

SUSAN ALBAUGH, et al.,

Grievants,

v.

Docket No. 99-35-489

OHIO COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Grievants, Susan Albaugh, Maureen Barbe, Shirley J. Carnahan, Rebecca A. Lowmiller, Mary Ann Murad, Jack Nelson, Pearl Renforth, Martha Sayre, and Beverly Sue Taylor, employed by the Ohio County Board of Education (OCBOE) as Cook I's and II's, filed a level one grievance on November 23, 1999, in which they alleged a violation of W. Va. Code §18A-4-8. They assert that they should properly be classified as Cook III's, and request back pay, benefits, and interest on all monetary sums. After the grievance was denied at levels one and two, Grievants elected to bypass consideration at level three, and advanced their claim to level four on November 24, 1999.

A level four hearing was conducted in the Grievance Board's Wheeling office on February 9, 2000, at which time Grievants were represented by John E. Roush, Esq., of the West Virginia School Service Personnel Association, and OCBOE was represented by counsel, Kathy M. Finsley. The matter became mature for decision upon receipt of Grievant's response to OCBOE's proposed findings of fact and conclusions of law on March 22, 2000.

The following findings of fact are derived from the record in its entirety, including the level two transcript and exhibits, and the evidence admitted at level four.

Findings of Fact

1. At the time the grievance was initiated in November 1999, Grievants were all employed as Cook I's or Cook II's at Wheeling Park High School (WPHS).
2. Grievants' duties include the preparation and serving of meals to the students and staff at WPHS, as well as the preparation of meals for "satellite" schools.
3. Grievant Taylor maintains a "Prep Book" for the hot lunch program. This book contains the menu for the current day and a "to do" list for menus in the upcoming days.
4. Grievants Albaugh, Sayre, and others, keep records of the types (free, reduced price, paid,

or adult), and number of lunches served, and the number of cartons of milk served. Additionally, they monitor and record refrigerator temperatures, which they provide to Cafeteria Manager, Felicia Harto.

5. Grievants utilize a series of cross checks to keep an inventory of food items used. Each Grievant keeps a notebook in which he or she records the items used. Additionally, the item, and amount are to be recorded when taken from the storage site, at the work station where the food is prepared (the "main dish" "vegetable" and "salad bar" books), and in another "master" book.

6. Grievants assist in the training of substitute and new employees.

7. Grievants are responsible for notifying the Cafeteria Manager when a maintenance repair is necessary, and when supplies are needed.

8. In February 2000, OCBOE accepted the recommendation of Dr. H. Lawrence Jones, Superintendent, to reclassify those Grievants holding the position of Cook I, to Cook II.

Discussion

Because misclassification is a non-disciplinary matter, Grievants bear the burden of proving their claims by a preponderance of the evidence. Midkiff v. Lincoln County Bd. of Educ., Docket No. 95-22-262 (March 3, 1996); Purdue v. Mercer County Bd. of Educ., Docket No. 92-27-280 (March 29, 1993). In order to prevail in a misclassification grievance, an employee must establish that his or her duties more closely match those of a classification defined by W. Va. Code § 18A-4-8 other than the classification he or she currently holds. Pope v. Mingo County Bd. of Educ., Docket No. 91-28-0678 (July 31, 1992). However, an employee who simply performs some duties normally associated with a higher classification may not be considered misclassified per se. Hatfield v. Mingo County Bd. of Educ., Docket No. 91-29-077 (April 15, 1996). Incidental duties which require an inconsequential amount of an employee's time will not warrant a higher 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).

Grievants argue that Ms. Harto has developed an efficient food service operation with a particular emphasis on accuracy of records and accountability, which requires that they assume a high degree of responsibility for maintaining accurate records. They conclude that the scope and complexity of the reporting and recordkeeping entitles them to reclassification as Cook III's. Respondent asserts that Grievants are properly classified as Cook II's because the recordkeeping they performed is to assist in maintaining inventory, a distinguishing characteristic of the Cook II classification, while Ms. Harto is

responsible for completion and filing of food service reports.

W. Va. Code §18A-4-8 provides the following relevant definitions:

“Cook II” is “personnel employed to interpret menus, to prepare and serve meals in a food service program of a school and shall include personnel who have been employed as 'Cook I' for a period of four years, if the personnel have not been elevated to this classification within that period of time.”

“Cook III” is “personnel employed to prepare and serve meals, make reports, prepare requisitions for supplies, order equipment and repairs for a food service program of a school system.”

Testimony offered by Grievants establishes that in addition to food preparation, they complete multiple lists of ingredients used in the preparation of the meals, and engage in the sale of meal tickets and cartons of milk. Grievant Taylor keeps a “Prep Book” of things to do for future meals, Grievant Lowmiller maintains a production book of items used on the salad bar, and Grievant Nelson completes a “main dish” book, listing food used. Other Grievants sell lunch tickets and milk, and report the sales twice daily. All Grievants make notations on inventory sheets on the freezer or supply room when taking food for use, and record the ingredients in the master book.

Interestingly, Ms. Harto testified at level four that Grievants are only required to complete “Quantity of Food Forms” to record the amounts of food used. She stated that while she was aware of the other notebooks kept by Grievants, they are not required. Clearly, Grievants believe they are required to keep the multiple books documenting ingredients and future preparation. Several Grievants testified that it was Ms. Harto herself who showed them how to keep the books, which they refer to at times to cross check other documents. Considering the conflicting testimony offered by Ms. Harto and Grievants, OCBOE is directed to investigate this matter, and clarify exactly what records are to be kept, and which may be abandoned.

However, even considering the recordkeeping which Grievants may not be required to maintain, they do not engage in activities sufficient to qualify them for a higher classification. The vast majority of their recordkeeping involves the listing of ingredients taken from storage, and used in the meal preparation. Primarily Grievants Albaugh and Sayre sell lunch tickets and milk, and report the total number sold twice daily. They also report the refrigerator temperatures to Ms. Harto.

Grievants do not count money collected for meals and milk, and they do not fill out deposit slips. They do not “call in” maintenance repairs, they simply advise Ms. Harto of the situation. They do not keep an inventory of food and supplies. They do not place orders for food and supplies. They do not

complete the myriad reports and forms attendant to a school lunch program which are required by state and federal agencies. Essentially, Grievants provide raw data to Ms. Harto, who then maintains the inventory, orders food and supplies, arranges for repairs to be made, and completes the myriad state and federal forms and reports required by a public school food service program.

Grievants' reliance on Porter, et al. v. Hancock County Board of Education, Docket No. 95-15-493 (May 24, 1994), and Pierantozzi v. Brooke County Board of Education, Docket No. 96-05-061 (May 31, 1996), in support of their claim for reclassification is misplaced. In both of those cases, grievants were Cooks assigned to satellite schools, and spent less time with food preparation, and more time with administrative duties, than Grievants herein. In Porter, the grievants were required to assess, log, and report to the central kitchen on a daily basis the amount of breakfast and lunch food needed, received, consumed, and left over. The type and/or source of compensation for each meal, such as, free, reduced, or paid in full, was also recorded and reported to the central kitchen on a daily basis. In addition, Grievants kept track of existing milk supplies and informed the central kitchen when napkins, various condiments, and related supplies/staples were needed. In Pierantozzi, the grievant sold lunch tickets, and completed attendant reports, counted the money, prepared the bank deposit, inventoried supplies, and ordered those needed, made copies of the menu and delivered them to the teachers, and made the bank deposits. Clearly, none of the present Grievants are required to complete so many duties. On the contrary, while Grievants each sign the inventory sheets, they do not all sell tickets or keep "prep books". If, as Ms. Harto indicates, Grievants are not required to keep a number of inventory lists which are currently being maintained, their paperwork will be significantly reduced. Even at current levels, Grievants Taylor and Nelson testified that their recordkeeping consumes only 15 to 25 minutes per day, a small percentage of their actual work time. If the duties cited by Grievants should be viewed to be more closely associated with employees classified as Cook III, reclassification is still not warranted, because an employee may be required to perform occasional "overlap" duties of another distinct class, if the assignments are specified in the employee's job description and are reasonably related to the duties contemplated by the statutory description of the presently-held classification. See Boyer v. Wood County Bd. of Educ., Docket No. 90-54-196 (Jan. 29, 1991).

In addition to the foregoing findings of fact and discussion, the following conclusions of law are appropriate.

Conclusions of Law

1. Because a misclassification grievance is non-disciplinary in nature, Grievants have the burden of proving their case by a preponderance of the evidence. Tasker v. Mineral County Bd. of Educ., Docket No. 98-28-215 (Oct. 28, 1998); 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. In order to prevail on a claim that their positions are misclassified, the employees must establish that their duties more closely match those of another classification defined by W. Va. Code §18A-4-8, other than that under which their positions are 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).
3. "[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, supra.
4. Incidental duties which require an inconsequential amount of an employee's time will not warrant a higher 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).
5. Grievants have failed to prove that they are entitled to reclassification as Cook III's.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Ohio 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. However, the appealing party is required by W. Va. Code §29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

Date: April 27, 2000 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE