PAULA TAYLOR-HURLEY,

Grievant,

v.

DOCKET NO. 96-29-265

MINGO COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Paula Taylor-Hurley, filed this grievance on or about December 19, 1995, asserting that a November 27, 1995, vacancy posting listed a Clerk/Receptionist for the central office, which should have been listed as a Secretarial position, in violation of W. Va. Code § 18A-4-8. An adverse decision was rendered at level two on December 19, 1996. Grievant appealed to level four on June 28, 1996. On September 10, 1996, the parties requested the matter be held in abeyance. Thereafter, on December 2, 1996, the parties requested the matter be submitted on the record. This matter became mature for decision on February 24, 1997, the deadline for the submission of the parties' proposed findings of fact and conclusions of law.

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

Findings of Fact

1. Grievant is employed as a secretary by the Mingo County Board of Education ("Board").

2. On November 27, 1995, the Board posted a Clerk/Receptionist position for the central office with the following qualifications:

(1) Take and transcribe dictation of various types, including correspondence, reports and notices.

(2) Obtain, gather, and organize pertinent data as needed.

(3) Receive telephone calls.

(4) Type a variety of material, letters, records and reports.

(5) Transcribe materials from transcribing machine.

(6) Have a working knowledge of Microsoft Works or Word Perfect.

(7) Attend meetings and transcribe all minutes of Mingo County Board of Education.

(8) Have excellent writing and typing skills, possessing a minimum typing speed of 50 w.p.m.

(9) Have ability in shorthand, with an emphasis being placed upon speed.

3. Grievant did not apply for the Clerk/Receptionist position.

Discussion

Grievant alleges the Clerk/Receptionist position should have been posted as a Secretary position (See footnote 1) and filled by an applicant from the secretary classification. In the alternative, Grievant seeks a guarantee that the successful applicant not be reclassified to the secretary classification category of employment. Grievant asserts that, had the position been posted as a Secretarial position, she would have applied, as would manyother employees within the secretarial classification, and to post the position as a Clerk/Receptionist deprived her and other employees of the opportunity to receive this position. The Board denies any wrongdoing, and further argues that, as Grievant did not even apply for the position, she could not have been harmed by the posting.

W. Va. Code § 18A-4-8 defines the pertinent classification categories of employment as follows:

"Clerk I" means personnel employed to perform clerical tasks.

"Clerk II" means personnel employed to perform general clerical tasks, prepare reports and tabulations and operate office machines.

"Switchboard operator-receptionist" means personnel employed to refer incoming calls, to assume contact with the public, to direct and to give instructions as necessary, to operate switchboard equipment and to provide clerical assistance.

"Secretary I" means personnel employed to transcribe from notes or mechanical equipment,

receive callers, perform clerical tasks, prepare reports and operate office machines. (See footnote 2)

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

W. Va. Code § 18A-4-8 places a burden on county boards of education to see that the duties of a particular service position coincide with the classification and paygrade to which it is assigned. Robinson v. Nicholas County Bd. of Educ., Docket No. 93-34-197 (Mar. 25, 1994). Simply stated, the statute requires the board to call the position what itis. Gosnell v. Raleigh County Bd. of Educ., Docket No. 94-41-112 (Apr. 21, 1995). Further, a school service employee may contest the classification of another employee or the classification of a vacant position when it appears that he has been directly affected thereby. See, e.g., Stevens v. Wayne County Bd. of Educ., Docket No. 50-86-294-1 (May 22, 1987). Because the position was posted as a Clerk/Receptionist position, individuals holding those classifications would be considered before Grievant, who holds a secretary classification. Thus, Grievant would not have been given preference for the position as it was posted. The fact that Grievant did not apply for the position does not change the fact that, as a secretary, she probably would not have even been considered for the position. Therefore, if the position was wrongly posted, Grievant has suffered harm because she was denied the opportunity of being considered for the position.

It is clear from the above definitions that all of the duties listed on the subject posting would fall squarely within the Secretary I classification. It is less clear that the duties would fit within the Secretary III classification, primarily because there is no indication that this individual would work directly for an office administrator as stated in the Secretary III definition. Therefore, inasmuch as the burden of proof lies with the Grievant, she has not proven that the posting is a Secretary III classification. Thus, the comparison is now limited to the Clerk classifications and the Secretary I classification.

There is significant overlap between the Clerk classifications and the Secretary I classification, with respect to the general types of duties performed, such as operating office machines, preparing

reports, and general clerical tasks, such as filing. Grievant argues the Clerk classifications do not contemplate an individual who can take dictation, use shorthand, and transcribe material from a transcribing machine, and that it is arbitraryand capricious of the Board to try to, in essence, get around the secretarial classification category in this manner. The Secretary I classification clearly specifies that an individual in this classification shall be able to transcribe from notes or mechanical equipment. Neither of the Clerk classifications specifically mention this function as a criterion to hold those classifications.

A county board of education may utilize its own expanded job descriptions for various service personnel positions, but those descriptions must be consistent with and not contrary to those contained within W. Va. Code § 18A-4-8. Fogus v. Greenbrier County Bd. of Educ., Docket No. 89-13-604 (Apr. 30, 1990); Smith v. Mingo County Bd. of Educ., Docket No. 29-88-204 (Feb. 23, 1989). When a particular task could reasonably fall within two or more of the job descriptions contained in W. Va. Code § 18A-4-8 or descriptions promulgated by a county board of education consistent therewith, the decision as to which service employee should be assigned said task is within the discretion of the principal of the school involved. Fogus, supra.

The job specification for the Clerk/Receptionist position does not indicate the percentage of time the successful applicant would be required to perform the identified tasks. However, it is clear from the face of the posting that 7 of the 9 requirements listed involve some sort of typing, transcribing, shorthand, or operation of computer typing programs. Further, the successful applicant is required to attend board meetings and transcribe the minutes of those meetings. Item number two, which is basically filing, could generally be considered a clerical task, and item number 3, receive telephone calls, is clearly a task which could fall within the Switchboard operator-receptionist classification, the Clerk classification, or the Secretary I classification. In any event, reviewing the postingas a whole, it would not be inconsistent with the Clerk definitions in Code § 18A-4-8 for an individual holding that classification to perform some typing and transcribing duties. But when the job requirements indicate that the large majority of the tasks associated with the position are secretarial in nature, and the clerical and receptionist duties are incidental in nature, then the position must be called what it is: secretarial.

Conclusions of Law

1. Grievant has the burden of proving her case by a preponderance of the evidence. Black v. Cabell County Bd. of Educ., Docket No. 89-06-707 (Mar. 23, 1990).

2. W. Va. Code § 18A-4-8 places a burden on county boards of education to see that the duties of a particular service position coincide with the classification and pay grade to which it is assigned. Robinson v. Nicholas County Bd. of Educ., Docket No. 93- 34-197 (Mar. 25, 1994). Simply stated, the statute requires the board to call the position what it is. Gosnell v. Raleigh County Bd. of Educ., Docket No. 94-41-112 (Apr. 21, 1995). 3. A school service employee may contest the classification of another employee or the classification of a vacant position when it appears that she has been directly affected thereby. See, e.g., Stevens v. Wayne County Bd. of Educ., Docket No. 50-86-294-1 (May 22, 1987).

4. A county board of education may utilize its own expanded job descriptions for various service personnel positions but those descriptions must be consistent with and not contrary to those contained within W. Va. Code § 18A-4-8. Fogus v. Greenbrier County Bd. of Educ., Docket No. 89-13-604 (Apr. 30, 1990); Smith v. Mingo County Bd. of Educ., Docket No. 29-88-204 (Feb. 23, 1989).

5. When a particular task could reasonably fall within two or more of the job descriptions contained in W. Va. Code § 18A-4-8 or descriptions promulgated by a county board of education consistent therewith, the decision as to which service employee should be assigned said task is within the discretion of the principal of the school involved. Fogus, supra.

6. Grievant has proven by a preponderance of the evidence that the large majority of the duties listed on the Clerk/Receptionist posting are secretarial, while the clerk and receptionist duties are incidental to the posting.

Accordingly, this grievance is **GRANTED**. The Board is hereby **ORDERED** to repost the subject position as a Secretary I position, recognizing that if the position is no longer in existence due to a reduction-in-force or reorganization, the Board is not required to post and fill the position at this time. Should it be determined that Grievant would have been the successful applicant for the Secretary I position, she shall be compensated as follows: If Grievant has not been employed in any other capacity with the Board since the subject position was filled, she shall receive back pay and benefits, in full, for the entire period the position remained in existence. If Grievant has been employed in other capacities with the Board, she shall receive the difference, if any, in compensation and benefits, between the Secretary I classification and whatever other positions she may have held for the entire

period the position remained in existence.

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 28, 1997

Footnote: 1

Grievant did not specify what secretarial level she believes this position should be, however, in her proposed findings of fact and conclusions of law, she indicates the position should be a Secretary III. Because proposed findings of fact and conclusions of law are not direct evidence, the undersigned will not limit the discussion of this issue to a Secretary III classification.

Footnote: 2

The "Secretary II" classification category is not applicable to this grievance, as that category encompasses secretaries employed in the schools, as opposed to the central office.