MITZI AKERS,

Grievant,

v. DOCKET NO. 97-41-301

RALEIGH COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Grievant, Mitzi Akers, alleges she is currently misclassified as a Secretary II, in violation of W. Va. Code §§18A-4-8 and -8e, and requests reclassification as a Secretary II/Accountant II, with wages and benefits retroactive to April 15, 1997, with interest. Her grievance was denied at Levels I and II, and was waived at Level III in accordance with W. Va. Code §18-29-4(c). At Level IV, the matter was submitted for decision based upon the record developed below, supplemented by the parties' briefs and Grievant's rebuttal brief. Upon receipt of the rebuttal brief on September 23, 1997, the grievance became mature for decision.

FINDINGS OF FACT

1 1. Grievant is a regular employee of Respondent. She has held several positions in several locations, and has been classified as a Secretary II for the last eight years. She has worked as such at Shady Spring High School for the last two years. Her duties have been substantially the same since she began working at Shady Spring High School. (Tr. pp. 16-17, 34-35.)

2 2. Grievant's job duties pertaining to the food service program include (with time spent in each task, if known): scanning cards at the point of service and collecting additional receipts (45 min./day); answering the telephone, filing, giving outmessages; comparing the number of students eating meals with the number of students' cards scanned (10 min. to 1.5 hrs./day); receiving monies and issuing receipts; depositing monies; and filing reports. (Tr. pp. 17-18, 36-37.)

3 3. Grievant oversees purchase orders utilized by individual teachers to spend their faculty-senate money. Each teacher has $250 at his or her disposal. If a purchase is desired, the teacher completes a purchase order form, ensures the appropriate funds are available, obtains approval through her

school's office, and then makes the order. Grievant holds the purchase order until the bill is received, at which time she pays it from invoices. Grievant is responsible for ensuring all outstanding bills are paid. (Tr. pp. 27-28.)

4 4. All school purchase orders are handled by Grievant, who checks to be sure adequate funds are available. Grievant has authorization to use the school principal's signature stamp to approve purchase orders, unless the account is close to or in a deficit. (Tr. pp. 45, 55.)

5 5. Grievant's other job duties include: periodically reviewing accounts with relevant people; balancing accounts; receiving, counting, receipting, and depositing cash; writing checks; reconciling bank accounts with records; notifying responsible individuals (such as the coach regarding the athletic account) when funds are low; posting receipts and disbursements on a computerized account ledger; and generating reports for each account. The various accounts handled by Grievant include: general fund, athletics, faculty senate, FFA, media, student council, honorsociety, AP, Project Graduation, and others. For each club, Grievant is responsible for counting, receipting and depositing money. (Tr. pp. 20-25.)

6 6. When receiving, receipting and depositing monies, Grievant receives monies (from fundraising events, sales of sodas and snacks, sporting events, or other sources), counts it, creates an internal deposit ticket listing the amounts of cash and checks separately, reconciles her count with that of the person giving her the monies, and then she and the person sign the deposit. Grievant provides the person with a receipt, and prepares the deposit slip. (Tr. pp. 27-31.)

7 7. Each month, Grievant reconciles her accounts. She also creates and distributes reports monthly, which itemize receipts and disbursements for each account. Copies of reports go to the school files, the responsible person (sponsor of a club, teacher, coach, etc.), and the Central Office. The Central Office copy goes to the auditor, Larry Jessup.

8 8. At the end of each year, Grievant reconciles each individual account, listing all outstanding checks and ensuring that the bank statement and the end of year statement match. A copy of each report goes to the school files, the responsible person, and Mr. Jessup.

9 9. If Mr. Jessup finds a problem, he and Grievant review the records and events, to ensure accuracy of the records.

10 10. Grievant also receives checks from vending machine commissions and from pay phone commissions, posts them to the proper account, and deposits the funds. She also handles transfersof

funds between accounts, although she talks to the school principal before doing so. (Tr. p. 33, 55.)

11 11. Grievant spends approximately 3.5 hours per day in matching invoices to purchase orders, reconciling accounts, and resolving discrepancies in account information. She also may perform other tasks during these hours, such as directing telephone inquiries or calling parents about absent students, depending on events at the school. She spends at least four days each month paying bills. (Tr. pp. 37-38.)

12 12. Grievant spends one to five hours each week filing. (Tr. pp. 39-40.)

13 13. Grievant has no responsibility for payroll. (Tr. p. 33.)

14 14. Grievant handled approximately $500,000 of funds for Shady Spring High School last year. (Tr. p. 33.)

15 15. Prior to Grievant taking this position, the school custodian made bank deposits. (Tr. p. 55.)

DISCUSSION

Because a misclassification grievance is non-disciplinary in nature, Grievant has the burden of proving her 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 on a claim that her position is misclassified, an employee must establish, by a preponderance of the evidence, that her duties more closely match those of a classification defined by Code §18A- 4-8, other than that under which her position is categorized. Pope v. Mingo County Bd. of Educ., Docket No. 91-28-068 (July 31, 1992). However, "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). "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." Conclusion of Law 4, Graham v. Nicholas County Bd. of Educ., Docket No. 93-34-224 (Jan. 6, 1994). Incidental duties which are not outside the responsibilities defined for a class title, and which require an inconsequential amount of time to complete, will not warrant a different classification, if the remainder of one's duties are accurately described by one's current classification. Graham, citing Martin v. Fayette County Bd. of Educ., Docket No. 89-10-110 (July 20, 1989).

When a statutory definition is very generally worded, as with these class definitions, it must be broadly applied. Midkiff, supra at 7, citing Sites and Murphy v. Pendleton County Bd. of Educ., Docket No. 94-36-1112 (May 31, 1995). See also Morgan v. Pizzino, 256 S.E.2d 592 (W. Va. 1979) (statute to be construed in favor of the employees it was intended to benefit). In assessing whether a grievant is misclassified, one must "consider the duties performed by the individual seeking reclassification compared to the job description and the statutory definition," not compared with the duties performed by other employees. Conclusion of Law 2,Midkiff, supra. Thus, RCBE's argument that other secretaries perform similar functions is not a consideration in this analysis.

Here, Grievant is already classified as a Secretary II. Under W. Va. Code §18A-4-8,

> "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. (See footnote 1)

Grievant seeks to be multiclassified, with the addition of the Accountant II title. "'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." W. Va. Code §18A-4-8.

Grievant asserts she performs duties of an Accountant II, while RCBE contends that those same duties are subsumed under the Secretary II duties of preparing reports, operating office machines, and keeping records. It is clear that Grievant spends a significant portion of her time, in excess of fifty percent, on the duties she terms "accounting-related." While a small amount of time spent on one or two financial tasks might be considered "incidental," the amount of time spent by Grievant on such tasks cannot be viewed as "inconsequential" and the duties thus cannot beconsidered as "incidental" to her more traditional secretarial tasks.

Moreover, the tasks cited by Grievant, and her responsibility therefore, are best covered by the Accountant II definition. While preparing financial reports and reconciling of accounts could possibly be construed as "preparing reports" and "keeping records" under the Secretary II definition, they are much more specifically described by the Accountant II definition. While the accounting tasks performed by Grievant may be relatively simple, bookkeeping functions, that distinction does not

indicate that they are secretarial tasks. Ellison v. Fayette County Bd. of Educ., Docket No. 97-10-258 (Sept. 18, 1997) (bookkeeping duties entitled the grievant to multi-classification as SecretaryII/Accountant II).

Applying the statutory definitions, and the prior Grievance Board decisions, to the facts here, I find that Grievant proved that, more likely than not, the tasks she described as "accounting- related" best fit under the Accountant II definition, rather than the Secretary II definition. I further find that Grievant proved she spends a significant amount of her time performing such tasks, and that they are therefore not incidental to her secretarial duties.

However, in examining the relief requested, it is noted that the Secretary II and Accountant II class titles are in the same pay grade, according to W. Va. Code §18A-4-8a. It therefore appears that there can be no back pay due Grievant because of her misclassification. Grievant is entitled only to seniority in the Accountant II class title.

CONCLUSIONS OF LAW

1 1. In a non-selection grievance, Grievant bears the burden of proving her 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).

2 2. In order to prevail on a claim that her position is misclassified, an employee must establish, by a preponderance of the evidence, that her duties more closely match those of a classification defined by Code §18A-4-8, other than that under which her position is categorized. Pope v. Mingo County Bd. of Educ., Docket No. 91-28-068 (July 31, 1992).

3 3. Incidental duties which are not outside the responsibili- ties defined for a class title, and which require an inconse- quential amount of time to complete, will not warrant a different classification, if the remainder of one's duties are accurately described by one's current classification. Graham v. Nicholas County Bd. of Educ., Docket No. 93-34-224 (Jan. 6, 1994), citing Martin v. Fayette County Bd.of Educ., Docket No. 89-10-110 (July 20, 1989).

4 4. Grievant proved that a significant amount of her time is spent performing duties which more closely match those of a class title defined by Code §18A-4-8 as Accountant II, rather than Secretary II.

Accordingly, this grievance is hereby **GRANTED**.

RCBE is ordered to reclassify Grievant as a Secretary II/ Accountant II, effective April 15, 1997, with appropriate seniority.

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

Dated: October 30, 1997

JENNIFER J. MEEKS **Administrative Law Judge**

Footnote: 1

No job description specific for Grievant's position of Secretary II, or for RCBE's Accountant II position, was supplied.