 (Oct. 31, 1991), a bus operator's grievance was denied because she voluntarily agreed to drive an extra run, when she knew that she could have refused.

In summary, even assuming arguendo that WVSBOE employees should be treated like county board of education employees, Grievant has not met her burden.

In addition to the foregoing findings of fact and narration, it is appropriate to make the following conclusions of law. **CONCLUSIONS OF LAW**

1. A state board of education employee may participate in the grievance procedure set forth in W.Va. Code §§ 18-29-1, et seq.
2. Grievant is not "skilled personnel" and does not supervise any other employees of Respondent.
3. Grievant failed to prove her grievance by a preponderance of the evidence.

Accordingly, this grievance is DENIED.

Any party may appeal this decision to the "circuit court of the county in which the grievance occurred," and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code § 29-6A-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.

Dated: 4/10/96 _____

JEFFREY N. WEATHERHOLT
ADMINISTRATIVE LAW JUDGE

[Footnote: 1](#)

The record in this case consists of the following: (1) a completed grievance form; (2) the Level I decision (3) the Level II transcript; (4) the Level II decision; (5) Grievant's four exhibits admitted at Level II; (6) Respondent's one exhibit admitted at Level II; (7) the audio tapes from the Level IV hearing; and (8) Respondent's two exhibits admitted at Level IV. The Undersigned considered all matters of record.

[Footnote: 2](#)

Grievant was unclear as to whether Jason Charlton performs vehicle maintenance tasks or building maintenance tasks.