ERNESTINE STOLLINGS,

Grievant,

v. **DOCKET NO. 04-23-209**

LOGAN COUNTY BOARD

OF EDUCATION,

Respondent.

DECISION

On, January 28, 2004, Grievant Ernestine Stollings filed a grievance against the Logan County Board of Education, Respondent, claiming:

> Grievant, a cafeteria manager, alleges that Respondent erred in filling a posted position for Food Services Supervisor (Child Nutrition Faculties [sic], Commodities, and Equipment Supervisor). Grievant contends that the job posting contains qualifications unrelated to the position. Grievant alleges a violation of West Virginia Code §§ 18-29-1,18A-4-8, 18A-4-8b, 18A-4-8c, & 18A-4-8g.

As relief, Grievant seeks, "[I]nstatement into the position with compensation for lost wages and other benefits, if any, that said position entailed. Grievant also seeks interest on sums to which she is entitled."

Having been denied at levels one and two, level three was bypassed by Grievant, and a level four hearing was held in the Grievance Board's Charleston office on July 9, 2004. Grievant was represented by John Roush, Esq. of the West Virginia School Service Personnel Association. Respondent was represented by Leslie Tyree, Esq. The matterbecame mature for decision on August 13, 2004, the deadline for submission of the parties' proposed findings of fact and conclusions of law.

Based on a preponderance of the evidence contained in the record and adduced at the level four hearing, I find the following material facts have been proven:

FINDINGS OF FACT

1. Grievant is regularly employed by Respondent as a Cook, assigned as Cafeteria Manager at Chapmanville East Elementary School.

2. Respondent, on a date not in evidence, posted a position titled, “Child Nutrition Facilities, Commodities and Equipment Supervisor.” Qualifications for the position included an electrician's license and EPA certification to handle Freon and refrigerants.

3. Job responsibilities specified in the posting included: 1) Service and maintain food service equipment; 2) Maintain inventories of all food service equipment; 3) Develop rotation of equipment management plan; 4) Work with all utility companies; and 5) Relocation of equipment from closed facilities into facilities needing equipment replaced. In addition, the position is responsible for inspecting all refrigerated equipment, working with outside vendors, managing the food inventory to minimize loss, instructing personnel on equipment operation, and receiving, storing and handling commodities.

4. Grievant applied for the position, but it was awarded to Steven Dingess, an electrician who has less seniority than Grievant and who had performed most of the duties of the new position as part of his former job.

5. Grievant does not have an electrician's license. Mr. Dingess is an electrician and is qualified to work with refrigerants.

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. Code St. R. § 156-1-4.21. "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 & Human Res.*, 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*. Grievant argues the position should have been awarded on the basis of seniority, as the electrician license qualification was not needed for the position, and she is otherwise qualified. Respondent maintains the position's duties mandate an electrician's license and refrigerant certification, neither of which Grievant has.

School service personnel positions must be filled on the basis of seniority, qualifications and evaluations. W. Va. Code §§ 18A-4-8b, 18A-4-8g. Additionally, the qualifications listed in a posting for a position must be commensurate with the duties associated with the classification title in the Code, and the title of a posted position must correspond with the duties listed. *Gosnell v. Raleigh County Bd. of Educ.*, Docket No. 94-41- 112; W. Va. Code §§ 18A-2-5, 18A-4-8, 18A-4-8b, 18A-4-8e and 18A-4-8g.

Grievant argues she is qualified to be a Food Service Supervisor. That classification title is defined by W. Va. Code § 18A-4-8(i)(41) as

> qualified personnel not defined as professional personnel or professional educators in [W. Va. Code § 18A-1-1], employed to manage and supervise a county school system's food service program. The duties would include preparing in-service training programs for cooks and food service employees, instructing personnel in the areas of quantity cooking with economy and efficiency and keeping aggregate records and reports.

Simply comparing the position description provided by the job posting reveals this was not the classification being posted.

Grievant contends Respondent could have validly posted the position as an Electrician/HVAC Mechanic, but it instead posted a Food Service Supervisor position. Clearly, this position does not “manage and supervise a county school system's food serviceprogram.” Grievant seems to believe that because the position works in the food service area and supervises something, it must be a Food Service Supervisor. Just because Respondent used the word “Supervisor” in the job title does not alter the fact that the duties of the position do not match the duties of a Food Service Supervisor.

Mr. Dingess' contract is not in evidence, so there is no evidence of the class title under which he is being paid for doing these duties. The title on the job posting does not match any service personnel job classification as listed in W. Va. Code § 18A-4-8(i), but it does match the duties listed for the job. It is true that a county board of education may not depart from the class titles for service personnel defined in the Code, and should have posted the position with a proper and legal class title. Nevertheless, the error in naming the position was harmless to Grievant. While it may be that Grievant is qualified to be a Food Service Supervisor, it is the duties assigned to a position that are controlling, not the name given to it by Respondent. Had Respondent posted these duties under a proper legal class title, Grievant still would not be qualified for the job, as she holds no electrician's

license or EPA certification; in fact she probably would never have applied for the job, and this whole grievance process could have been avoided.

The following Conclusions of Law support this decision:

CONCLUSIONS OF LAW

1. 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. Code St. R. § 156-1-4.21. "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 & Human Res.*, 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. School service personnel positions must be filled on the basis of seniority, qualifications and evaluations. W. Va. Code §§ 18A-4-8b, 18A-4-8g.

3. The qualifications listed in a posting for a position must be commensurate with the duties associated with the classification title in the Code, and the title of a posted position must correspond with the duties listed. *Gosnell v. Raleigh County Bd. of Educ.*, Docket No. 94-41-112; W. Va. Code §§ 18A-2-5, 18A-4-8, 18A-4-8b, 18A-4-8e and 18A-4-8g.

4. The qualifications listed on the job posting for Child Nutrition Facilities, Commodities and Equipment Supervisor are commensurate with the duties listed therein.

5. The position is not a “Food Service Supervisor.”

6. Grievant was not qualified for the position, and it was properly awarded to Mr. Dingess.

For the foregoing reasons, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or to the Circuit Court of Logan 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.

Date: August 24, 2004 _____

M. Paul Marteney

Administrative Law Judge