



**Members**  
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**WEST VIRGINIA EDUCATION  
EMPLOYEES GRIEVANCE BOARD**

**ARCH A. MOORE, JR.**  
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**DREMA BATES**

**v.**

**Docket No. 23-86-317-1**

**LOGAN COUNTY BOARD OF EDUCATION**

**DECISION**

Grievant, Drema Bates, is employed by the Logan County Board of Education as an Aide IV. She applied for a Secretary II position at Stirrat Grade School and filed a grievance when a substitute secretary was selected for the position. A level two hearing was conducted on October 14, 1985 and the transcript of that hearing was filed in the Education Employees Grievance Board office on October 30, 1986.<sup>1</sup>

Grievant had not been employed in a secretarial position with the school board or other educational agency but contended

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<sup>1</sup> This grievance was appealed along with a number of other grievances in December, 1985 when the Education Employees Grievance Board became functional. The parties waived an evidentiary hearing at level four and the grievance was submitted on the record and the brief of the grievant, which was received on November 12, 1986.

This grievance had been assigned to the hearing examiner in Beckley and reassigned to the undersigned hearing examiner.

that her secretarial experience in the private sector qualified her for the Secretary II position. She was required to take a secretarial test and failed to pass the test on two occasions.<sup>2</sup>

Mr. Jack Garrett, associate superintendent, testified that between thirty to fifty applicants responded to the three job openings, one of which was the Stirrat Grade School opening, but no regular secretaries were included therein. Consequently, it had been the unwritten policy of the school board to require the out-of-classification applicants to score an 80 on a secretarial test to demonstrate their secretarial skills.<sup>3</sup> Mr. Garrett contended that this procedure had been approved by the State Superintendent of Schools and that in the final analysis grievant would not have been selected because she was not the most senior applicant. (T. 5,13).

Grievant contends that school service vacancies must be filled on the basis of seniority, qualifications and evaluations of past service and had these criteria been correctly

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<sup>2</sup> W.Va. Code, 18A-4-8 provides that the duties of a Secretary II may include performing general clerical tasks, transcribing, preparing reports, operating office machines, etc. A school board is not required to offer a secretarial position to one who does not possess the skills requisite for the position. Janice Jones v. Ohio County Board of Education, Docket No. 35-86-051 (May 30, 1986).

<sup>3</sup> The theory was that a secretary working in the classification was qualified by operation of law. The test was prepared and administered by the secretarial teachers at the Vocational School (T. 5).

applied by the school officials she would have been selected. Grievant further contends that the law does not require the taking or passing of a test and was therefore an unauthorized requirement imposed by school officials.<sup>4</sup>

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

#### FINDINGS OF FACT

1. Grievant is employed by the Logan County Board of Education and classified as an Aide IV; she applied for a Secretary II position at Stirrat Grade School. The position was awarded to a substitute secretary.

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<sup>4</sup> Grievant also asserts that the policy requiring testing for out-of-classification applicants was unwritten and therefore unenforceable as per West Virginia Board of Education Policy No. 5300 (7).

These arguments were asserted and disposed of in Joann Hammond v. Logan County Board of Education, Docket No. 23-86-023 (April 30, 1986), affirmed July 17, 1986 by the Circuit Court of Kanawha County. The Hammond grievance involved the same position at Stirrat Grade School and grievant's failure to take the test involved herein. See also, Mary Adkins v. Logan County Board of Education, Docket No. 23-86-024 (May 22, 1986).

2. There were numerous applicants for the position but none of the applicants were in the secretary classification. In accordance with an unwritten policy of the board of education these applicants were required to take a test designed to evaluate their secretarial skills.

3. Grievant took the test on two occasions and scored below eighty each time. The minimum passing score was eighty and the test was applied uniformly throughout the county.

4. The test had been designed by the secretarial teaching staff at the Vocational School and consists of three parts: (1) a timed writing, (2) a typing project, and, (3) a written examination.

5. Grievant had never been employed or classified in a secretarial position in the school system but claims previous employment experience as a typist for Aracoma Drug store and as an office manager for a private employment agency.

6. Grievant was not the most senior applicant and would not have been awarded the position on the basis of seniority.

## CONCLUSIONS OF LAW

1. Present employees of a board of education must be given first opportunity for promotion or filling of vacancies; however, a board is not required by W.Va. Code, 18A-4-8b to offer a position to any employee who does not possess skills requisite for the position. Janice L. Jones v. Ohio County Board of Education, Docket No. 35-86-051.

2. 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 uniformly applied and fair in all respects. Mary Adkins v. Logan County Board of Education, Docket No. 23-86-024.<sup>5</sup>

3. There was no violation of W.Va. Code, 18A-4-8b in the non-selection of grievant to the position of Secretary II at Stirrat Grade School.

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<sup>5</sup> State ex rel. Hawkins v. Tyler County Board of Education, 275 S.E.2d 908 (W.Va. 1981) does not condone the use of unwritten or unofficial policies. However, as in the Hammond decision, supra, the unofficial policy of the board requiring testing is not the determinative factor in the instant grievance.

For the foregoing reasons the grievance is denied.

Either party may appeal this decision to the Circuit Court of Kanawha County or Logan County and such appeal must be filed within thirty days of receipt of this decision. (W.Va. 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.

A handwritten signature in cursive script, reading "Leo Catsonis", is written over a horizontal line.

LEO CATSONIS

Chief Hearing Examiner

Dated: November 26, 1986