MARCIA KOBILY,

Grievant,

v. **Docket No. 97-15-247**

HANCOCK COUNTY BOARD OF EDUCATION.

D E C I S I O N

Grievant Marcia Kobily, employed by the Hancock County Board of Education (Board) as a Clerk II/Switchboard Operator/Receptionist, filed a grievance with Dr. Charles Chandler, Jr., Superintendent, in May 1997, in which she alleged a violation of W. Va. Code §18A-4-8, in that "she is misclassified and should be multi-classified as a secretary/clerk II/switchboard operator/receptionist." Grievant requested reclassification, wages, benefits, interest, and seniority retroactive to May 3, 1995. (See footnote 1) Grievant elected to waive consideration at level three as is permitted by W. Va. Code §18-29-4(c), and filed a level four appeal on May 21, 1997. Following an evidentiary hearing held on June 26, 1997, this grievance became mature for decision on July 30, 1997, upon receipt of Grievant's proposed findings of fact and conclusions of law. (See footnote 2)

The following findings of fact have been developed from the record developed at levels two and four.

Findings of Fact

1. Grievant has been employed by the Hancock County Board of Education for sixteen (16) years, and at all times pertinent herein, was multi-classified as a Clerk II/Switchboard Operator/Receptionist.

2. From August 1993 through 1995, Grievant was assigned to the central office. Grievant was subject to a reduction in force in 1995 and was subsequently reassigned to the vocational school, effective the 1996-97 school year. Her classification remained unchanged.

3. Grievant performs the following duties which she argues entitle her to the secretarial classification:

(a) Grievant calls out substitutes for professional and service employees. Grievant keeps the records for the days worked for substitutes, where the substitute worked and who they replaced. She keeps payroll records for professional (teacher) substitutes. Grievant makes note of when a substitute has been in a position for thirty days and becomes eligible for additional benefits. Grievant also prepared a year end report detailing the number of days each substitute worked during said school year.

(b) Grievant keeps the work order records for the maintenance department including when the work order was submitted and when it was completed. Upon request of the administration she prepares reports detailing incomplete work orders and completed work orders. She also contacts the schools on a regular basis to determine if the work order records are accurate.

(c) Grievant keeps track of the location at which the various maintenance men are working in case contact with said employee is necessary.

(d) Grievant works with the WVEIS system adding personnel data into the program.

(e) Grievant processes routine correspondence. Currently this takes the form of communications with companies concerning invoices and purchase orders for the most part.

(f) Grievant answers the telephone and greets visitors and directs the callers/visitors to the correct department or employee. (Grievant performed these duties on a regular basis while assigned to the central office. She continued to perform this duty after being assigned to the vocational school, although to a lesser extent. While at the vocational school, the calls Grievant received were for the most part calls to the maintenance department. However, she has served as a back up on the telephone for the vocational school.)

(g) Grievant prepares invoices and purchase orders for the maintenance department.

(h) Grievant operates a variety of office machines.

(i) Grievant is involved in assigning the money budgeted to the maintenance department to various accounts and monitors the funds expended from those accounts. Grievant uses her judgement and the record of the funds used from various accounts in recent years to arrive at the appropriate figures.

(j) Grievant has altered software programs to meet the needs of the maintenance department.

Grievant's Proposed Finding of Fact 4.

4. Grievant has not been required to transcribe from notes or a mechanical recording device while performing her duties, but has approximately five years experience in that area.

5. Grievant has not passed the secretary competency test.

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 iscategorized. Porter 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, undertaking 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, it must be broadly applied. Sites and Murphy v. Pendleton County Bd. of Educ., Docket No. 94-36- 1112 (May 31, 1995).

W. Va. Code §18A-4-8 defines the classifications pertinent to this matter as follows:

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

'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 the employees from holding or being elevated to a higher classification.

'Secretary III' means personnel assigned to the county board 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.

The “Characteristics of Position” and “Example of Duties” sections from the Board's job descriptions for Clerk II, Secretary II and III follow: (See footnote 3)

Clerk II

Characteristics of Position: Under immediate supervision, is responsible for routine typing and clerical duties; and performs related work as required.

Examples of Duties: Types letters, forms, reports, articles, tabulations, and other materials from copy or rough draft; cuts stencils, sorts and files correspondence, checks, vouchers, index cards, forms, documents, or other materials numerically, alphabetically, or by other predetermined classification; acts as receptionist; answers telephone, works on switchboard; secures and gives out routine information.

Secretary II

Characteristics of Position: Under general supervision, is responsible for varied clerical and school secretarial work, involving some supervision of other school clerical personnel; and performs related work as required that is more difficult than the average office work which would pertain to keeping detailed records or being responsible for providing material from the printing press of which would be more intense than a regular secretary.

Examples of Duties: Serves as secretary and aide to principal or other administrative personnel, arranging appointments, taking calls, answering inquiries, and composing routine correspondence

independently; performs a wide variety of school clerical work including the receipt, deposit and disbursement of school monies, maintenance of internal accounts and preparation of financial reports, preparing of attendance records and reports or keeping records of school personnel which the information would be furnished by all schools and departments in the county, and other reports required ofthe principal or administrator; contacts parents, attendance officers or police regarding unreported absences; keeps student records; furnishes information and assistance to students, parents, teachers and other interested parties; supervises clerical assistants in the performance of similar or related work; performs minor first aid; handles minor disciplinary matters and complaints when principal is not available; takes and transcribes dictation.

Secretary III

Characteristics of Position: Under general supervision, performs responsible stenographic and secretarial work calling for some independent judgment; handles office administrative matters; serves as secretary to the head of a major department or office; and performs related work as required.

Examples of Duties: Serves as secretary and aide; arranging appointments, taking calls, answering inquiries, keeping office records and correspondence files, and handling office administrative matters; interprets policy in answer to inquiries; relays directives and information to subordinates of the administrator; assists administrator in a wide variety of his/her lesser administrative functions; takes and transcribes difficult, technical and confidential dictation, and types from recorded dictation, shorthand notes, rough or plain copy; serves as receptionist; handles personnel records and related matters; attends meetings called by the administrator and takes minutes of same; assists in the preparation of budget information; compiles a variety of reports; may supervise the work of other clerical personnel as assigned.

Grievant asserts that employees classified as secretaries in the Food Service and Transportation Departments perform duties similar to hers relating to purchase orders, invoicing and payroll. Additionally, when Grievant does not work during the summer break her duties are performed by a secretary. The Board argues that Grievant is properly classified. Ron Daugherty, Director of Vocational Education, Richard Barnabei, Director of Operations (including Maintenance) and Federal

Programming, and Mary Ann Bucci, Assistant Superintendent for personnel, all testifiedthat they had not assigned any secretarial duties to Grievant. Their testimony is consistent with Grievant's statement that everyone had been directed to not assign her secretarial duties.

While both clerks and secretaries perform duties such as typing, filing, answering the telephone, and processing invoices and purchase orders, Grievant does not complete routine secretarial duties to provide administrative support to a principal or other administrator. Grievant's duties are routine and well-defined, requiring no independent judgment on her part. She does not make appointments, travel arrangements, set up meetings, or compose correspondence. Grievant's primary duties, calling substitutes and processing work orders for the maintenance employees, are clerical in nature. The fact that secretaries may perform some of the same duties as Grievant does not prove that she is misclassified.

In addition to the foregoing findings of fact and discussion it is appropriate to make the following formal conclusions of law.

Conclusions of Law

1. Because a misclassification grievance is non-disciplinary in nature, the grievant has the burden of proving her case by a preponderance of the evidence. Procedural rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §4.19 (1996); Sanders v. Putnam County Bd. of Educ., Docket No. 96-40-382 (May 28, 1996). See W. Va. Code §18-29-6.

2. “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.” Nottingham and Hill v. Kanawha County Bd. of Educ., Docket No. 97-20-026 (Jan. 22, 1998); Porter 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).

3. Grievant has failed to meet her burden of proving that she is misclassified , as she has failed to demonstrate that she functions as a secretary.

Accordingly, the grievance is **DENIED**.

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

of Hancock 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.

Date: January 30, 1998 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

The record does not reflect the name of Grievant's immediate supervisor; however, her counsel indicated that she did not have one. In any event, it is unlikely that the grievance could have been granted at that level.

Footnote: 2

This matter was transferred to the undersigned for administrative reasons on January 7, 1998.

Footnote: 3

The job description for Executive Secretary was not made part of the record.