LOUISE POPE AND DELORES STANLEY,

Grievants,

v. DOCKET NO. 96-29-190

MINGO COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievants, Louise Pope and Delores Stanley, argue they are currently misclassified as PAC Home Coordinators (See footnote 1) ("PACHC")/ Secretary("Sec") I's, and they seek to be reclassified as PACHC/Sec III's. (See footnote 2) On October 2, 1995, prior to filing this grievance, Grievants wrote Superintendent Everett Conn and requested reclassification. After several phone calls and receiving no response, they filed this grievance in January 1996. Thisgrievance was denied at Levels I and II, and waived at Level III. After several agreed to continuances, granted for good cause, a Level IV Hearing was held on September 11, 1996. (See footnote 3) This case became mature for decision on November 1, 1996, the deadline for the parties' proposed findings of fact and conclusions of law.

The majority of facts in this case are not in dispute and will be set out below.

Findings of Fact

1. In 1983, Grievants were classified as PACHC's.

2. In 1988, Grievants were reclassified as PACHC/Sec I's. (See footnote 4) The Title I (See footnote 5) Director at that time, Mr. Ike Weaver, stated at a June 2, 1988 board meeting, that he did not need a Secretary III, if he should require a secretary later he would hire one, and for now he would use Grievants "if needed." Level IV Hrg, G. Exh. 3.

3. Mr. Charles Cline became Director of the Chapter I program before the start of the 1989-1990 school year.

4. During the 1989-1990 school year, when Mr. Cline had a broken wrist, Grievants spent the year in the Central Office doing secretarial work. Their duties consisted of typing, preparing reports, filling out purchase orders, paying bills, and checking the payroll. 5. Ms. Betty Sammons was

hired to work at the Central Office sometime during the 1989-1990 school year, and she has acted as Mr. Cline's secretary since that time.

6. Prior to the beginning of the 1990-1991 school year, Grievants were informed that they were expected to work out of the home-based school in their assigned territories. The principals at these schools were to be the Grievants' immediate supervisors. (See footnote 6) These principals were informed they could utilize Grievants to assist them, and Grievants perform secretarial duties at these schools in addition to their Title I duties. These schools already have secretaries assigned to them; thus, Grievants assist these individuals and perform similar duties.

7. The secretarial duties Grievants perform at their schools include answering the phone, typing, and preparing routine correspondence. Grievants perform whatever secretarial work is required by the principal.

Discussion

W. Va. Code § 18A-4-8 defines a Secretary I as:

> personnel employed to transcribe from notes or mechanical equipment, receive callers, perform clerical tasks, prepare reports and operate office machines.

A Secretary II is defined as:

> personnel employed in any elementary, secondary, kindergarten, nursery, special education, vocational or any other school as a secretary. The duties may include performing general clerical tasks, transcribing from notes or stenotype or mechanical equipment or a sound-producing machine, preparing reports, receiving callers and referring them to proper persons, operating office machines, keeping records and handling routine correspondence. There is nothing implied herein that would prevent such employees from holding or being elevated to a higher classification.

A Secretary III is defined as:

> 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.

Because a misclassification grievance is non-disciplinary in nature, Grievants have the burden of proving their case by a preponderance of the evidence. Midkiff v. Lincoln County Bd. of Educ., Docket No. 95-22-262 (Mar. 3, 1996); 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 his [sic] position is categorized." Porter, et al. v. Hancock County Bd. of Educ., Docket No. 93-15-493 (May 24, 1994). See also 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." Hatfield v. Mingo County Bd. of Educ., Docket No. 91-29-077 (Apr. 15, 1996). Further, "[b]ecause of similarities in the nature of certain jobs listed in Code §18A-4-8, two or more job definitions may encompass the same duties. Proof that an employee performs such `crossover' duties does notnecessarily mandate that his position be reclassified." Graham v. Nicholas County Bd. of Educ., Docket No. 93-34-224 (Jan. 6, 1994). A board of education is statutorily required to review each service personnel's job classification annually and to reclassify employees as indicated by their current duties. W. Va. Code § 18A-4-8.

It is possible Grievants were misclassified during the 1989-1990 school year, but they are not misclassified at this time. They do not meet the statutory definition for a Secretary III. They are not housed in the Central Office, and they do not perform secretarial duties for a Central Office Administrator.

Although they have assisted their home-based school's secretary at the direction of the principal, they are not identified as that school's secretary, and they have not functioned as a Secretary II for the past eight years. Their assigned primary duty is, and always has been, to "assist the ESSIA Chapter I Central Office administrative and supervisory personnel in planning, implementing, and evaluating a more effective" educational program, and to promote a cooperative attitude between the parents and the Chapter I staff. Level IV Hrg, G. Exh. 2. As stated in their Job Description, Grievants may be assigned any other activities by their supervisor. Additionally, their former Director expected they would perform some secretarial duties, and their prior classification was changed to include Secretary I in 1988 to reflect that expectation.

The above-discussion will be supplemented by the following Conclusions of Law.

Conclusions of Law

1. A board of education is statutorily required to review each service personnel's job classification annually and to reclassify employees as indicated by their current duties. W. Va. Code § 18A-4-8. 2. Because a misclassification grievance is non-disciplinary in nature, Grievants have the burden of proving their case by a preponderance of the evidence. Midkiff v. Lincoln County Bd. of Educ., Docket No. 95-22-262 (Mar. 3, 1996); Perdue v. Mercer County Bd. of Educ., Docket No. 92-27-280 (Mar. 29, 1993).

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 W. Va. Code §18A-4-8 classification than that which under which his [sic] position is categorized." Porter, et al. v. Hancock County Bd. of Educ., Docket No. 93-15- 493 (May 24, 1994). See also Hamilton v. Jackson County Bd. of Educ., Docket No. 91- 18-264 (Mar. 31, 1992).

4. "[S]imply being required to undertake some responsibilities normally associated with a higher classification, even regularly, does not render a grievant misclassified, per se." Hatfield v. Mingo County Bd. of Educ., Docket No. 91-29-077 (Apr. 15, 1996).

5. "Because of similarities in the nature of certain jobs listed in Code §18A-4-8, two or more job definitions may encompass the same duties. Proof that an employee performs such `crossover' duties does not necessarily mandate that his position be reclassified." Graham v. Nicholas County Bd. of Educ., Docket No. 93-34-224 (Jan. 6, 1994). 6. Grievants have not met their burden of proof and have not established they are currently misclassified. Their duties and placement do not fall within the definition of Secretary III.

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.

JANIS I. REYNOLDS

Administrative Law Judge

Dated: January 31, 1997

Footnote: 1

The acronym "PAC" was never clarified, but apparently Grievants are assigned to a specific area in the county to work as a liaison between the Chapter I parents and children and the school and Chapter I staff. Grievants write reports, arrange for specific services (such as obtaining glasses from the Lions' Club), and occasionally make home visits to assess why a child is having difficulty.

Footnote: 2

Although not informed by the parties, a review of the Grievance Board's records revealed Grievants had filed a previous misclassification grievance in 1991. This case is styled Pope and Stanley v. Mingo County Bd. of Educ., Docket No. 91-29-068 (July 31, 1992)(Pope I). At that time, Grievants argued they should be classified as Directors or Coordinators of Services as listed in W. Va. Code §18-4-8. Grievants did not inform the Administrative Law Judge in that case that they were multi-classified and were also classified as Secretaries I's. That grievance was denied because Grievants did not demonstrate they performed the duties of a Director or Coordinator.

Footnote: 3

Originally, Ms. Betty Sammons asked to intervene in this grievance, and this request was granted. Prior to the Level IV Hearing this request was withdrawn.

Footnote: 4

Grievants stated they were recently reclassified as PAC Home Coordinator Technicians without their consent or any notification. No further data was received about this event, and it is not considered a part of this grievance.

Footnote: 5

Apparently the title of this federal program has changed several times over the years, and depending on the time referred to in this grievance, the correct name is either Chapter I or Title I.

Footnote: 6

In a Job Description for fiscal year 1990, the ESSIA("Title I Director") is identified as Grievants' supervisor. Mr. Cline testified the principals were the immediate supervisors, but in an emergency he could overrule the principals in much the same way Superintendent Conn could overrule his decision. It is interesting to note that in Pope I a detailed job description was admitted into evidence that indicated the chain of command as "Superintendent, Director/Asst. Director and Home Base Principal if assigned a home base when not working under a directive or directives from the central

office." Pope I supra. Grievants were very clear that they do not receive directions from Mr. Cline.