MARJORIE ROGERS,

Grievant,

v.

DOCKET NO. 03-10-004

FAYETTE COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Marjorie Rogers, filed this grievance against her employer, the Fayette County Board of Education ("Board") on September 12, 2002:

> The Grievant, a regularly employed Clerk II at Midland Trail High School, contends that she is misclassified and is seeking reclassification as a Secretary II. The Grievant alleges a violation of West Virginia Code § 18A- 4-8.
>
> Relief Sought: The Grievant seeks reclassification as a Secretary II, retroactive wages, benefits, and seniority in the secretarial classification. The Grievant also seeks interest on all monetary sums.

The grievance was denied at level one on September 20, 2002, by Principal Sammy P. Snead. Following a level two hearing on December 2, 2002, the grievance was denied by Hearing Examiner Thomas K. Fast on December 31, 2002. Grievant bypassed level three, and appealed to level four on January 8, 2003. A level four hearing was held in the Grievance Board's Beckley, West Virginia, office on March 11, 2003, and this matter became mature for decision on April 11, 2003, the deadline for the parties' proposed findings of fact and conclusions of law. Grievant was represented by John E. Roush, Esq.,West Virginia School Service Personnel Association, and the Board was represented by Erwin L. Conrad, Esq., Conrad & Conrad.

SUMMARY OF EVIDENCE

Level II Joint Exhibit

Ex. 1 -

Level I Grievance filing, level I decision, level II appeal, waiver of level II timeline, and notice of level II hearing.

LII Grievant's Exhibits

Ex. 1 -

March 6, 2002 memorandum from Charles L. Garvin, III, to school clerks.

Ex. 2 -

September 10, 2002 memorandum from Manuel Domingues to school clerks.

Ex. 3 -

Duties performed by Marjorie Rogers.

LII Board Exhibits

Ex. 1 -

Personnel transaction card of Marjorie Rogers.

Ex. 2 -

Clerk II Job Description.

Testimony

Grievant testified in her own behalf. The Board presented the testimony of Manuel Domingues.

Based upon a review of the testimony and evidence in its entirety, I find the following facts have been proven by a preponderance of the evidence.

FINDINGS OF FACT

1. Grievant is employed by the Board as a Clerk II (Pay Grade C) at Midland Trail High School.

2. On March 6, 2002, Interim Superintendent Charles L. Garvin, III, notified school clerks, including Grievant, that he was reclassifying them as Secretary IIs (Pay Grade E), effective March 1, 2002. LII G. Ex. 1. 3. No action was ever taken by the Board to confirm the recommendation of Mr. Garvin to reclassify the school clerks to Secretary IIs.

4. On September 10, 2002, the new Superintendent, Manuel Domingues, notified the clerks that Mr. Garvin did not have Board approval to reclassify them, and requested they inform him in writing if they wanted to be reclassified, and to send him a list of the duties they performed. LII G. Ex. 2.

5. On September 13, 2002, Grievant notified Mr. Domingues in writing that she wished to be reclassified as a Secretary II/Accountant II, and prepared a list of her duties and responsibilities. (See footnote 1) LII G. Ex. 3.

6. Grievant is responsible for the breakfast and lunch program. Grievant collects money at breakfast from 7:00 a.m. to 7:40 a.m., and at lunch from 10:45 a.m. to 11:40 a.m. daily. She collects money, documents payments, and enters payments into the computer, and prepares and makes the deposit. She prepares monthly billings to be mailed to parents, and files reports with the Board office.

7. Grievant greets visitors to the office; answers telephones; types occasional correspondence for the principal; records attendance on the WVEIS program; calls out substitutes for the cooks, and others if the principal or secretary cannot do it; operates all the office machines in her office; refunds money lost in vending machines; prepares eligibility reports for student athletes; prepares graduation information for printing diplomas and programs; processes and distributes mail; prepares disciplinary letters; and assists the secretary when needed. 8. Based upon the information provided by Grievant, Superintendent Domingues concluded she is properly classified as a Clerk II, and did not submit her name for reclassification to the Board.

9. Grievant has never been classified as a Secretary II, and has never taken the competency test for Secretary II required by W. Va. Code § 18A-4-8(e).

DISCUSSION

Grievant alleges her duties and responsibilities more closely fit within the Secretary II classification. Because a misclassification grievance is non-disciplinary in nature, Grievant has the burden of proving her case by a preponderance of the evidence. 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). In order to prevail on a claim that her position is misclassified, an employee must establish, by a preponderance of the evidence, that her duties more closely match those of another classification defined by W. Va. Code § 18A-4-8, other than that under which her position is categorized. Pope v. Mingo County Bd. of Educ., Docket No. 91-28-068 (July 31, 1992).

"Simply being required to undertake some responsibilities normally associated with a higher classification, even regularly, does not render a grievant misclassified per se." Hatfield v. Mingo County Bd. of Educ., Docket No. 91-29-077 (Apr. 15, 1996). "Because of similarities in the nature of certain jobs listed in W. Va. Code § 18A-4-8, two or more job definitions may encompass the same duties. Proof that an employee performs such 'crossover' duties does not necessarily mandate that his position be reclassified." Graham v. Nicholas County Bd. of Educ., Docket No. 93-34-224 (Jan. 6, 1994). Incidental duties which are not outside the responsibilities defined for a class title, and which require aninconsequential amount of time to complete, will not warrant a different classification, if the remainder of one's duties are accurately described by one's current classification. Graham, citing Martin v. Fayette County Bd. of Educ., Docket No. 89-10-110 (July 20, 1989).

W. Va. Code § 18A-4-8 defines the class titles for school service personnel. The class titles at issue here are defined as follows:

> "Clerk II" means personnel employed to perform general clerical tasks, prepare reports and tabulations and operate office machines.

> "Secretary II' means personnel employed in any elementary, secondary, kindergarten, nursery, special education, vocational or any other school as a secretary. The duties may include performing general clerical tasks, transcribing from notes or stenotype or mechanical equipment or a sound-producing machine, preparing reports, receiving callers and referring them to proper persons, operating office machines, keeping records and handling routine correspondence. There is nothing implied herein that would prevent such employees from holding or being elevated to a higher classification.

County boards must make decisions affecting promotions and filling of any service personnel

positions of employment or jobs occurring throughout the school year that are to be performed by service personnel on the basis of seniority, qualifications, and evaluation of past service. “Qualifications” shall mean that the applicant holds a classification title in his or her category of employment as provided by W. Va. Code § 18A- 4-8(b). Competency tests shall be administered to service personnel to determine whether school service personnel can hold a classification title in a particular category of employment. W. Va. Code § 18A-4-8(e).

Quite simply, employees cannot be classified in a particular classification unless they hold the classification title, or they pass the required competency test. Grievant hasnever held the classification of Secretary II, nor has she taken the required competency test, and it would be unlawful for the Board to reclassify her as a Secretary II, even if her duties more closely matched that of the Secretary II classification. See Roegner v. Putnam County Bd. of Educ., Docket No. 99-40-087 (Aug. 12, 1999).

However, a review of Grievant's listed job duties and responsibilities does not convince the undersigned that she performs the duties of a Secretary II. Her self- described duties fall squarely within the Clerk II classification, and while some of the duties she performs may overlap with that of the Secretary II classification, that does not mandate she be considered for reclassification.

CONCLUSIONS OF LAW

1. Because a misclassification grievance is non-disciplinary in nature, Grievant has the burden of proving her case by a preponderance of the evidence. 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 her position is misclassified, an employee must establish, by a preponderance of the evidence, that her duties more closely match those of another classification defined by W. Va. Code § 18A-4-8, other than that under which her position is categorized. Pope v. Mingo County Bd. of Educ., Docket No. 91-28- 068 (July 31, 1992).

3. "Simply being required to undertake some responsibilities normally associated with a higher classification, even regularly, does not render a grievant misclassified per se." Hatfield v. Mingo County Bd. of Educ., Docket No. 91-29-077 (Apr. 15, 1996). "Because of similarities in the nature of certain jobs listed in W. Va. Code §18A-4-8, two or more job definitions may encompass the same

duties. Proof that an employee performs such 'crossover' duties does not necessarily mandate that his position be reclassified." Graham v. Nicholas County Bd. of Educ., Docket No. 93-34-224 (Jan. 6, 1994).

4. Incidental duties which are not outside the responsibilities defined for a class title, and which require an inconsequential amount of time to complete, will not warrant a different classification, if the remainder of one's duties are accurately described by one's current classification. Graham, citing Martin v. Fayette County Bd. of Educ., Docket No. 89-10-110 (July 20, 1989).

5. County boards must make decisions affecting promotions and filling of any service personnel positions of employment or jobs occurring throughout the school year that are to be performed by service personnel on the basis of seniority, qualifications, and evaluation of past service. “Qualifications” shall mean that the applicant holds a classification title in his or her category of employment as provided by W. Va. Code § 18A- 4-8(b).

6. Competency tests shall be administered to service personnel to determine whether school service personnel can hold a classification title in a particular category of employment to be given priority in job assignment. W. Va. Code § 18A-4-8(e).

7. Grievant has failed to establish by a preponderance of the evidence that she has held the classification title of Secretary II, or that she has taken and passed the competency test required by W. Va. Code § 18A-4-8(e).

8. Grievant has failed to establish that her duties and responsibilities more closely fit within the Secretary II classification category of employment.

Accordingly, this grievance is **DENIED**.

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

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MARY JO SWARTZ

Administrative Law Judge

Dated: April 29, 2003

Footnote: 1

Grievant abandoned her claim to be reclassified as an Accountant II at the commencement of the level two hearing.