EILEEN HAYHURST,

Grievant,

v. **DOCKET NO. 94-17-1113**

HARRISON COUNTY BOARD OF EDUCATION,

Respondent, and,

CHARLES REIDER,

Intervenor.

D E C I S I O N

Eileen Hayhurst ("Grievant") initiated this grievance against the Harrison County Board of Education ("HBOE"), grieving her non-selection for a school service personnel position. Grievant appealed to Level IV of the grievance procedure on December 12, 1994. The parties subsequently asked that a decision be rendered on the Level II record, and this matter became mature for decision on April 7, 1995. (See footnote 1)

As Grievant, by her own admission, was not qualified for the posted position at the end of twenty working days from the posting, this grievance must be denied.

The following pertinent facts, which are undisputed, were developed at Level II.

Findings of Fact

1. HBOE posted the position of Coordinator of Custodians ("CC") on July 15, 1994. Attached to the posting was a job description for CC, which provided as follows:

> High school graduate. At least five year's custodial department or related experience. Such alternative to the above qualification as the Superintendent and the Board may find appropriate and acceptable. The Coordinator shall possess outstanding ability to work harmoniously and effectively with parents, teachers, principals, other administrators, and all employees of the Harrison County Board of Education involved

with the custodial system. Successful completion of coordinator's qualification test as per state code. Working knowledge of computers.

2. Six persons applied for the CC position, including Grievant and Charles Reider. Both Grievant and Mr. Reider were employed by HBOE as custodians. Grievant had attained more seniority than any other applicant.

3. None of the applicants held the classification title of CC.

4. The West Virginia Department of Education has not developed a competency test for the CC classification.

5. HBOE Assistant Superintendent Robert Stemple, Administrative Assistant Victor Gabriel and Director Joe Ammonsinterviewed the applicants. They determined from the interview and from a written test administered to the applicants that Grievant did not possess a working knowledge of computers, and therefore, she was not qualified for the position. They further determined that Charles Reider did possess a working knowledge of computers.

6. Charles Reider was the successful applicant.

7. The CC position did not utilize a computer at the time the position was filled, but Harrison County is ready to computerize many of its operations, including certain duties of the CC, such as materials ordering, inventory control, and personnel records. The CC would also generate memoranda using word processing software.

Discussion

W. Va. Code §18A-4-8b requires school service personnel positions to be filled on the basis of seniority, evaluations and qualifications. An applicant meets the qualifications of the position by meeting the definition of the job. A CC falls within the W. Va. Code §18A-4-8 classification "[d]irector or coordinator of services." "Director or coordinator of services means personnel not defined as professional personnel or professional educators in section one [§ 18A-1-1], article one of this chapter, who are assigned to direct a department or division." W. Va. Code §18A-4-8.

One way an applicant may "meet the definition of the job," is to hold the classification title. As noted in the findings offact, none of the applicants held the classification title of "director or coordinator of services".

The other way to "meet the definition of the job" is to pass the state competency test for the classification. However, when, as with the classification at hand, no state competency test exists for a classification, W. Va. Code §18A-4-8e is not applicable.

Absent a state competency test, a county board of education may develop its own competency test, so long as it is applied to everyone. "In Hyre v. Upshur Co. Bd. of Educ., 412 S.E.2d 265 (W.Va. 1991) it was held that a county board of education may expand the requirements of a service position consistently with the definition of the position provided by W.Va. Code §18A-4-8 and persons may then 'qualify' by meeting those requirements." Brewer v. Mercer County Bd. of Educ., Docket No. 91-27-002 (March 30, 1992).

Grievant does not dispute that she does not possess a working knowledge of computers. It further appears from the Conclusions of Law submitted by Grievant at Level IV, that she is not arguing that HBOE could not make a working knowledge of computers one of the job's requirements. (See footnote 2) Rather, Grievant's argument is that becausethe CC position did not utilize a computer at the time the position was filled, Grievant should have been given time to learn how to operate a computer. Grievant, in fact, enrolled in a computer course in the fall of 1994.

This Board recently addressed this situation in the context of a licensure requirement, in Cyphers v. Marion County Bd. of Educ., Docket No. 94-24-134 (Oct. 31, 1994). In that case, Grievant possessed a license required for the posted position, but was passed over for the position to allow the most senior applicant time to acquire the license. This Board looked to the W. Va. Code §18A-4-8b requirement that the position must be posted for at least five working days, and filled within twenty working days of the posting date, and awarded Grievant the posted position as the only applicant holding the required license at the end of twenty working days.

HBOE did not abuse its discretion in requiring that the successful applicant possess a working knowledge of computers. Grievant did not possess this required training when the posted position had to be filled, twenty working days after the posting, and, therefore, she did not meet the qualifications for the position.

This discussion is supplemented by the following conclusions of law, which support the denial of this grievance.

Conclusions of Law

1. School service personnel positions must be filled on the basis of seniority, evaluations, and qualifications. W. Va. Code §18A-4-8b.

2. "The standard of review in determining whether requirements imposed on a school service position are consistent with its statutory definition is that pronounced in Dillon v. Bd. of Educ. of the Co. of Wyoming, 351 S.E.2d 58 (W.Va. 1986), namely whether or not a board, in doing so, has abused its substantial discretion in personnel matters." Brewer v. Mercer County Bd. of Educ., Docket No. 91-27-002 (March 30, 1992). HBOE presented a rational basis for the working knowledge of computers requirement, as set forth in finding of fact number 7 above, and did not abuse its discretion.

3. School service personnel positions must be posted for at least five working days, and must be filled within twenty working days of the posting. W. Va. Code §18A-4-8b.

4. Grievant did not meet the qualifications of the posting at the time it had to be filled, and could not, in accordance with W. Va. Code §18A-4-8b, be chosen for the posted position. See, Cyphers v. Marion County Bd. of Educ., Docket No. 94-24-134 (Oct. 31, 1994).

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or to the Circuit Court of Harrison County and 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. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

BRENDA L. GOULD

Administrative Law Judge

Dated: June 8, 1995

Footnote: 1 This grievance was initiated August 26, 1994. Grievant was notified that her immediate supervisor was not involved in the decision-making process, and was therefore without authority to render a decision or response. The Level II hearing was held October 6, 1994, and a Level II decision denying the grievance was rendered December 1, 1994. Level III was bypassed by Grievant. The successful applicant, Charles Reider, was granted Intervenor status at Level IV.

The parties submitted proposed findings of fact and conclusions of law, and responses thereto by April 7, 1995.

Footnote: 2 "The standard of review in determining whether requirements imposed on a school service position are consistent with its statutory definition is that pronounced in Dillon v. Bd. of Educ. of the Co. of Wyoming, 351 S.E.2d 58 (W.Va. 1986), namely whether or not a board, in doing so, has abused its substantial discretion in personnel matters." Brewer v. Mercer County Bd. of Educ., Docket No. 91-27-002 (March 30, 1992). HBOE presented a rational basis for the working knowledge of computers requirement, as set forth in finding of fact number 7 above, and did not abuse its discretion. Recently, in Mayle v. Barbour County Bd. of Educ.,Docket No. 94-01-260 (February 28, 1995), this Board found the requirement of a federal certification which was not effective for six months after the position was filled consistent with the statutory definition.