

**SHIRLEY MAY,**

**Grievant,**

**v.**

**DOCKET NO. 96-29-066**

**MINGO COUNTY BOARD OF EDUCATION,**

**Respondent.**

## **D E C I S I O N**

Grievant, Shirley May, filed this grievance on or about October 13, 1995, alleging:

Shirley May was a Cook III for the 94-95 school year. She was placed on transfer and when she received her pay for her new assignment, she was only being paid as a Cook II. She feels that her pay grade should not be changed from last year.

Following adverse decisions at the lower levels, Grievant advanced an appeal to level four on February 13, 1996. Hearing was held on April 3, 1996, at which time this case became mature for decision.

The material facts are not in dispute and are set forth in the following findings.

### Findings of Fact

1. Grievant was employed as a Cook III during the 1994-95 school year at Respondent's Matewan Elementary School, and has been employed by Respondent for approximately 13 years.
2. Grievant received proper notice of transfer in the Spring of 1995, and requested and was given a hearing before Respondent.
3. On May 1, 1995, Respondent posted several service personnel vacancies, including a Cook I position at Matewan High School.
4. Grievant applied for and received the Cook I position at Matewan High School.

5. Grievant received her first paycheck for the 1995-96 school year on September 15, 1995, and found she was being paid as a Cook II. Grievant believed she would be paid a Cook III salary.

6. Grievant contacted Assistant Superintendent Johnny Fullen regarding her paycheck. He told her he would check into the matter because there had been numerous errors made in that first payroll.

7. Grievant received her second check on September 30, 1995, again at a Cook II salary. Grievant went to her Principal and requested a grievance form. He asked her to wait until he checked into the matter. He did and told Grievant the paycheck was correct.

8. Grievant filed this grievance on October 13, 1995.

### Discussion

Grievant alleges she should be paid as a Cook III despite the fact that she applied for and received a Cook I position. Grievant testified that Superintendent Everett Conn told her at her transfer hearing in the Spring of 1995 that if she was classified as a Cook III, she would remain a Cook III, and that statement constituted a promise that she would be paid at a Cook III salary no matter what position she applied for.

Respondent asserts that the grievance was untimely filed, and that it has not violated any law, rule or statute with regard to Grievant's salary. Respondent argues that when Grievant applied for the Cook I position, she was offered and accepted a new contract, and except for the provisions of W. Va. Code § 18A-4-8, she would have been paid as a Cook I. [\(See footnote 1\)](#)

The undersigned finds that Grievant's complaint was filed in a timely manner. While Grievant was first aware that she was not being paid a Cook III salary on September 15, 1995, because Assistant Superintendent Fullen informed her that there were numerous errors in the payroll, it was not fatal that Grievant did not file a grievance at that time. Indeed, she, along with Assistant Superintendent Fullen, merely believed a computer error had taken place at that time. It was not until the second paycheck on September 30, 1995, when Grievant asked her Principal and was

informed that indeed she was supposed to be paid at the lesser salary, that Grievant realized a grievable event had occurred. Thus, Grievant filed her complaint within the statutory framework of W. Va. Code § 18-29-1, et seq.

With respect to Grievant's allegation that Superintendent Conn promised her she would continue to be paid as a Cook III, no matter what position she applied for, the undersigned questions the Superintendent's authority to make such a promise. Of course, Superintendent Conn's statement to Grievant that she would remain a Cook III is not wrong. Once Grievant attained that classification, she would retain it; however, that does not mean that if Grievant bid on and received a lesser paying position in a different classification that she would still be compensated as a Cook III.

Grievant's argument seems to be once a Cook III, always a Cook III, particularly for purposes of salary. Grievant relies on Lucion v. McDowell County Bd. of Educ., 446 S.E.2d 487 (W. Va. 1994), to support her position that it was improper for Respondent to lower her salary to that of a Cook II when she applied for and received the Cook I position. Specifically, Grievant contends that Respondent has violated the non-relegation clause found in W. Va. Code § 18A-4-8, which states in relevant part:

No service employee, without his written consent, may be reclassified by class title, nor may a service employee, without his written consent, be relegated to any condition of employment which would result in a reduction of his salary, rate of pay, compensation or benefits earned during the current fiscal year or which would result in a reduction of his salary, rate of pay, compensation or benefits for which he would qualify by continuing in the same job position and classification held during said fiscal year and subsequent years.

Clearly, Grievant believes Respondent has "relegated" her to a Cook II salary.

"Relegation" is defined as:

. . . 1. To send or consign, esp. to an obscure place, position, or condition. 2. to assign to a particular class or category; classify. 3. To refer or assign (a task, for example) for decision or performance. 4. To banish, exile. . . , to send away.

American Heritage Dictionary, Second College Edition, 1991, at 1043.

Implicit in this definition is an action taken, which in this instance, would be a

unilateral action taken by Respondent to classify and pay Grievant as a Cook II. Indeed, in Lucion, supra, the board of education had taken a unilateral action to terminate those grievants' contracts and issue them new contracts at a reduced salary.

That is not what happened here. Respondent placed Grievant on the transfer list. Thus, she was guaranteed a Cook III job with Respondent for the next year, if one was available. Nonetheless, Grievant elected to apply for a Cook I position and accepted the position with Respondent. Grievant did not have to apply for or take that job. However, Grievant's action in applying for the Cook I position was not mandated by Respondent, nor did Respondent somehow coerce her into applying for that position. It was Grievant's choice. While she wishes she could still be paid as a Cook III while holding a Cook I position, there is nothing in the Code or other law which would entitle Grievant to such a windfall.

#### Conclusions of Law

Grievant has failed to prove by a preponderance of the evidence that Respondent violated any rule, law or statute by paying her as a Cook II pursuant to W. Va. Code § 18A-4-8 for a Cook I position for which she applied and accepted.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mingo 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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**MARY JO SWARTZ**

**Administrative Law Judge**

**Dated: April 26, 1996**

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[Footnote: 1](#)

*Respondent paid Grievant a Cook II salary pursuant to its interpretation of W. Va. Code § 18A-4-8, the pertinent part of which states:*

*"Cook II" means personnel employed to interpret menus, to prepare and serve meals in a food service program of a school and shall include personnel who have been employed as "Cook I" for a period of four years, if such personnel have not been elevated to this classification within that period of time.*