DIANA WATTS,

Grievant,

v. **Docket No. 98-50-247**

WAYNE COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Diana Watts, contends the Wayne County Board of Education ("WCBOE" or "Board") violated W. Va. Code § 18A-4-8 when it denied her request to be reclassified from a Secretary III to an Executive Secretary. Grievant also avers that WCBOE violated W. Va. Code § 18-29-2(m) and has discriminated against her in its failure to reclassify her when other employees have been reclassified as Executive Secretaries. The relief sought is to be reclassified to an Executive Secretary and to receive compensation and benefits from July 1, 1997. This grievance was denied at all lower levels, and then appealed to Level IV. A hearing was held on September 30, 1998. This case became mature for decision on November 2, 1998, after receipt of the parties' proposed findings of fact and conclusions of law. (See footnote 1)

After a detailed review of the record in its entirety, the undersigned Administrative Law Judge makes the following Findings of Fact.

Findings of Fact

1. Grievant has been employed by WCBOE as a secretary for 22 years. She is currently employed as a Secretary III, and her direct supervisor is Mr. Jeffery Fry, the Director of Facilities.

2. There are four Executive Secretaries within the WCBOE system. One works for the Superintendent, two work for the Assistant Superintendents, and one works for the Administrative Assistant, Jim Hale.

3. The position of Administrative Assistant was first utilized by WCBOE in 1989, and Mr. Hale was placed in the position. (See footnote 2) He was assigned few duties and mostly performed his work as the Director of Vocational Education. Sometime thereafter, a new Superintendent was

selected. He did not recognize the position of Administrative Assistant, and Mr. Hale was not assigned any administrative duties. During 1989, the duties of Mr. Hale's secretary, Ms. Chola Tooley, changed little as Mr. Hale was not assigned many administrative tasks.

4. Mr. Wilts Salmons was selected as Superintendent on July 1, 1997, and shortly thereafter, he "reactivated" Mr. Hale's position of Administrative Assistant. This position is second-in-command on the organizational chart, and Mr. Hale's placement is above the Assistant Superintendents. (See footnote 3) 5. Shortly after Mr. Hale was given his new job duties, his Secretary, Chola Tooley, a Secretary III, asked to be reclassified to an Executive Secretary. This request was granted in July 1997. (See footnote 4)

6. In July 1997, Grievant asked Superintendent Salmons to be reclassified as an Executive Secretary. She subsequently went before the Board and made the same request. WCBOE reviewed Grievant's duties and found her to be classified properly. 7. After Grievant received the Board's response, she filed this grievance. At the same time that she requested a grievance form, she also asked for and received a copy of the Job Descriptions for the Secretary III and Executive Secretary positions. Grievant indicated she had never read these Job Descriptions prior to that time, but had only glanced at them.

8. Both prior to and after Ms. Tooley's reclassification, Grievant has been employed as the secretary to Mr. Fry. Her duties have not changed since she was hired into this position in 1996.

9. Mr. Fry and Grievant basically stated, and the undersigned Administrative Law Judge agrees that Grievant completes the following duties:

a) Grievant finishes projects Mr. Fry starts and "roughs out."

b) Mr. Fry gives Grievant directions as to what steps she should take in handling specific situations.

c) Mr. Fry has given Grievant a process to follow with the majority of her work.

d) Mr. Fry has established a line of authority Grievant should follow if she has questions when he is not there and is not available by the various forms of communication available to Grievant.

e) Grievant is expected to follow the proper chain of command established by the organizational chart if she needs an immediate decision made in an emergency situation.

f) Grievant may assign workers in some non-severe emergency situations pursuant to a list of workers provided by Mr. Fry. In essence, Grievant is to use her independent judgement to select the

employee to complete the task from this list. If the situation does not require action, Grievant is to fill out a work ticket, and Mr. Fry will assign the work in his usual manner. If Mr. Fry is not available or if a worker has completed his previously assigned tasks, Grievant may assign the worker to complete a work ticket that came in that day. These assignments are to be made from the list of workers designated by Mr. Fry.

g) Grievant has not been given the authority do assume any significant duties other than the one mentioned in f).

h) Grievant does not supervise anyone.

i) Grievant is not responsible for the completion of any projects. Mr. Fry oversees the projects and assures their completion.

j) Grievant does not make independent judgements but uses her judgement to follow the guidelines set or the processes established by Mr. Fry.

10. Grievant does not compose or type letters.

11. Grievant has daily contact with Assistant Superintendents, to answer questions and to ask questions in Mr. Fry's absence. Recently, Grievant has also spent some time assisting the new Assistant Superintendent in charge of the non-instructional areas, Mr. Larry Heck, by explaining the workings of the Facilities Department. (See footnote 5)

12. WCBOE expects the Secretary III in the Central office to perform some acts involving independent judgement from time to time, and the Job Description states a Secretary III is expected to work without direct supervision.

13. Grievant is not sure that the duties she performs meet the requirements identified in WCBOE's Job Description for an Executive Secretary. 14. All secretaries in the WCBOE Central Office, who work for directors, are classified as Secretary IIIs.

Issues and Arguments

Grievant alleges she is misclassified, and that she is being discriminated against by this misclassification, especially when Ms. Tooley has been reclassified. Grievant also argues that the secretary of the Administrative Assistant cannot be classified as an Executive Secretary. Respondent asserts Grievant is properly classified and is classified the same as all secretaries who are similarly

situated. Respondent also argues the decision to reclassify the Administrative Assistant's secretary as an Executive Secretary was correct given the responsibilities of her supervisor and the duties expected of the secretary to the Administrative Assistant.

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 is categorized.” Porter, et al. 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, simply being required to undertake 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, as here, it must be broadly applied. Sites and Murphy v. Pendleton County Bd. of Educ., Docket No. 94-36-1112 (May 31, 1995). See Midkiff v. Lincoln County Bd. of Educ., Docket No. 95-22-267 (Mar. 19, 1996), aff'd Kanawha County Circuit Court, Civil Action No. 96-AA-56 (June 6, 1997).

W. Va. Code § 18A-4-8 defines Secretary III and Executive Secretary in the following manner:

> “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 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 Executive Secretary Job Description for WCBOE states an Executive Secretary is expected to type and compose letters, assemble and submit data from files, compile statistical data, and perform delegated administrative tasks. This Job Description specifically states the Executive

Secretary is to screen calls and mail and set up meetings and appointments so that the supervisor can "devote the maximum amount of time to managerial duties."

The Job Description of a Secretary III states the key duties of this employee are to receive phone calls and act as the office receptionist, process mail, collect and organize information and maintain files, order supplies, complete bi-monthly attendance reports, and compile and maintain necessary fiscal information and reports. Three key aspects of an Executive Secretary's duties have been identified by this Grievance Board; they are the ability to “exercise independent judgment”, to “be solely responsible for the completion of any project”, and to "supervise other employees." Ziler v. Berkeley County Bd. of Educ., Docket No. 02-88-221 (June 30, 1989), aff'd Kanawha County Circuit Court, Civil Action No. 89-AA-148 (Aug. 12, 1992). Given the above-cited statutory definitions and Grievance Board case law, it is clear Grievant is not misclassified. Grievant does not relieve Mr. Fry of multiple and significant duties as required by statute, she exercises only limited independent judgment in regard to some of the assignments to maintenance workers, and she is not solely responsible for completion of any projects. Although Grievant stated she supervised the maintenance workers, this statement was incorrect. Grievant does not perform the duties listed in WCBOE's Executive Secretary Job Description. Grievant's duties fall squarely within the duties of a Secretary III.

Grievant's next argument, that Ms. Tooley cannot be classified as a Executive Secretary because she is not assigned as the secretary to the Superintendent or an Assistant Superintendent, must also fail. The Code requires the individual in the Executive Secretary position to perform "significant administrative duties". Testimony indicated Ms. Tooley is responsible for performing all of Mr. Hale's secretarial work, and Mr. Hale is second only to Superintendent Salmons in responsibility for the working of the Wayne County School System. No evidence was presented to demonstrate Ms. Tooley did not perform the duties specified by the Code, other than Grievant's statement that she did not see a change in Ms. Tooley's duties. Grievant also stated she did not see Ms. Tooley frequently. Grievant also alleges discrimination and alleges she was treated differently than similarly situated employees. W. Va. Code §18-29-2(m) defines discrimination as "differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing."

To prove discrimination, a grievant must establish a prima facia case which consists of

demonstrating:

(a) that he is similarly situated, in a pertinent way, to one or more other employee(s);

(b) that he has, to his detriment, been treated by his employer in a manner that the other employee(s) has/have not, in a significant particular;

and,

(c) that such differences were unrelated [to] actual job responsibilities of the grievant and/or other employee(s), and were not agreed to by the grievant in writing.

If a grievant establishes a prima facie case, a presumption of discrimination exists, which the respondent can rebut by presenting a legitimate, nondiscriminatory reason for the action. However, a grievant may still prevail if he can demonstrate the reason given by the respondent was pretextual. Steele v. Wayne County Bd. of Educ., Docket No. 89-50-260 (Oct. 19, 1989).

Grievant has failed to establish a prima facie case of discrimination. The evidence reveals that all the secretaries who work for directors, i.e., all secretaries who are similarly situated to Grievant, are classified as Secretaries III. The evidence also demonstrates the only secretaries who are classified as Executive Secretaries are under the direction of an Assistant Superintendent or above.

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

Conclusions of Law

1. Boards of education are required to classify service personnel according to the duties they perform. W. Va. Code §§ 18A-2-5 and 18A-4-8.

2. It is important to consider the duties performed by the individual seeking reclassification compared to the job description and the statutory definition, not a comparison with the duties performed by other employees.

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 classification than that under which [her] position is categorized.” Gregory v. Mingo County Bd. of Educ., Docket No. 95-29-006 (June 19, 1995); Hatfield v. Mingo County Bd. of Educ., Docket No. 91-29-077

(Apr. 15, 1991).

4. A school service employee, who establishes that she is performing the duties of a higher classification than the one under which she is currently classified, is entitled to reclassification. Hatfield, supra.

5. Grievant failed to establish that her duties more closely match those of an Executive Secretary than those of a Secretary III.

6. W. Va. Code § 18-29-2(m) defines discrimination as "differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing."

7. To prove discrimination, a grievant must establish a prima facia case which consists of demonstrating:

> (a) that he is similarly situated, in a pertinent way, to one or more other employee(s);
>
> (b) that he has, to his detriment, been treated by his employer in a manner that the other employee(s) has/have not, in a significant particular;

and,

> (c) that such differences were unrelated [to] actual job responsibilities of the grievant and/or other employee(s), and were not agreed to by the grievant in writing.

If a grievant establishes a prima facie case, a presumption of discrimination or favoritism exists, which the respondent can rebut by presenting a legitimate, nondiscriminatory reason for the action. However, a grievant may still prevail if he can demonstrate the reason given by the respondent was pretextual. Steele v. Wayne County Bd. of Educ., Docket No. 89-50-260 (Oct. 19, 1989).

8. Grievant has failed to establish a prima facie case of discrimination in that all other employees who are similarly situated and performing the same job functions for a Director, are classified the same as she is.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Wayne 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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JANIS I. REYNOLDS

Administrative Law Judge

Dated: November 30, 1998

Footnote: 1

Grievant was represented by Susan Hubbard, from the West Virginia Education Association, and Respondent was represented by Attorney David Lycan.

Footnote: 2

The position of Administrative Assistant, although not specifically identified in the West Virginia Code, is covered under W. Va. Code § 18A-1-1(c)(4), Central Office Administrator.

Footnote: 3

Grievant alleges Mr. Hale's initial placement and subsequent "reactivation" as an Administrative Assistant is illegal, and that he cannot and is not placed above the Assistant Superintendents. It is noted that Grievant did not grieve either Mr. Hale's placement or reactivation, that several counties have Administrative Assistants, and their placement inthe organizational structure is decided by the board of education.

Footnote: 4

Grievant did not allege any violations associated with Ms. Tooley's placement as Mr. Hale's secretary.

Footnote: 5

Grievant testified Mr. Heck was her immediate supervisor. The evidence demonstrated Mr. Fry was Grievant's supervisor, and Mr. Heck was now Mr. Fry's supervisor and, thus, Grievant's second level supervisor. At times, Mr. Heck may direct Grievant to provide information or to complete some task.