JOEY L. McDANIELS,

Grievant,

v. **DOCKET NO. 04-41-085**

RALIEGH COUNTY BOARD

OF EDUCATION,

Respondent.

DECISION

On November 10, 2003, Grievant filed a grievance against Respondent, claiming: “Requested classification to Maintenance Coordinator of Planning and Logistics because I am doing the same duties as those of Mike Christian who was classified as such. Superintendent denied classification.” As relief, Grievant seeks, “Be reclassified as Maintenance Coordinator of Planning & Logistics/Secretary III/Accountant III/Computer Operator. Effective dates: Maintenance Coordinator of Planning & Logistics eff. 07-01-03; Secretary III/Accountant III/Computer Operator eff. 10-14-02.”

Having been only partially granted at level two, Grievant by-passed level three and a level four hearing was held in the Grievance Board's Beckley office on May 18, 2004. Grievant was represented by WVSSPA Attorney John Roush. Respondent was represented by counsel, Kathryn Bayless. The matter became mature for decision June 4, 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. Respondent employs Grievant as a Secretary III/Accountant III/Computer operator in its maintenance department.

2. Grievant was originally employed in October 2002, after applying for a Secretary III position.

3. On November 25, 2003, pursuant to a finding at level two of the grievance procedure, Grievant was reclassified to his current multiclassification title, after seeking the title of Maintenance Coordinator of Planning and Logistics/Secretary III/Accountant III/Computer Operator.

4. Mike Christian was Respondent's Maintenance Coordinator of Planning and Logistics up until September 2002, when he retired.

5. After Mr. Christian retired, his position was abolished, and Respondent posted a new position, the one Grievant applied for and accepted.

6. Respondent abolished Mr. Christian's position because it determined that it had not been properly classified.

7. Grievant performs most of the same duties as Mr. Christian performed, with the exception of work with the Governor's Summer Youth Program, which has been discontinued.

8. Grievant does not direct a department or division, but instead is the secretary to Maintenance Director Gilbert Pennington, who directs the Maintenance Division and delegates related duties to his subordinate.

DISCUSSION

Grievant's contention is that he is currently filling a position that was classified as Maintenance Coordinator of Planning and Logistics/Secretary III/Accountant III/Computer Operator when his predecessor held it, and that he performs the same duties as the previous incumbent, therefore, he should be classified and paid the same. Since this is a non-disciplinary grievance, 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. Respondent contends Grievant is now properly classified, and that he is not eligible for the Coordinator classification because he does not direct or coordinate a department or division.

Grievant's position is somewhat confusing: he argues that he performs the exact same duties as Mr. Christian did, and therefore should be classified the same as he was, but at the same time requests additional classification titles beyond that held by Mr. Christian. He relies on *Hurt v. Raliegh County Bd. of Educ.*, Docket No. 41-86-166-1 (July 25, 1986), which held that a grievant who

performed the same duties as her predecessor was entitled to the same salary as her predecessor. Although Respondent argues there are two different positions at issue in this case, rather than a continuation of one, *Hurt* is still instructive _ in that case a new posting for the same duties carried a lower classification title, and the Grievant nevertheless prevailed. Respondent counters this argument by pointing out Mr. Christian was not properly classified, a determination Grievant contends is self-serving.

However, Grievant proposes that Respondent and the undersigned ignore an important part of the definition of the classification he seeks. Under W. Va. Code § 18A-4- 8(i)(34), a “Director or Coordinator of Services” must be assigned to “direct a departmentor division.” Grievant, by his own admission, is not so assigned, but is subordinate to the director of his department. This lends credence to Respondent's argument that Mr. Christian was misclassified. “When a grievant compares himself to others who are employed in a higher classification and are performing similar work, but the others are misclassified, the remedy is not to similarly misclassify the grievant. *Akers v. W. Va. Dep't of Tax and Revenue*, 194 W. Va. 456, 460 S.E.2d 702 (1995); *Kunzler v. Dep't of Health and Human Serv.*, Docket No. 97 HHR-287 (Jan. 18, 1996).” *Weaver v. Preston County Bd. of Educ.*, Docket No. 03-39-129 (Aug. 28, 2003). Grievant offered no authority that would allow the undersigned to ignore one of the express conditions upon which the classification is based. No matter what Grievant's or his predecessor's duties were, his responsibilities do not match those required for the Coordinator classification. 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. 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 & 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 grievant who performs the same duties as her predecessor is entitled to the same salary as her predecessor. *See, Hurt v. Raliegh County Bd. of Educ.*, Docket No. 41-86-166-1 (July 25, 1986) 3. Under W. Va. Code § 18A-4-8(i)(34), a “Director or Coordinator of Services” must be

assigned to "direct a department or division."

4. "When a grievant compares himself to others who are employed in a higher classification and are performing similar work, but the others are misclassified, the remedy is not to similarly misclassify the grievant. *Akers v. W. Va. Dep't of Tax and Revenue*, 194 W. Va. 456, 460 S.E.2d 702 (1995); *Kunzler v. Dep't of Health and Human Serv.*, Docket No. 97 HHR-287 (Jan. 18, 1996)." *Weaver v. Preston County Bd. of Educ.*, Docket No. 03- 39-129 (Aug. 28, 2003).

5. Grievant has not met his burden of proving he should be classified as a Coordinator.

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 Raliegh 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.

Date: June 22, 2004 _____

M. Paul Marteney

Administrative Law Judge