NANCY PAULEY,

Grievant,

v v.

Docket No. 97-22-309

LINCOLN COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Nancy Pauley, alleges the Lincoln County Board of Education ("LCBOE") has violated W. Va. Code § 18A-4-8 by its failure to reclassify her as a Coordinator of Personnel. (See footnote 1) The relief sought is reclassification as Coordinator of Personnel, back pay, the supplement paid to other coordinators, and any other appropriate compensation. This grievance was waived at Level I and denied at Level II. (See footnote 2) Grievant then appealed to Level IV, and a Level IV hearing was held on August 11, 1997. This case became mature for decision on that same date as the parties elected not to submit proposed findings of fact and conclusions of law. After a review of the complete record in this case the undersigned Administrative Law Judge makes the following Findings of Fact.

Findings of Fact

1. Grievant has been employed by LCBOE for 24 years, and is currently classified as an Executive Secretary.

2. Grievant requested to be reclassified as Coordinator of Personnel on September 19, 1996. Shortly after this request was denied, Grievant filed this grievance on October 3, 1996.

3. Until approximately July 1997, Grievant reported to the Assistant Superintendent, Donna

Martin; now she reports to the Director of Drug Free Schools.

4. Grievant coordinates all necessary information dealing with personnel issues in the Lincoln County School System. These duties include, but are not limited to: assisting LCBOE's attorney in answering personnel questions, especially at Board meetings; compiling and checking seniority lists; attending in-service training on personnel issues and applying that information to her duties; preparing the personnel section of the Board agenda; compiling lists for RIF's and transfers, answering questions from all employees and administrators about personnel issues; organizing job postings and bids; compiling factual information for applicants; updating and distributing revisions of policy manuals; preparing WVEIS reports for the State Department of Education; maintaining grievance files; testifying at grievance hearings about personnel issues; transcribing grievance hearings; scheduling interviews; maintaining files of nonprofessional coaches and sponsors; distributing and filing drug free verifications; and preparing and maintaining the preferred recall list. Most of these duties are completed with little to no supervision. 5. Grievant's duties are commensurate with those of other service personnel, who are classified as coordinators, and who receive a salary supplement. These coordinators have always reported to directors. (Level IV Test. of Donna Martin, Assistant Superintendent; Shelia Stapleton, Pres. of the local chapter of W. Va. Educ. Assoc., and Grievant).

6. Grievant's duties are of the same difficulty as those of Ms. Brenda Adkins, the Superintendent's Executive Secretary, and Ms. Adkins receives the salary supplement.

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 that of another W. Va. Code §18A-4-8 classification than that under which [her] position is categorized.” Porter v. Hancock County Bd. of Educ., Docket No. 93-15-493 (May 24, 1994). See 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).

The term “Executive Secretary” is defined by W. Va. Code § 18-4-8 as “personnel employed as the county school superintendent's secretary or as a secretary who is assigned to a position characterized by significant administrative duties.” This same CodeSection defines a “Coordinator” as “personnel who are assigned to direct a department or division.”

A county board of education is required by W. Va. Code § 18A-4-8b to review each service personnel's job description annually and reclassify all service personnel as required by the job classifications. When statutory definitions are very generally worded, as here, they must be broadly applied. Sites and Murphy v. Pendleton County Bd. of Educ., Docket No. 94-36-1112 (May 31, 1995). Further, W. Va. Code § 18A-4-5b requires a county board of education to pay county supplements uniformly.

The LCBOE Executive Secretary job description identifies the following responsibilities and duties: (See footnote 3)

Job Description

Executive Secretary

A. Responsibilities

1. To serve as a secretary to specific department/department head, assisting to assure that the office operates smoothly and efficiently.

2. Maintain lines of communication with all schools and departments.

3. Handle routine or emergency situations in the absence of the department head or other supervisors as required.

4. To assist department head and/or supervisor in various responsibilities of the department as directed. May include scheduling appointments, correspondence, and

reports.

B. Relationship to Others

1.

Works under the direct supervision of the department head/director.

2.

Works in a cooperative manner with all school personnel and the public toward the attainment of the goals and objectives of the school system. 3.
Works cooperatively with others in department to maintain positive environment and to attain goals and objectives of the department.

. . .

E. Functions and Duties

1.

Preparation of correspondence and factual reports which require exercise of judgment and originality.

2.

Participate in in-service training as directed by the department head and as deemed necessary by the Superintendent of schools.

3.

Complete transcription and dictaphone assignments as required.

4.

Maintain open communication with central offices and schools.

5.

Prepare requisitions and inventories of office supplies and materials.

6.

Perform routine office duties as applicable to assignment, such as filing, placing and receiving phone calls, operation of FAX machines, mail handling, duplication of forms & materials, maintenance of personnel records, scheduling of conferences & interviews, etc.

7.

Perform other duties assigned by department head or as deemed necessary by the Superintendent of Schools or his designee.

The unrebutted testimony in this case is clear. Although some of Grievant's duties fall within the Executive Secretary job description, many of them do not. In essence, as Grievant testified, she performs all the personnel duties with the exception of interviewing candidates and conducting grievance hearings. Thus, Grievant exercises independent judgment in regard to a variety of tasks and issues, is solely responsible for the completion of many personnel related activities, and is the only individual in the Lincoln County School System who routinely answers all questions as they relate to these type of issues.

Additionally, Grievant performs the same type or similar duties as other service personnel who are classified as coordinators, and who receive the salary supplement. See Thacker v. Lincoln County Bd. of Educ., Docket No. 97-22-104 (Dec. 1, 1997); Wilkinsonv. Lincoln County Bd. of Educ. Docket No. 95-22-248 (Sept. 7, 1995). Although reasonable people may differ with LCBOE's decision to have coordinators in these multiple positions, to treat Grievant differently and non-uniformly would violate the above-cited Code Sections. Thus, given the above-cited statutory definitions, the type of duties Grievant consistently performs, the statutory requirement for uniformity, and Grievance Board case law, it is clear Grievant should be reclassified as the Coordinator of Personnel and should receive the salary supplement.

The above-discussion will be supplemented by the following findings of fact and 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. “In order to prevail in a misclassification grievance an employee must establish, by a preponderance of the evidence, that her duties more closely match that of another W. Va. Code §18A-4-8 classification than that under which [her] position is categorized.” Porter v. Hancock County Bd. of Educ., Docket No. 93-15-493 (May 24, 1994). See Gregory v. Mingo County Bd. of Educ.,

Docket No. 95-29-006 (June 19, 1995); Hamilton v. Jackson County Bd. of Educ., Docket No. 91-18-264 (Mar. 31, 1992); Hatfield v. Mingo County Bd. of Educ., Docket No. 91-29-077 (Apr. 15, 1991).

3. 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. 4. Grievant established that her duties more closely match those of a Coordinator than that of an Executive Secretary.

5. Grievant established she is entitled to the salary supplement paid by LCBOE to other coordinators.

Accordingly, this grievance is **GRANTED**. LCBOE is **ORDERED** to reclassify Grievant as the Coordinator of Personnel, pay Grievant back pay on the appropriate pay scale, Pay Grade H, and pay Grievant the salary supplement paid to other coordinators as of fifteen days prior to October 3, 1996, the date of filing this grievance, less any appropriate set-offs.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Lincoln 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: March 31, 1998

Footnote: 1

At this point in time, the position of Coordinator of Personnel does not exist within the LCBOE structure, but multiple other coordinator positions have been created by LCBOE in the past several years.

Footnote: 2

At the time the grievance was filed, Grievant also alleged violations of W. Va. Code § 18-29-2 (m), (n), (o), and (p) because her personnel duties were removed after she requested reclassification. This portion of the grievance was

dropped as these duties were reassigned to Grievant shortly after they were removed. The parties agreed these duties were reassigned, although Grievant requested a letter to confirm this event, and this letter was never sent.

Footnote: 3

No job description was submitted for a coordinator.