CINDY FAZZINI,

Grievant,

v. **Docket No. 01-17-393/524**

HARRISON COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Cindy Fazzini, employed by the Harrison County Board of Education (HCBE) as a teacher, filed a level one grievance on April 5, 2001, in which she alleged a violation of West Virginia State Board of Education Policy 4321.1, when a service personnel employee was placed in the Director/Coordinator of Child Nutrition Services. For relief, Grievant seeks instatement into the position, and back pay. (See footnote 1)

Grievant's immediate supervisor lacked authority to resolve the matter at level one. Following an evidentiary hearing, the grievance was denied at level two, and HCBE declined to hear the matter at level three. Appeal was made to level four on October 1, 2001, and a hearing was conducted on December 11, 2001. Grievant was represented by William White, WVEA UniServ Consultant, and HCBE was represented by Basil Legg, Jr., Esq. The matter became mature for decision on January 15, 2002, upon receipt of Grievant's notification that no post-hearing proposals would be filed.

The facts of this matter are undisputed and may be set forth as the following findings of fact.

Findings of Fact

1. Grievant has beem employed by HCBE as a teacher for approximately twenty years, and was assigned as Teen Parent Resource Teacher at all times pertinent to this grievance.

2. On March 20, 2001, HCBE posted a vacancy for Director/Coordinator, Child Nutrition Services, a service personnel position. Qualifications were an “Associate Degree and/or a minimum of five years of successful county management or supervisory experience preferred.” This position had been posted approximately eight times during the preceding twelve months, and had been designated as a professional position on certain postings.

3. The position description for the Director of Child Nutrition Programs, revised March 6, 2001, includes the following functions and duties:

Continuously evaluates the nutritional value and quality of the foods served in the schools following USDA and WVDE guidelines followed. [sic]

Conducts periodic reviews of the child nutrition program in the schools to assure compliance with state and federal program guidelines.

Assists with staff development and training programs for substitute and full time child nutrition service staff.

Provides informational materials as needed to all school child nutrition service personnel in the county schools

Plans and distributes menus to the cafeteria managers no less than one month in advance.

Supervises computer analysis for all menus for nutrient content.

Receives complaints regarding nutrition services and investigates the situation. Assures appropriate follow up in all situations.

3. Grievant submitted an application for the position, but was not interviewed since it was a service position.

4. Sharon Douglas, previously the Coordinator of Title I Services, and the service employee applicant with the most seniority, was awarded the position.

5. Kathy Loretta, a professional employee assigned as Supervisor- Comprehensive School Health and Professional Staff Development, serves as immediate supervisor to Ms. Douglas.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §4.21 (2000); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ. Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code §18-29-6.

Grievant argues that the position of Director of Child Nutrition is a professional, not a service personnel position. By posting the position as service, Grievant asserts that Respondent has shown

favoritism to service personnel and prevented more qualified professional personnel from being interviewed and hired. Further, by posting the assignment as a service personnel position, Respondent simply adhered to laws to hiring within classification, and did not have to interview, or consider degrees, qualifications or experience when hiring. Respondent asserts that the position was posted as service in order to eliminate a professional position and conserve financial resources. HCBE notesthat approximately eleven counties fill the Child Nutrition position with a service personnel employee, and that decision is properly made within its discretion when the employee is supervised by a professional employee.

W. Va. Code § 18A-1-1(e), which defines “service personnel” as “those who serve the school or schools as a whole, in a nonprofessional capacity, including such areas as secretarial, custodial, maintenance, school lunch and as aides.”

W. Va. Code § 18A-4-8(i)(34), defines “Director or coordinator of services” as:

personnel who are assigned to direct a department or division. Nothing in this subdivision may prohibit professional personnel or professional educators as defined in section one [§ 18A-1-1], article one of this chapter, from holding this class title, but professional personnel may not be defined or classified as service personnel unless the professional personnel held a service personnel title under this section prior to holding class title of "director or coordinator of services." Directors or coordinators of service positions shall be classified as either a professional personnel or service personnel position for state aid formula funding purposes and funding for directors or coordinators of service positions shall be based upon the employment status of the director or coordinator either as a professional personnel or service personnel.

Further guidance is provided by West Virginia Department of Education (WVDOE) Policy 4321.1, “Standards for School Nutrition” (C.S.R. § 126-86-1, effective February 13, 1997). Section 9.1 provides:

Since the availability of a full-time nutrition director at the county level is desirable for centralizing operations, developing and monitoring compliance with specification for foods, especially entrees, implementing the Dietary Guidelines, local
district accountability, and for nutrition education and training, it is recommended that each county assign a qualified full-time nutrition director.

Section 9.1.2. provides that a qualified county director of nutrition shall have a minimum of a baccalaureate degree in professional education or in home economics, nutrition, dietetics, or equivalent experience, and shall have experience in food service management, business management, classroom teaching in nutrition, or experience as a member of the NET cadre.

While Grievant's argument that she was better qualified to hold the position of Director of Child Nutrition is persuasive, she has failed to establish that HCBE erred in posting and filling the position with a service employee. WVDOE Policy includes only “suggested staffing”, and county boards of education are not bound by those suggestions. HCBE Superindent Carl Friebel testified at level four that the duties of the Director of Child Nutrition are appropriate for a service employee, and that Ms. Douglas is fulfilling the requirements of her job description in conjunction with her supervisor. Based upon the foregoing evidence, it is impossible to determine that the position is improperly filled.

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. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance 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); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ. Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code §18-29-6.

2. Grievant has failed to prove by a preponderance of the evidence that HCBE was required to fill the position of Director of Child Nutrition Services with professional personnel, or that she was otherwise entitled to the position. Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Harrison 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: February 15, 2002 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

In Fazzini v. Harrison County Board of Education, Docket No. 01-17-393, Grievant alleged that the series of postings for the Food Service Director had been arbitrary and capricious, in that it was clearly wrong to fill the position with a service personnel employee. At level four, counsel for HCBE made a Motion to Dismiss, alleging that the grievance was moot in that it had been superceded by the second grievance. Grievant's representative indicated that representation to be accurate, and the matter is accordingly dismissed.