

LORAREDA MIDKIFF,

Grievant,

v.

Docket No. 95-22-262

LINCOLN COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Grievant, Lorareda Midkiff ([See footnote 1](#)), states:

My duties and responsibilities have been reviewed by my immediate supervisor and determined to have sufficient administrative duties to warrant re- classification to Executive Secretary pay grade "G". Requests for re- classification have been ignored and I hereby request that the BOE comply with WV Code 18A-4-8 by properly classifying me. Furthermore, I request back pay to the date of the last formal request for re-classification.

Grievant is currently classified as a Secretary III. This grievance was waived at Level I and denied at Levels II and III. Grievant appealed to Level IV, and a hearing was held on September 8, 1995. Because Superintendent Dallas Kelly was unable to attend this hearing due to illness, only Grievant's testimony was taken, and the parties agreed to present additional testimony, if needed, at a hearing on October 6, 1995. The parties then agreed not to have a hearing on that date, but agreed the record would be left open for ten days for Respondent to assess the need for further evidence. No response was received within the ten days. On November 20, 1995, the undersigned wrote the parties stating the record was closed, and the case would become mature for decision on December 18, 1995, the deadline for the submission of proposed findings of fact and conclusions of law.

W. Va. Code §18A-4-8 defines Secretary III and Executive Secretary in the following manner: "Secretary III" means personnel assigned to the county board of education office administrators in charge of various instructional, maintenance, transportation, food services, operations and health departments, federal programs or departments with particular responsibilities of purchasing and

financial control or any personnel who have served in a position which meets the definition of "Secretary II" or "Secretary III" herein for eight years.

"Executive Secretary" means personnel employed as the county school superintendent's secretary or as a secretary who is assigned to a position characterized by significant administrative duties.

Although it appears the Lincoln County Board of Education ("LCBOE") does not have a job description for the Secretary III position, Grievant did submit LCBOE's Executive Secretary job description. Gr. Exh. 2. The description identifies the following responsibilities and duties.

Job Description

Executive Secretary

A. Responsibilities

1.

To serve as a secretary to specific department/department head, assisting to assure that the office operates smoothly and efficiently.

2.

Maintain lines of communication with all schools and departments.

3.

Handle routine or emergency situations in the absence of the department head or other supervisors as required.

4.

To assist department head and/or supervisor in various responsibilities of the department as directed. May include scheduling appointments, correspondence, and reports.

B. Relationship to Others

1.

Works under the direct supervision of the department head/director.

2.

Works in a cooperative manner with all school personnel and the public toward the attainment of the goals and objectives of the school system.

3.

Works cooperatively with others in department to maintain positive environment and to attain goals and objectives of the department.

...

E. Functions and Duties

1.

Preparation of correspondence and factual reports which require exercise of judgment and originality.

2.

Participate in in-service training as directed by the department head and as deemed necessary by the Superintendent of schools.

3.

Complete transcription and dictaphone assignments as required.

4.

Maintain open communication with central offices and schools.

5.

Prepare requisitions and inventories of office supplies and materials.

6.

Perform routine office duties as applicable to assignment, such as filing, placing and receiving phone calls, operation of FAX machines, mail handling, duplication of forms & materials, maintenance of personnel records, scheduling of conferences & interviews, etc.

7.

Perform other duties assigned by department head or as deemed necessary by the

Superintendent of Schools or his designee.

Grievant testified she performed all of the above-identified duties and responsibilities, and gave specific examples of actions she has taken and functions she performs. Grievant also stated she met the required qualifications for the Executive Secretary position.

Grievant also submitted the job description of the Transportation Director, Mr. Johnny Adkins, and identified which of his duties she performs. The pertinent sections of this job description, with starred to numbers show which duties Grievant performs, are as follows:

A. Responsibilities:

1.

To enable each student, through safe and efficient transportation, to take full advantage of the complete range of curricular and extra-curricular activities offered by the county schools.

*2.

Supervise mechanics and mechanic's helpers in the repair and maintenance of school buses and other motor equipment and perform other related duties as required.

*3.

To prepare transportation budgets, warehousing needs, maintenance schedules, and necessary repairs in order to ensure a safe and efficient transportation system for Lincoln County.

4.

To work in conjunction with others of the central office staff to prepare the annual county budget.

5.

Serve as supervisor for those employees assigned directly to the office of transportation.

B.

Relationship to Others:

1.

Work under the direct supervision of the county superintendent or his designee in planning and implementing the regular and special transportation needs for the Lincoln County School System.

2.

Work with the staff, principals, bus operators, mechanics, and parents in a team effort to provide the best possible delivery of service to all schools and children.

3.

To provide administrative leadership and supervision to members of the Transportation Department.

...

E. Functions and Duties:

1.

Develop and administer a transportation program to meet with [sic] the requirements of the daily instructional program and extra-curricular activities.

2.

Supervise the preparation of bus routes for all public schools in the county.

*3.

Prepare and update all bus schedules in the county on a yearly basis.

4.

Recruit, train, and supervise all transportation personnel; and make recommendations on their employment, transfer, promotion, and release.

*5.

Maintain all county-owned equipment and develop plans for preventive maintenance and repairs.

6.

Prepare and administer the transportation budget.

*7.

Prepare the transportation payroll records on a semi-monthly basis.

8.

Recommend purchases in accordance with budgetary limitations [sic], board policy, and regulations.

9.

Maintain safety standards in conformance with state and insurance regulations and develop a program of preventive safety.

10.

Supervise the work of mechanics, helpers, and bus drivers in the servicing of school buses and other motor equipment.

*11.

Interpret work orders and repair work to mechanics.

12.

Assign mechanics to specific repair jobs in accordance with their respective abilities and skills.

13.

Decide whether a defective or malfunctioning part shall be replaced or repaired.

14.

Inspect buses and other motor equipment at specific intervals for safety and to determine needs for repairs.

15.

Operate a preventive maintenance program covering all motor vehicles in the school system.

*16.

Requisition parts and supplies as needed.

*17.

Maintain records of work performed.

*18.

Arrange and participate in in-service training as directed.

19.

Perform other duties assigned by the Superintendent or his designee.

Grievant's un rebutted testimony is she actively participates in Responsibilities A. 2 and 3, and performs the duties identified in E. 3, 5, 7, 11, 16, 17, and 18.

Additionally, during the summer, Grievant performs the duties assigned to area supervisors during the school year. These duties include organizing and planning the summer run schedule. Further, Grievant prepares all maintenance schedules. Grievant was clear that these above-identified duties are not ones Mr. Adkins tells or reminds her to do, or gives her directions on how to complete. She does these duties on her own, and in many instances checks with other employees to assure they are done correctly. For example, if a band director calls about his bus, Grievant clarifies the request with the band director, completes the form, takes it to the garage and discusses it with the proper employee, and then checks to make sure all work was completed.

Discussion

Because a misclassification grievance is non-disciplinary in nature, Grievant has the burden of proving her case by a preponderance of the evidence. Perdue v. Mercer County Bd. of Educ., Docket No. 92-27-280 (Mar. 29, 1993). "In order to prevail in a misclassification grievance an employee must establish, by a preponderance of the evidence, that her duties more closely match those of another W. Va. Code §18A-4-8 classification than that under which [her] position is categorized." Porter, et al. v. Hancock County Bd. of Educ., Docket No. 93-15-493 (May 24, 1994). Hamilton v. Jackson County Bd. of Educ., Docket No. 91-18-264 (Mar. 31, 1992). Conversely, simply being required to undertake some responsibilities normally associated with a higher classification, even regularly, does not render a grievant misclassified, per se. Hamilton v. Mingo County Bd. of Educ., Docket No. 91-29-077 (Apr. 15, 1991). Additionally, when a statutory definition is very generally worded, as here, it must be broadly applied. Sites and Murphy v. Pendleton County Bd. of Educ., Docket No. 94-36-1112 (May 31, 1995). Two key aspects of an Executive Secretary's duties have been identified by this Grievance Board; they are the ability to "exercise independent judgment" and to "be solely responsible for the completion of any project . . .". Ziler v. Berkeley County Bd. of Educ., Docket No. 02-88-221 (June 30, 1989).

Given the above-cited statutory definitions and Grievance Board case law, it is clear Grievant is misclassified. Grievant relieves Mr. Adkins of multiple and significant duties as required by statute, exercises independent judgment in regard to a variety of tasks, and is solely responsible for completion of many Transportation Department obligations.

The above discussion will be supplemented by the following findings of fact and conclusions of

law.

Findings of Fact

1. Grievant, a fifteen year employee with LCBOE, is classified as a Secretary III and works in the Transportation Department.
2. On October 13, 1994, Grievant wrote Superintendent Kelly requesting she be reclassified as an Executive Secretary.
3. On January 19, 1995, Grievant's immediate supervisor, the Director of Transportation, requested she be reclassified to an Executive Secretary.
4. Grievant received no response from these letters and filed a grievance in either late February or early March 1995.
5. Grievant performs all the duties identified in LCBOE's Executive Secretary's job description.
6. Grievant performs significant administrative duties for her direct supervisor, the Transportation Director.
7. LCBOE has approximately six individuals classified as Executive Secretary. These individuals perform a variety of duties and are assigned to a variety of directors and supervisors.

Conclusions of Law

1. Boards of education are required to classify service personnel according to the duties they perform. W. Va. Code §§18A-2-5 and 18A-4-8.
2. It is important to consider the duties performed by the individual seeking reclassification compared to the job description and the statutory definition, not a comparison with the duties performed by other employees.
3. "In order to prevail in a misclassification grievance, an employee must establish, by a preponderance of the evidence, that [her] duties more closely match those of another classification than that under which [her] position categorized." Gregory v. Mingo County Bd. of Educ., Docket No. 95-29-006 (June 19, 1995); Hatfield v. Mingo County Bd. of Educ., Docket No. 91-29-077 (Apr. 15, 1991).
4. A school service employee, who establishes that she is performing the duties of a higher classification than the one under which she is currently classified, is entitled to reclassification. Hatfield, supra.
5. Grievant established that her duties more closely match those of an Executive Secretary

than those of a Secretary III.

Accordingly, this grievance is **GRANTED**.

LCBOE is **ORDERED** to reclassify Grievant to an Executive Secretary and to pay her back wages as an Executive Secretary from October 13, 1994, onward.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Lincoln 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.

JANIS I. REYNOLDS

Administrative Law Judge

Dated: March 19, 1996

[Footnote: 1](#)

After filing this grievance, Grievant changed her last name to Topping.