JOANNE ADKINS,

Grievant,

v. **Docket No. 06-22-038**

LINCOLN COUNTY
BOARD OF EDUCATION,

Respondent.

DECISION

Grievant, Joanne Adkins, filed her grievance on December 12, 2005, grieving non- selection of the Accounting/Secretary 2 position at the new Lincoln County High School. Her stated relief is to be placed in that position.

Relief was denied at Levels I and II. Grievant bypassed Level III, and appealed directly to Level IV. A Level IV hearing was held on March 7, 2006, at the Grievance Board's Charleston office. Grievant was represented by Gary Archer from the West Virginia Education Association, and Respondent was represented by Rebecca Tinder from Bowles Rice McDavid Graff & Love L. L. P. This case became mature for decision on March 21, 2006, upon the submissions of proposed findings of fact and conclusions of law by the parties.

Issues and Arguments

Grievant argues the successful applicant's request to be considered for the Accountant/Secretary 2 position was submitted late, and therefore she should not be considered a viable applicant. Grievant asserts that her application was timely. Respondent argues that when Ms. Wheeler, the successful applicant, completed the application she believed she was applying for both positions simultaneously. Respondent not only asserts that Ms. Wheeler is more senior than Grievant, but also thatMs. Wheeler was the only qualified applicant at the close of the posting because she had already passed the required accounting test. Therefore, based on a preponderance of the evidence, I find the following material facts have been proven:

Findings of Fact

1. Lincoln County High School, a new consolidated high school, is scheduled to open in the fall of 2006. At this time, Duval High School and Hamlin High School, among others, will close. As a result, a number of professional and service personnel positions were posted.

2. Respondent posted a notice of vacancy for the positions of Secretary 2 and Accountant/Secretary 2 for Lincoln County High School.

3. The posting for Accountant/Secretary 2 position required the successful applicant to pass the accounting competency test or hold or have previously held the classification of Accountant.

4. The deadline for applying for the two positions was October 4, 2005, but was later extended to October 6, 2005.

5. Since these postings were together, applicants were to complete one application and rank their choices.

6. Grievant and Ms. Wheeler both submitted applications for these postings. Grievant ranked the position of Accountant/Secretary 2 as her first choice, and Secretary 2 as her second choice. Ms. Wheeler accidentally ranked the position of Secretary 2 as her first choice and Accountant/Secretary 2 as her second choice.

7. Grievant's application was submitted on October 6, 2005. Ms. Wheeler's application was submitted on October 5, 2005. Both were timely filed. 8. When Grievant submitted her application, she was employed as a Secretary III at Hamlin High School with a seniority date was December 8, 1992, and she had not taken the required accounting test.

9. At the time Ms. Wheeler submitted her application, she was employed as a Secretary at Duval High School, and her seniority date was November 17, 1986. She had already taken and passed the accounting test.

10. On October 10, 2005, the Superintendent prepared a memorandum detailing who had been chosen for the various service personnel positions. The instructions on the memorandum were that it was to be shared with all service employees so that “if there are any questions concerning placement, seniority, choice, etc., they may contact Mr. Huffman.” Joint Exhibit 4. This process allowed for corrections before recommendations to Respondent.

11. On that memorandum, it indicated Grievant was selected for the Accountant/Secretary 2 position, pending passage of the accounting test.

12. Grievant attended the Accounting In-service on November 3rd and 7th and then passed the

accounting test on November 9, 2005.

13. The memorandum indicated Ms. Wheeler had been chosen for the Secretary 2 position. Upon seeing that, Ms. Wheeler questioned the Superintendent and explained that it had been her intent to apply for the Accountant/Secretary 2 position as her first choice. She faxed written documentation to that effect to the Superintendent.

14. The recommendation for the Accountant/Secretary 2 position was changed, and Ms. Wheeler was placed in that position, while Grievant was given her second choice of Secretary 2.

Discussion

Since this grievance is not about discipline, Grievant must prove all of her claims by a preponderance of the evidence, which means she must provide enough evidence for the undersigned Administrative Law Judge to decide that her claim is more likely valid than not. *See Unrue v. W. Va. Div. of Highways*, Docket No. 95-DOH-287 (Jan. 22, 1996); *Leichliter v. W. Va. Dep't of Health and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). If the evidence supports both sides equally, then Grievant has not met her burden. *Id.*

County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. *Dillon v. Bd. of Educ. of County of Wyoming*, 177 W. Va. 145, 351 S.E.2d 58 (1986). (See footnote 1) "Service personnel vacancies are to be filled on the basis of seniority, qualifications and evaluation of past service. *W. Va. Code* §18A-4-8b." *Leishman v. Monongalia County Bd. of Educ.*, Docket No. 04-30-127 (Aug. 31, 2004).

Because numerous positions were posted at the same time, Respondent designed an application that allowed the applicants to designate their preference of positions. Simply listing a preference did not ensure it would be honored. Instead, it was something for Superintendent Grizzell to take into consideration when deciding who to recommend for specific positions. Grievant and Ms. Wheeler submitted their applications for both positions in a timely manner. Both applications were received on or before the closing date of the posting. Ms. Wheeler was more senior than Grievant. Therefore, Ms. Wheeler was entitled to the position of first choice, so long as she was qualified. Upon completing the application, Ms. Wheeler inadvertently made a clerical error, and when she realized the error, she immediately rectified it.

Superintendent Grizzell circulated a memorandum listing who would be recommended for the various positions with the intent to clarify any misunderstandings and answer any questions prior to

making a recommendation to Respondent. This is evident from reading the opening paragraph that states, “Please share this list of placements with all service employees so that if there are any questions concerning placement, seniority, choices, etc., they may contact Mr. Huffman.” Joint Exhibit 4.

When Ms. Wheeler saw she had been chosen for the Secretary 2 position, she questioned the Superintendent and explained that her first choice was the Accountant/Secretary 2 position. At that time, the Superintendent requested she notify him in writing, and Respondent placed her in the appropriate position.

Ms. Wheeler's application for both positions were submitted timely. She had more seniority than Grievant, and Respondent chose to place her in the position of Accountant/Secretary 2, a position for which she had applied and was qualified. Therefore, Grievant has failed to meet her burden. The following conclusions of law support this Decision.

Conclusions of Law

1. Since this grievance is not about discipline, Grievant must prove all of her claims by a preponderance of the evidence, which means she must provide enough evidence for the undersigned Administrative Law Judge to decide that her claim is more likely valid than not. *See Unrue v. W. Va. Div. of Highways*, Docket No. 95-DOH-287 (Jan. 22, 1996); *Leichliter v. W. Va. Dep't of Health and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). If the evidence supports both sides equally, then Grievant has not met her burden. *Id.*

2. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. *Dillon v. Bd. of Educ. of County of Wyoming*, 177 W. Va. 145, 351 S.E.2d 58 (1986).

3. “Service personnel vacancies are to be filled on the basis of seniority, qualifications and evaluation of past service. *W. Va. Code* § 18A-4-8b.” *Leishman v. Monongalia County Bd. of Educ.*, Docket No. 04-30-127 (Aug. 31, 2004).

4. Respondent followed the requirements set forth in *W. Va. Code* § 18A-4-8b.

5. Grievant has failed to show Respondent violated any statute or policy or otherwise abused its discretion in not hiring her for the Accountant/Secretary 2 position.

Accordingly, the is grievance is hereby **DENIED**.

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

of Lincoln County. Any such appeal must be filed within thirty 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: April 27, 2006

_____

Wendy A. Campbell

Administrative Law Judge

Footnote: 1

Even though neither party argued this change in position was a transfer, based on the facts, the undersigned ALJ believes it was a transfer for both Grievant and Ms. Wheeler. Typically the superintendent, subject only to approval of the board, has authority to transfer, so long as it done reasonably and in the best interest of the school system and is not arbitrary and capricious. Basing transfers on seniority is not arbitrary and capricious. See Baisden v. Mingo County Bd. of Educ., Docket No. 03-29-286 (Jan. 23, 2004).