



**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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MARY ADKINS

vs.

Docket No. 23-86-024

LOGAN COUNTY BOARD OF EDUCATION

DECISION

Grievant, Mary Adkins, has been employed by the Logan County Board of Education for thirteen years and is presently serving as a Teachers Aide IV. On June 19, 1985 two Secretary II positions were posted, one for Man High School and the other for Logan Central Junior High School. Grievant was not awarded either position and filed a grievance on September 19, 1985. A level two hearing was conducted on October 14, 1985 before Superintendent Sentelle.

Grievant had never been classified as a secretary or substitute secretary and had failed to pass a minimal qualification or competency test given to applicants bidding on the position who were outside that classification.¹ Grievant, however, contends that she has taken several

¹ Mr. Jack D. Garrett, associate superintendent, testified that grievant had taken the test four times and hadn't "...come near the level of performance as outlined by the Board." (T.p.4,6). Her scores were: typing speed 70, written test 68, letters 60; the minimum score required was 80.

college secretarial courses which should be counted as qualifications and that it is unfair to require applicants such as she to take a test and waive the test for substitute secretaries.²

Mr. Garrett, associate superintendent, testified that it has long been the policy of the board in Logan County to require a secretarial skills tests for applicants outside the secretarial classification and this had been upheld by the State Superintendent of Schools³; that had grievant passed the test she would have been appointed over the substitute secretary who was appointed because grievant was a regular, fulltime employee with seniority. The level two grievance was denied on October 15, 1984.⁴

² Dr. Sentelle ostensibly agreed with grievant and in his letter to her dated October 15, 1985 noted that he was going to recommend to the board of education that passing a minimum-competency test of skills be required for all secretary classifications, both substitute and regular. Grievant also contended at level four that the positions had not been filled within twenty days. This, however, would not change the outcome of the decision as it applies to grievant.

³ Hartley v. Board of Education of Marshall Co., a June 21, 1985 interpretation of Superintendent Truby upheld the right of the board to require testing in this instance. This decision is entitled to weight unless clearly erroneous. Dillon v. Board of Education, 301 S.E.2d 588 (W.Va. 1983). Cf. Smith v. Logan County Board of Education, dated Dec. 17, 1985, Justices Neely and Brotherton dissenting.

⁴ There were no findings of fact or conclusions of law in the decision of the Superintendent in this case. Henceforth such an appeal will be remanded for compliance with Code, 18-29-6. Cf. Burks v. McNeel, 264, S.E. 2d 651 (W.Va. 1980).

In addition to the foregoing recitation of facts the following specific findings of fact are appropriate.

FINDINGS OF FACT

1. Grievant has been employed by the Logan County Board of Education for thirteen years and is presently serving as a Teacher's Aide IV.

2. Grievant applied for one of two Secretary II positions and was required to take a competency test because she had no classification time as secretary or substitute secretary.

3. Grievant did not obtain the required score on the competency test and was not selected for either position.

4. Grievant submitted college course credit in secretarial courses in lieu of the test and/or other qualifications, which were rejected by the board.

5. The Superintendent of Schools represented to grievant that he was going to recommend to the board of education that the minimum-competency test of skills be required for all secretarial classifications, substitute and regular.

CONCLUSIONS OF LAW

1. One of the purposes of Code, 18A-4-8 is to establish an employment term and class title for service personnel.

2. Code, 18A-4-8 defines the duties of an Aide and of a secretary as separate job classifications.

3. Code, 18A-4-8b requires a board of education to promote and fill service personnel positions on the basis of seniority, qualifications and evaluation of past service.

4. Code, 18A-4-8b provides that an employee's seniority begins on the date that he enters into his assigned duties; that the seniority shall be determined on the basis of the length of time the employee has been employed by the county board of education within a particular job classification.

5. Code, 18A-4-8b provides that qualifications shall mean that the applicant holds a classification title in this category of employment and must be given first opportunity for promotion and filling vacancies; that other employees then be considered and shall qualify by meeting the definition of the job title as defined in Section 8 of Article 4, that relates to the promotion or vacancy.

6. A county board of education is permitted to require a competency test for applicants seeking a position outside their classification. However, the tests should be uniform.

7. Code, 18-29-6 requires that every decision pursuant to a hearing shall be in writing and shall be accompanied by findings of facts and conclusions of law.

Accordingly, for the foregoing reasons the grievance is denied.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Logan County and such appeal must be filed within thirty (30) days of receipt of this decision. (Code, 18-29-7) Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the Court.



LEO CATSONIS
Hearing Examiner

Dated: _____

5/22/86