BRENDA TONEY

Grievant,

v. **DOCKET NO. 01-41-501**

RALEIGH COUNTY

BOARD OF EDUCATION,

Respondent.

DECISION

This grievance was filed by Brenda L. Toney, a Secretary III/Accountant III employed by the Raleigh County Board of Education, on July 11, 2001, alleging that she should be reclassified as an Accounts Payable Supervisor. As relief, she seeks reclassification as of the date the Accounts Payable Supervisor classification was created, and any resulting backpay. Her grievance was denied at Level I because her supervisor lacked the authority to grant the relief requested. A Level II hearing was held on August 28, 2001, and a decision entered September 5, 2001, by Grievance Evaluator Kathryn Reed Bayless again denied the grievance. Level III was waived, and the matter was submitted for a Level IV decision based on the lower-level record. Grievant is represented by WVSSPA Representative John E. Roush, Esq. and Respondent is represented by Erwin L. Conrad, Esq. The parties' representatives agreed to submit proposed findings of fact and conclusions of law by December 19, 2001, and the matter became mature for a decision on that date. Based on a review of the relevant evidence contained in the record, the undersigned Administrative Law Judge makes the following findings of fact:

FINDINGS OF FACT

1. Grievant is regularly employed by Respondent and is multi-classified as Secretary III/Accountant III, working in the central office with some responsibility for the accounts payable function. Grievant began as a substitute Secretary II in 1994, and worked the entire 1994-1995 school year in that capacity at Sylvia Elementary School. She continued working as a substitute secretary in various elementary schools from September 1995 through December 1995, and became a regular employee at Daniels Elementary School on January 2, 1996, where she stayed until September 1998, when she began employment at the School Board's central office in her current

classifications. Although she has been employed by Respondent for eight years, she is given credit for six years' experience for pay purposes, because she worked less than 133 days in two of those years.

2. Grievant has successfully completed 18 college credit hours: six in English, six in Math and six in Accounting.

3. In Grievant's prior secretarial positions with Respondent, she also performed accounting tasks at the schools where she was employed. These tasks were less difficult and complex than her current duties, and consumed approximately 70% of her work time.

4. Grievant worked as a bookkeeper for Healthwise Incorporated for 14 months from August, 1980 to October, 1981. Her work consisted of making deposits, accounts receivable and accounts payable, journal entries and reconciling bank statements. 5. Grievant worked for Blue Ridge Memorial Gardens from October 1981 through August 1984. Her duties consisted of accounts receivable, deposits, computer data entry, processing sales contracts and preparing weekly reports.

6. Grievant worked from January, 1987 through March 2001, on a part-time basis doing the bookkeeping for her husband's contracting company, handling payroll, accounts payable, keeping financial records, and reconciling bank statements.

7. On April 21, 2001, House Bill 102 became effective, amending W. Va. Code § 18A-4-8 by adding two new service personnel classifications: Accounts Payable Supervisor and Payroll Supervisor. Accountant III and Secretary III were retained without modification.

8. Larry Jessup is Raleigh County Schools' Assistant Business Manager, and Grievant's immediate supervisor. After H.B. 102 became effective, he recommended to the superintendent of schools that Grievant be reclassified to the new Accounts Payable Supervisor classification. The superintendent did not pass the recommendation on to the Board of Education.

9. Mr. Jessup is a member of the State Accounting Committee, which made the recommendation that led to the introduction of the new classifications in H.B.102. Those recommendations called for a “Senior Accountant” classification that did not have “a stipulation as far as work and that kind of thing” or experience requirements. [Lvl. II Tran., P. 38] He made his recommendation before seeing the final language of the bill.

10. Mr. Jessup also recommended another employee be reclassified as Accounts Payable Supervisor. This employee has at least eight years' experience with Respondent and was

reclassified.

DISCUSSION

This is a non-disciplinary grievance in which Grievant bears the burden of proof. Grievant's allegations must be proven by a preponderance of the evidence. See, W. Va. Code § 18-29-6, 156 W. Va. C. S. R. 1 § 4.21. Grievant argues that although she does not meet the education requirement contained in the definition of Accounts Payable Supervisor, she does meet the experience requirement, and should be "grandfathered" into the new classification. Respondent contends the new law contains no grandfather clause that would permit Grievant's reclassification despite her lack of the requisite education requirement, and further contends that only experience with the board of education should apply to the experience requirement.

A "grandfather clause" in a law is a provision that exempts those already in a position from new requirements that would otherwise prevent them from holding the position. See Black's Law Dictionary, 5th Ed., 1979. House Bill 102 contains no such clause.

Under the new W. Va. Code § 18A-4-8(i)(7) (2001),

> "Accounts payable supervisor" means personnel who are employed in the county board office who have primary responsibility for the accounts payable function, which may include the supervision of other personnel, and who have either completed twelve college hours of accounting courses from an accredited institution of higher education or have at least eight years of experience performing progressively difficult accounting tasks.

Grievant admits that she only has half the required 12 credit hours of college accounting coursework, so she does not meet the education requirement.

The new classification allows a practical substitute for the college credit: "at least eight years of experience performing progressively difficult accounting tasks." Theemployee must have either the education or the experience. Grievant testified that she does have at least eight years of progressively difficult accounting experience, but Respondent only credits her with the experience she gained working for it, which is less than eight years. Just as there is no grandfather clause in H. B. 102, there is also no definition of "experience," as that term is used in the Accounts Payable Supervisor definition, that restricts it to experience with the school board. Nothing in the new or any existing statute equates "experience" with "seniority," which would be exclusive of work not performed for the school board. In fact, W. Va. Code § 18A-4-8(i)(2) defines "Years of Employment" as the term

used to limit experience to experience with the school board (or the armed services), and this is not the term used in the new provision. Respondent did not rebut Grievant's assertion that the work she performed prior to being employed with Respondent included “progressively difficult accounting tasks.” With this experience, she meets the experience requirement for Accounts Payable Supervisor.

The issue was raised at Level II as to whether outside experience was considered by Respondent when filling other service personnel positions. It was concluded that there is “no practice or policy now in effect which grants to service employees any credit for experience gained with an employer other than the board of education.” [Lvl. II Decision, Finding of Fact No. 8]. While this may be the case, it is irrelevant to the question at hand. Here, the requirement to consider experience has been codified by the legislature, with no discretion given to county boards of education to follow a different practice. Past practice also has little bearing on the two new classifications, because they are unique in that noother service personnel classification defined in W. Va. Code § 18A-4-8 has a similar, non-specific experience requirement. (See footnote 1)

Grievant must not only prove that she meets the experience or education requirements contained in the classification definition, but since she requests reclassification, she must also prove she is the correct person to fill the position. On this point, the record is not fully developed. Although she meets the experience requirements and is employed in the central office with responsibility for the accounts payable function, the record also indicates that Grievant's supervisor recommended another employee be made an Accounts Payable Supervisor, which recommendation was passed on to the board, and that person was reclassified. However, the new classification explicitly states the new position has “primary” responsibility for the accounts payable function, and this term implies a singularity of position that would be impossible with two “primary” employees. It is possible that Respondent has more than one accounts payable function over which it needs a primary supervisor, or there may be other circumstances which would allow more than one person with this title. While Grievant has shown she should have been considered eligible for reclassification, insufficient evidence exists in the record to determine whether she should have been given the primary responsibility for the accounts payable function rather than the other employee.

The following Conclusions of Law supplement the above discussion:

CONCLUSIONS OF LAW

1. This is a non-disciplinary grievance in which the Grievant bears the burden of proof.

Grievant's allegations must be proven by a preponderance of the evidence. *See*, W. Va. Code § 18-29-6, 156 W. Va. C. S. R. 1 § 4.21. "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." Leichliter v. W. Va. Dep't. of Health and Human Resources, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the party bearing the burden has not met its burden. Id.

2. A “grandfather clause” in a law is a provision that exempts those already in a position from new requirements that would otherwise prevent them from holding the position. See Black's Law Dictionary, 5th Ed., 1979. House Bill 102 (2001) contains no such clause relating to the classifications of school service personnel.

3. Under W. Va. Code § 18A-4-8(i)(7) (2001), as amended,

> “Accounts payable supervisor” means personnel who are employed in the county board office who have primary responsibility for the accounts payable function, which may include the supervision of other personnel, and who have either completed twelve college hours of accounting courses from an accredited institution of higher education or have at least eight years of experience performing progressively difficult accounting tasks.

The requirement of “at least eight years of experience performing progressively difficult accounting tasks” is not limited to experience with a county board of education.

4. The language of W. Va. Code § 18A-4-8(i)(7) (2001) contemplates a single person with the “primary [or overall] responsibility for the accounts payable function” of a county board of education.

Accordingly, this Grievance is **GRANTED IN PART** and **DENIED IN PART**. Respondent is **ORDERED** to determine whether Grievant should be reclassified as anAccounts Payable Supervisor. For such purposes, Grievant shall be considered to meet the minimum experience requirements for the position, and the question to be considered is whether her position meets the duty requirement that she have primary responsibility for the accounts payable function for Respondent.

Any party may appeal this Decision to the Circuit Court of Kanawha County or to the Circuit Court of Raleigh County. Any 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 Grievance Board with the civil action number so that the record can be prepared and transmitted to the circuit court.

Dated: January 16, 2002 _____

M. Paul Marteney

Administrative Law Judge

Footnote: 1

The other two classifications that require experience both expressly limit what experience may be considered. "Aide III" requires at least one year's experience as an Aide in special education, and "Autism Mentor" requires "experience to be determined by the state board."