THE WEST VIRGINIA EDUCATION AND STATE EMPLOYEES

GRIEVANCE BOARD

KATHY FREEMAN,

Grievant,

v. Docket No. 06-20-227

Janis I. Reynolds

Senior Administrative Law Judge

KANAWHA COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Kathy Freeman, filed this grievance against the Kanawha County Board of Education ("KCBOE" or "Board") at Level II on April 20, 2006. The Statement of Grievance noted Grievant had been recommended for reclassification from a Secretary III A to a Coordinator of Services/Secretary III-A, (See footnote 1) and this recommendation was not processed and presented to KCBOE by Superintendent Ronald Duerring. The relief sought was placement into this multi-classification.

The parties agreed the grievance could be filed directly at Level II, and the statutory timelines were waived. The grievance was granted on June 30, 2006, (See footnote 2) and Respondent appealed that Level II Decision to Level IV by letter dated July 5, 2006, and received on July 7, 2006. The parties agreed to submit the case on the record developed below, andthis case became mature for decision on August 24, 2006, after receipt of the parties' proposed findings of fact and conclusions of law. Grievant represented herself, and

KCBOE was represented by its attorney, James Withrow.

Synopsis

Respondent appeals the Level II Decision pursuant to W. Va. Code § 18-29-3(t) and asserts the Level II Decision is contrary to law and clearly wrong in view of the reliable, probative, and substantial evidence of record.

Grievant asserts her job duties have changed, she should be reclassified, and she was approved for reclassification on August 4, 2005.

The undersigned Administrative Law Judge finds Respondent met its burden of proof and established the Level II Decision was contrary to law and clearly wrong.

After a detailed review of the entire record, the undersigned Administrative Law Judge makes the following Findings of Fact.

Findings of Fact

1. Grievant has been employed by KCBOE for approximately 23 years. She has held her current position of Secretary III-A, for ten years in the Child Nutrition Department. She has a High School education and secretarial course work.

2. Grievant's basic duties in the Child Nutrition Department are to monitor the individual school food orders and inventory, and assist the cafeteria managers/head cooks when problems arise with these food orders, such as shortages and errors. Grievant puts the menu on the website, acts as a receptionist for the Director and Coordinator of Services, trains cafeteria managers/head cooks on new procedures in her area, assembles data and prepares reports, and updates forms. She performs administrative tasks for hersupervisor as delegated and makes administrative decisions in the absence of her supervisors. Respt. No. 3.

3. Grievant performs her duties in an outstanding manner.

4. Grievant is supervised by both a Director and a Coordinator of Services.

5. Some time in the past, KCBOE established a committee of service personnel to hear employees' requests for reclassification. The employee wanting reclassification would complete documents and then answer questions from this five-member committee. The committee would then give their recommendation to the Superintendent. This committee was

advisory, and Superintendent Duerring was not bound by its recommendation. If Superintendent Duerring agreed with the recommendation, he then requested reclassification from KCBOE.

6. At a time unspecified by the record, but probably in August of 2005, Grievant and two other employees of the Child Nutrition Department, requested to be reclassified and to have the title of Coordinator of Services added to their other titles. (See footnote 3) **It is unclear how many employees are in this department, but if all of these requests had been granted, there would be four Coordinators of Services and one Director within this department.**

7. On August 4, 2005, the committee recommended Grievant and another employee be reclassified and have the title Coordinator of Services added to their classification, but did not recommend the third employee be reclassified.

8. These recommendations were then given to Superintendent Duerring. 9. On August 22, 2005, after receiving these recommendations, Superintendent Duerring wrote all three employees and noted his concern that no objective standards are used to evaluate the duties of the service personnel positions, and this lack of standards made it very difficult to assess fairly whether employees should be reclassified. Superintendent Duerring informed the employees he had asked Carol Hamric, Human Resources Administrative Assistant, to develop an assessment system, and he felt this should be done before he decided what action he would take on the committee's recommendations. If the reclassifications were ultimately approved, the effective date would be from the original filing, and if the employees did not want to wait, they could file a grievance.

10. Grievant decided to not file a grievance at that time.

11. On September 6, 2005, Superintendent Duerring again wrote to the three employees mentioned in Finding of Fact 6. He indicated the new assessment process should be completed by January 1, 2006, and reminded the employees that the recommendations of the committee were advisory.

12. Ms. Hamric, who has experience in the area of job classification, completed her assessment tool sometime in January or February. This assessment tool is based on the point factor method, a method considered the most objective, especially when used with public employees. (See footnote 4) **Test. Hamric at 18. 13. Using the new assessment tool, Ms.**

Hamric reviewed Grievant's Position Analysis Questionnaire and determined Grievant did not meet the requirements for reclassification.

14. On or about March 14, 2006, Grievant completed another, more detailed Position Analysis Questionnaire, and this document was reviewed by Ms. Hamric. Ms. Hamric again found reclassification was not warranted.

Discussion

A board of education may appeal a Level II decision on the grounds the decision: (1) was contrary to law or lawfully adopted rule, regulation or written policy of the chief administrator or governing board, (2) exceeded the hearing examiner's statutory authority, (3) was the result of fraud or deceit, (4) was clearly wrong in view of the reliable, probative and substantial evidence on the whole record, or (5) was arbitrary or capricious or characterized by abuse of discretion. W. Va. Code § 18-29-3(t). If a respondent appeals the Level II Decision under this Code Section it bears the burden of proof. See Winnell v. Kanawha County Bd. of Educ., Docket No. 02-20-240 (Oct. 28, 2002); Jackson v. Grant County Bd. of Educ., Docket No. 97-12-224 (Oct. 16, 1997); Harmon v. Fayette County Bd. of Educ., Docket No. 96-10-500 (Aug. 25, 1997). See also, Triggs v. Berkeley County Bd. of Educ., 188 W. Va. 435, 425 S.E.2d 111 (1992).

Typically, "[i]n order to prevail in a misclassification grievance, an employee must establish that her duties more closely match those of another classification than that under which her position is categorized. Sammons/Varney v. Mingo County Bd. of Educ., Docket No. 96-29-356 (Dec. 30, 1996); Savilla v. Putnam County Bd. of Educ., Docket No. 89-40- 546 (Dec. 21, 1989). A school service employee who establishes, by a preponderance ofthe evidence, that he is performing the duties of a higher W. Va. Code §18A-4-8 classification than that under which he is officially categorized, is entitled to reclassification. Gregory v. Mingo County Bd. of Educ., Docket No. 95-29-006 (July 19, 1995); Hatfield v. Mingo County Bd. of Educ., Docket No. 91-29-077 (Apr. 15, 1991); Holliday v. Marshall County Bd. of Educ., Docket No. 89-25-376 (Nov. 30, 1989); Scarberry v. Logan County Bd. of Educ., Docket No. 89-23-63 (Oct. 30, 1989). However, simply because an employee is required to undertake some responsibilities normally associated with a higher classification, even regularly, does not render him misclassified per se. Hatfield, supra." Carver v. Kanawha County Bd. of Educ.,

Docket No. 01-20-057 (Apr. 13, 2001). A brief and impermanent undertaking of some of the duties of a position. . . does not equate to an assignment to 'direct a department or division.'" O'Neal v. Fayette County Bd. of Educ., Docket No. 02-10-369 (Mar. 6, 2003).

Respondent asserts the Decision of the Level II Grievance Evaluator is "clearly wrong in view of the reliable, probative and substantial evidence on the whole record." Respondent notes there is nothing in the record to support a finding that Grievant should be reclassified to Coordinator of Services/Secretary III-A. Respondent points to the statutory definition of Coordinator of Services and Secretary III at W. Va. Code § 18A-4- 8(i)(34) & (77).

"Director or coordinator of services" is defined as "personnel who are assigned to direct a department or division. . . ." and a "Secretary III" is defined as "personnel assigned to the county board office administrators in charge of various instructional, maintenance, transportation, food services, operations and health departments, federal programs or departments with particular responsibilities of purchasing and financial control or anypersonnel who have served in a position which meets the definition of 'secretary II' or 'secretary III' in this section for eight years. . . ."

It should be noted Grievant is a skilled employee, and it is clear KCBOE values the ability and dedication with which she performs her job. However, the question before this Grievance Board is whether the Level II Decision finding Grievant was entitled to the Coordinator of Services title was clearly wrong or contrary to law. It is clear from the record that Grievant does not direct a department or division and has no authority of her own to make decisions. This fact is demonstrated by Grievant's testimony that she makes administrative decisions only when directed to do so by her supervisors or her supervisors are not in the office.

Grievant is assigned to a county board of education administrator in charge of the Child Nutrition Department. While she is responsible for many of the nuts and bolts and day to day operations in the area of ordering and inventorying food, she does not direct the Department. That duty falls on the shoulders of the Director and Coordinator of Services of the Department. The fact that her job duties have increased over the years does not make a case for reclassification, as Grievant does not have ultimate responsibility for the program, her supervisors do. Respondent has met its burden of proof and established the Level II Decision was wrong in light of the "reliable, probative and substantial evidence" presented in the

record.

The above-discussion will be supplemented by the following Conclusions of Law.

Conclusions of Law

1. A board of education may appeal a level two decision on the grounds that the decision (1) was contrary to law or lawfully adopted rule, regulation or written policy of thechief administrator or governing board, (2) exceeded the hearing examiner's statutory authority, (3) was the result of fraud or deceit, (4) was clearly wrong in view of the reliable, probative and substantial evidence on the whole record, or (5) was arbitrary or capricious or characterized by abuse of discretion. W. Va. Code §18-29-3(t).

2. When a county board of education appeals the level two grievance evaluator's decision, the county board of education has the burden of proof. See Winnell v. Kanawha County Bd. of Educ., Docket No. 02-20-240 (Oct. 28, 2002); Jackson v. Grant County Bd. of Educ., Docket No. 97-12-224 (Oct. 16, 1997); Harmon v. Fayette County Bd. of Educ., Docket No. 96-10-500 (Aug. 25, 1997).

3. The Coordinator of Services title is reserved for "personnel who are assigned to direct a department or division." W. Va. Code § 18A-4-8(i)(34).

4. "A brief and impermanent undertaking of some of the duties of a position with such responsibility does not equate to an assignment to 'direct a department or division.'" O'Neal v. Fayette County Bd. of Educ., Docket No. 02-10-369 (Mar. 6, 2003). See Newcome v. Kanawha County Bd. of Educ., Docket No. 98-20-08 (June 25, 1998) 5. Respondent demonstrated Grievant's duties do not match those of the statutory definition of a Coordinator of Services, as she does not direct a department or division. See Porter v. Hancock County Bd. of Educ., Docket No. 93-15-493 (May 24, 1994); Hamilton v. Jackson County Bd. of Educ., Docket No. 91-18-264 (Mar. 31, 1992); Hamilton v. Mingo County Bd. of Educ., Docket No. 91-29-077 (Apr. 15, 1991).

Accordingly, this grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha 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.

JANIS I. REYNOLDS

SENIOR ADMINISTRATIVE LAW JUDGE

Dated: October 17, 2006

Footnote: 1

The parties did not explain the "A" attached to the Secretary classification.

Footnote: 2

The Grievance Evaluator determined the grievance should be granted and stated, "it is recommended that the Superintendent of Schools recommend to the Board of Education that the grievant be reclassified for a Secretary III-A to a Coordinator of Services."

Footnote: 3

The Level II Decision indicates Grievant wanted to be reclassified only to Coordinator of Services, but this is not what the forms completed by Grievant indicated.

Footnote: 4

The undersigned Administrative Law Judge takes judicial notice that this system is very similar to the one currently used to by higher education to assess its employees for classification.