JANE VANOOYEN,

Grievant,

v. **Docket No. 96-17-209**

HARRISON COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant Jane VanOoyen is employed by Respondent Harrison County Board of Education (Board). She is grieving the selection of Patricia Gonzalez to fill the multi-classified position Accountant/Auditor/Secretary III. The matter was denied at the lower levels and appealed to Level IV on or about May 31, 1996. An evidentiary hearing was conducted on January 30, 1997. The case became mature for decision on February 25, 1997, with the receipt of the parties' proposed findings of fact and conclusions of law.

The pertinent facts in this case are not in dispute and are set out below:

FINDINGS OF FACT

1. On or about February 1, 1996, Respondent posted the multi-classified position of Accountant/Auditor/Secretary III. 2. Grievant and Ms. Gonzalez, along with several other service personnel employees, applied for the position.

3. At the time of the application, Grievant was classified as a Paraprofessional/ Aide and Ms. Gonzalez was a Secretary III.

4. Pursuant to W.Va. Code §18A-4-8e, Grievant and Ms. Gonzalez were required to take competency tests. Grievant passed the accountant and secretary tests. Ms. Gonzalez failed the accountant test.

5. Ms. Gonzalez notified the Board that she had not been given the full day of in-service training as required by W.Va. Code §18A4-8e, and requested the opportunity to retake the accounting test after completing the in-service training.

6. Relying upon Quintrell v. Lincoln County Bd. of Educ., Docket No. 95-22-051 (Aug. 31, 1995), the Board granted her request. Ms. Gonzalez completed in-service training, re-took, and

passed the accounting test.

7. Ms. Gonzalez was awarded the position on or about March 5, 1996.

8. Grievant has more seniority as a regular service personnel (2/8/87) than Ms. Gonzalez 8/23/89).

DISCUSSION

Grievant has a bachelor's degree and has taken several classes in the fields of accounting and auditing. Her argument is that she had passed the competency tests, has had at least satisfactory evaluations, is the most senior, and should be awarded the position. Respondent argues that Ms. Gonzalez held one of the titles in the posting, therefore, she was the most qualified and should beawarded the position. Thus, the issue is: is an applicant for a multi-classified position, qualified in one of the classifications, given preference over one not qualified in any of the classifications?

W. Va. Code §18A-4-8g states "[s]ervice personnel who are employed in a classification category of employment at the time when a vacancy is posted in the same classification category of employment shall be given first opportunity to fill such vacancy." W. Va. Code §18A-4-8b contains a similar sentence and says "[q]ualifications shall mean that the applicant holds a classification title in his category of employment . . . and must be given first opportunity for promotion and filling vacancies." Employees who otherwise meet the job qualifications are considered next. Id.

W. Va. Code §18A-4-8b also states service personnel positions shall be filled on the basis "of seniority, qualifications, and evaluations of past service." A preference for hiring the employee with the most seniority is indicated by the statement that if the most senior employee is not hired, a board "must show valid cause." Id. This emphasis on seniority was discussed in Harrison County Bd. of Educ. v. Coffman, 189 W. Va. 273 (1993). The West Virginia Supreme Court stated "the legislative intention to emphasize seniority as the determinative factor in decisions affecting the promotion and filling of school service personnel positions is . . . clear." Id. at 274.

The issue of filling multi-classified positions was raised in Wilson v. Marion County Bd. of Educ., Docket No. 93-44-084 (July 27, 1993). Although this case was decided on other grounds, ALJ Keller stated "[i]t is likely that an individual would be required to hold all of the class titles included in a multi-classified position to be qualified." Id. at 2. Judge Keller noted that since "multi- classification is listed

as a separate class title in W. Va. Code §18A-4-8, it should not be viewed fractionally."

Harrison and Wilson are both cited as authority in another case that clearly expresses thisconcept. Gandee, et al. v. Mason County Bd. of Educ., Docket No. 93-26-476. states as a conclusion of law that in multi-classification matters, “an employer may not consider an applicant's possession of one of the required classifications as granting that applicant priority over another applicant who is qualified and has more seniority.”

Given the above-stated statutes and case law, it would appear that Respondent improperly filled the Accountant/Auditor/Secretary III multi-classified position. Multi-classification is a separate and distinct title from each of the separate classifications contained therein. Since, no candidate qualified for the position outright, both were equally qualified. Neither of them held this multi-classed position, and the applicants were otherwise equal in qualifications and evaluations. Therefore, the amount of service personnel seniority must become the determinative factor. Utilizing seniority in this way is supported by statute and case law. W. Va. Code §18A-4-8b and §18A-4-8g; Harrison County, supra. Indeed Brewer v. Mercer County Bd. of Educ., Docket No.91- 27-002 (Mar. 30, 1992) states "when no applicant has in-classification seniority . . . total county seniority [is] determinative among applicants who 'qualify' for a service position." Id. at 11. Grievant has 10 years, having an original hire date of February 9, 1987, and Ms. Gonzalez has 8 years, with an original hire date of August 23, 1989. See Grievant's Ex. No. 2, Level IV hearing. Thus, combining all regular employment as required by W.Va Code §18A-4-8g, Grievant should receive the position.

CONCLUSIONS OF LAW

1. The Legislature has shown a clear intent that seniority is to be a determinative factor in promotion and filling of vacant positions. W. Va. Code §18A-4-8b; Harrison, supra. 2. Qualified for a multi-classification class means qualified for each class within the multi-class title. Gandee, et. al. v. Mason County Bd. of Educ., Docket No. 93-26-476 (Sept. 30, 1994).

3. Since "multi-classification" is listed as a separate classification in W. Va. Code §18A- 4-8, an employer may not consider an applicant's possession of one of the required classifications as granting that applicant priority over another applicant who is qualified and has more seniority. Gandee, supra.

4. When no applicant has priority for filling a vacancy by holding all classification titles within a

vacancy, overall seniority as a regular employee is the determinative factor in filling the position. W. Va. Code §18A-4-8g.

Accordingly this grievance is **GRANTED** and Harrison County Board of Education is **ORDERED** to place Grievant Jane VanOoyen in the Accountant/Auditor/Secretary III position and to pay her the difference between her present salary and the salary she would have received from March 5, 1996 to the time she is instated into the position.

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.

_____

JAMES D. TERRY

Administrative Law Judge

DATE: July 25, 1997