NYRELL ELLISON,

Grievant,

v. **DOCKET NO. 97-10-258**

FAYETTE COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

This grievance was submitted by Grievant Nyrell Ellison against Respondent Fayette County Board of Education ("FBOE"), alleging she was not properly classified as a Secretary II, a violation of W. Va. Code § 18A-4-8. Grievant initially sought as relief reclassification to Secretary II/Accountant II/Computer Operator, and wages, benefits, and seniority retroactive to 1991, and interest. At the Level II hearing, she amended the effective date of the relief sought to October 3, 1996. (See footnote 1) The following Findings of Fact are made based upon the evidence presented at Level II, and Level IV Joint Exhibit 1.

Findings of Fact

1. Grievant is employed by FBOE at Ansted Middle School, and is classified as a Secretary II.

2. Grievant answers the school telephone; receives visitors; takes messages; refers calls and visitors to the proper person; types correspondence, reports, tables, forms, parent newsletters and other items; processes all mail, including E-mail; prepares the daily announcement sheet; and maintains student information and office files. She calls students from class; writes bus slips, permission and admission slips for students; opens the safe; gets the meal check-off sheets and money box for the teacher on cafeteria duty; turns on the WVEIS information system and copier; shows substitute teachers to the classroom; and retrieves messages from the WVEIS system. She types the school's purchase orders for classroom supplies and equipment; checks her records to see that money is available in accounts for the purchases; verifies that calculations are correct; and sends the purchase orders to the FBOE office. When the merchandise is received, she verifies that it

is what was ordered. She keeps track of use of the funds allocated to various accounts at the school, and maintains a ledger for the levy account and journals. She enters data into the computer, and performs account set-ups on ISAC, the computerized financial accounting system. She writes checks for all accounts except the levy account; prepares deposit slips, and made deposits until recently; balances accounts and reconciles bank statements. She prepares monthly and annual reports on the accounts she monitors. Grievant makes all food service account daily entries, and prepares the daily reports and daily counts. She sends out monthly bills for hot lunches to parents, goes through thebilling print-out to determine who is to be sent the appropriate form reminder letter, payment not received letter, and final payment request letter, and generates these letters. (See footnote 2)

3. Grievant uses a personal computer to prepare reports, to maintain records, and to complete her typing duties. She enters data for the hot lunch program each day, enters student information and calls up that information on the personal computer. She uses a typewriter to type envelopes, short letters, labels and reports. Her duties have remained substantially the same since 1991.

4. FBOE's job description for Secretary II repeats the statutory definition of a Secretary II, and lists qualifications and responsibilities. Twenty-one numbered responsibilities are listed, including, "performs . . . minor accounting duties to facilitate the efficient operation of a school," "[r]eceives, counts, and deposits monies for the school," "[v]erifies and pays all bills," "[m]aintains a journal and ledger for the general fund," "[p]repares, requisitions," and "[c]ompiles, prepares, channels and files attendance, payroll, and financial reports." It does not specifically list preparing and sending out bills, keeping track of accounts receivable, and sending delinquent notices as duties of a Secretary II.

5. The Accountant II, Secretary II, and Computer Operator II class titles are all in pay grade E.

Discussion

The burden of proof is upon Grievant to establish, by a preponderance of the evidence, that her duties more closely match those of another W. Va. Code § 18A-4-8 class title than that under which her position is categorized. Pierantozzi v. Brooke County Bd. of Educ., Docket No. 96-05- 061 (May 31, 1996); Porter v. Hancock County Bd. of Educ., Docket No. 95-15-493 (May 24, 1994); Hatfield v. Mingo County Bd. of Educ., Docket No. 91-29-077 (Apr. 15, 1991). Grievant is seeking multiclassification as a Secretary II/Accountant II/Computer Operator. (See footnote 3)

"`Multiclassification' means personnel employed to perform tasks that involve the combination of two or more class titles in this section. In such instances the minimum salary scale shall be the higher pay

grade of the class title involved." W. Va. Code § 18A-4-8. "When seeking a `multi-classification', a grievant must establish, by the same standard, that his duties encompass those of all Code §18A-4-8 positions identified." Kinstler v. Raleigh County Bd. of Educ., Docket No. 92-41-468 (June 23, 1993).

"[S]imply being required to undertake some responsibilities normally associated with a higher classification, even regularly, does not render a grievant misclassified, per se." Midkiff v. Lincoln County Bd. of Educ., Docket No. 95-22-262 (Mar. 19, 1996), citing Hamilton v. Mingo County Bd. of Educ., Docket No. 91-29-077 (Apr. 15, 1991).

> W. Va. Code §18A-4-8 requires county boards of education to "review each service personnel employee's job classification annually and . . . reclassify all service employees as required by such job classifications." A board of education is obligated to classify school service personnel according to the duties performed by said employees. Taflan v. Hancock County Bd. of Educ., Docket No. 15-86-099-2 (Jan. 12, 1987). Service workers cannot be assigned to perform duties not contemplated by the statutory description of their currently-held classifications or not stated in their official job descriptions. See Britton v. Preston County Bd. of Educ., Docket No. 90- 39-015 (Aug. 31, 1990).
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> In addition, the multi-classification of service employees as described in Code §18A-4-8 is sometimes necessary for the efficient operation of the schools. Roberts v. Wyoming County Bd. of Educ., Docket No. 55-86-322-4 (Apr. 3, 1987); Sizemore v. Wyoming County Bd. of Educ., Docket No. 55-86-310-4 (Apr. 20, 1987). However, the statutes are silent about what portion of time a worker must spend on an out-of-class task in order to deserve reclassification and/or multi-classification. The Grievance Board has provided guidance on these matters.
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> While a worker may be required to perform occasional "overlap" duties of another distinct class, if the assignments are specified in the worker's job description and are reasonably related to the duties contemplated by the statutory description of the presently-held classification, reclassification or multi-classification is not required. See Boyer v. Wood County Bd. of Educ., Docket No. 90-54-196 (Jan. 29, 1991). Conversely, when a worker regularly performs work in her own and another classification, multi-classification is required. Bailey v. Mercer County Bd. of Educ., Docket No. 91-274-158 (Jan. 31, 1992).

White v. Randolph County Bd. of Educ., Docket No. 94-42-033 (Aug. 15, 1994) (footnote omitted).

W. Va. Code § 18A-4-8 establishes an employment term and class titles for service personnel. It defines each listed class title. The definitions of the class titles at issue are as follows:

> "Secretary II" means 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.

> "Accountant II" means personnel employed to maintain accounting records and to be responsible for the accounting process associated with billing, budgets, purchasing and related operations.

> "Computer operator" means qualified personnel employed to operate computers.

"County boards of education may expand upon the W.Va. Code §18A-4-8 classification definitions in a manner which is consistent with those definitions. Brewer v. Mercer Co. Bd. of Educ., DocketNo. 91-27-002 (March 30, 1992)." Pope and Stanley v. Mingo County Bd. of Educ., Docket No. 91- 29-068 (July 31, 1992).

FBOE argued the duties Grievant characterized as "accounting duties" were general clerical duties, and were within the Secretary II duty of preparation of reports, keeping records and operating office machines; although its own job description for Secretary II admits that "minor accounting duties" may be assigned. It argued the Black's Law Dictionary of accountant is "a person skilled in keeping books or accounts; an expert in accounts or bookkeeping; one competent to design and control systems of accounts". (Emphasis in original.) It further noted the W. Va. Code § 30-9-2 definition of public accounting. Finally, it pointed out that the personal computer is simply one of the office machines Grievant uses to perform her duties.

Grievant is not a Computer Operator. Grievant uses a personal computer only as a tool to complete her duties. If everyone in the school system who utilized a personal computer to perform her duties were a Computer Operator, it is likely that nearly every secretary and every accountant, and many others, would be multiclassified. Grievant was not hired to operate computers. She was hired to perform secretarial duties, and the personal computer is simply the mechanism she uses to complete her duties, just as it is for many people in the 1990's, including the undersigned. Grievant's use of a personal computer is merely incidental to performance of her primary responsibilities as a Secretary II, and does not impact upon her classification. See Robinson v. Nicholas County Bd. of Educ., Docket No. 93-34-197 (Mar. 25, 1994). (See footnote 4) As to Grievant's argument that she should be classified as an Accountant II, neither party presented any explanation of the class titles. The Accountant II definition, read literally, indicates that a person employed in this position is not performing the tasks necessary to get the billing and purchase orders out as Grievant does, but

rather, is "responsible for the accounting process;" indicating this person determines the appropriate accounting procedures to be carried out to accomplish the goals of making sure purchase orders are processed correctly and that the proper persons are billed the proper amount at the proper time, and are reminded at the appropriate time that their accounts are delinquent. While Grievant must call upon basic accounting principles to perform some of her tasks, she is performing clerical, secretarial and bookkeeping tasks as support services to the persons responsible for maintaining FBOE's financial records. Likewise, while Grievant is maintaining a fund balance, there is no evidence that this is an official "accounting record." It appears to the undersigned that this is simply a record kept by the school, similar to a checkbook register, so it does not overspend its allotment. See Robinson, supra.

However, two factors sway the undersigned not to apply the definition literally. First, it is curious that the Accountant II and the Secretary II class titles are in the same pay grade. One would expect a professional accountant to be in a higher pay grade than a secretary, while an accounting assistant would be closer to the secretary pay grade.

Second, other counties have not applied the definition of Accountant II literally, and other Grievance Board cases have accepted that persons performing duties very similar to those performed by Grievant were Accountant II's. In Sammons and Varney v. Mingo County Bd. of Educ., Docket No. 96-29-356 (Dec. 30, 1996), the Administrative Law Judge found the Grievants to be performing more than general clerical tasks, and that the Accountant II class title more closely fit their job dutiesthan the Clerk II class title, where one Grievant was "responsible for all accounting procedures for Respondent's Title I and Title II programs, including the processing of all accounts payable for all 21 schools in the county," and the other was "responsible for the receipt, compilation, and payment of all of Respondent's 21 schools' telephone bills, and all invoices and accounts payable related to the phone system," and reported to the Treasurer. In that case, the respondent conceded at Level IV that Accountant II was the best fit for the grievants.

In Higgins v. Randolph County Bd. of Educ., Docket No. 94-42-1111 (Dec. 27, 1995), cited by Grievant, the respondent did not dispute that the duties performed by the grievant would make her multiclassified as a Secretary III/Accountant II. The issue presented related to the requirement of the respondent that the grievant pass the competency test for Accountant II prior to the title becoming effective. The parties agreed, however, that the following were Accountant II duties:

> responsible for financial operations connected with the hot lunch fund, including point of service count, billing, accounts receivable, and monthly and yearly financial reports. She is also responsible for the maintenance of accounting records necessary for the school's general funds account and various special accounts, textbook user fees, including the preparation of notifications, billing, payment schedules, collection, and preparation of necessary reports, and for the Step 7 and grant funds received by the school.

Grievant similarly is responsible for financial operations connected with the hot lunch fund, including entering data on point of service count, billing, accounts receivable, and monthly and yearly financial reports, and maintenance of accounting records necessary for the school's general funds account. Grievant has proven the Accountant II class title is a better fit for her bookkeeping type duties.

Grievant argued in her Level IV written submission that she should not be limited to reclassification back to 15 days preceding the filing of the grievance, but should be reclassified backto 1991 because FBOE did not raise a timeliness defense at Level II. Of course, in this case, FBOE did not need to raise a timeliness defense at Level II or at Level IV, because Grievant testified that reclassification back to October 3, 1996, the date she filed the grievance, would resolve the grievance and she would be satisfied. Level II Transcript at page 39. Grievant's written Level IV argument that this was simply an offer made at Level II which was revoked when FBOE did not grant her grievance at Level II is rejected. At no time did Grievant indicate this was a settlement offer which would expire if she were not granted the relief she requested. FBOE had no reason to believe that it needed to raise a timeliness argument once Grievant stated she was modifying the relief she was seeking.

The following Conclusions of Law support the Decision reached.

Conclusions of Law

1. Grievant's use of a personal computer is incidental to performance of her duties, and she is not a Computer Operator, as defined in W. Va. Code § 18A-4-8.
2. The Accountant II class title is a better fit for Grievant's bookkeeping duties than Secretary II.

Accordingly, this grievance is **GRANTED IN PART, AND DENIED IN PART**. Respondent, Fayette County Board of Education is **ORDERED** to reclassify Grievant as a Secretary II/Accountant II, effective October 3, 1996, and to adjust her seniority in the class title to reflect this change.

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

BRENDA L. GOULD

Administrative Law Judge

Dated: September 18, 1997

Footnote: 1

This grievance was filed on October 3, 1996. Grievant's supervisor was without authority to grant relief. A hearing was held at Level II on May 2, 1997, and a decision was issued denying the grievance on May 16, 1997. Grievant waived Level III in accordance with W. Va. Code § 18-29- 4(c), and appealed to Level IV on May 27, 1997. After this matter was set for hearing, the parties agreed to submit this case at Level IV on the record developed at Level II, supplemented by Joint Exhibit 1, admitted at Level IV, and written argument. This matter became mature for decision upon receipt of the last of the parties' Proposed Findings of Fact and Conclusions of Law on August 11, 1997.

Footnote: 2

Grievant did not indicate how much time she spends performing what she defines as accounting duties. She testified she spends 75% of her time performing accounting and computer operator duties. She also presented as Level IV Joint Exhibit 1 a two month log, prepared for a period after the grievance was initiated. However, this log indicates only that she performs bookkeeping type duties more than occasionally. Due to the cryptic description of duties recorded in the log, the exact amount of time spent performing these types of duties is not clear.

Footnote: 3

As all three of these class titles are in Pay Grade E, any change in Grievant's class title would not affect her salary, but would entitle her to seniority in any class title added.

Footnote: 4

If Grievant's use of the personal computer were characterized as "operation," as that term is used in the definition of Computer Operator, it would be a crossover duty also within the duties of a Secretary II.