



**Members**  
James Paul Geary  
Orton A. Jones  
David L. White

**WEST VIRGINIA EDUCATION  
EMPLOYEES GRIEVANCE BOARD**

ARCH A. MOORE, JR.  
Governor

**Offices**  
240 Capitol Street  
Suite 508  
Charleston, WV 25301  
Telephone 348-3361

PHYLLIS BECKETT

VS:

DOCKET NUMBER: 41-86-107

RALEIGH COUNTY BOARD OF EDUCATION

**DECISION**

This grievance was submitted on appeal to the West Virginia Education Employees Grievance Board following a hearing and decision rendered by the Raleigh County Board of Education. This matter was assigned to John M. Richardson, Hearing Examiner, and thereafter both parties waived, in writing, an evidentiary hearing and requested the matter be decided upon the existing record.

Because of the delays attendant to this grievance, the parties' request was accepted by this Hearing Examiner, while noting that a written decision containing findings of fact and conclusions of law was not part of the record and the lack of which would normally be cause for remanding this case to the Raleigh County Board of Education for the purpose of obtaining a written decision in the form and manner prescribed by WV Code §18-29-3(i); §18-29-4(c); and §18-29-6.<sup>1</sup>

---

<sup>1</sup>In numerous decisions, the West Virginia Education Employees Grievance Board has held that failure to provide findings of fact and conclusions of law by a governing board may result in remanding an appeal for compliance, see, inter alia, West Virginia Education Employees Grievance Board Adkins v. Logan County Board of Education, Docket No. 23-86-024.

The grievant, Phyllis Beckett, was employed by the Raleigh County Board of Education in October, 1975 as a Cook and remained so employed until 1982. Thereafter, she became an Aide, which was her job classification when she applied for the position of part-time Secretary III.

There were no applicants with a classification of Secretary who applied for the vacancy and only two applicants who were regularly employed by the Raleigh County Board of Education. The grievant was one of the two regularly employed applicants, the other applicant withdrew from consideration.

Richard E. Rhodes, Director of ECIA Chapter 1, in whose department the vacancy existed, was responsible for screening the applicants. With the assistance of others in his department, Mr. Rhodes prepared a "secretarial skills inventory test" which was given to all applicants.

Neither the grievant nor the other regularly employed applicant performed satisfactorily on the test and ultimately another individual, who had been regularly employed but who had been laid off for lack of work, was employed. It is for this reason that the grievant alleges a violation of WV Code §18A-4-8b.

The parties are not in disagreement concerning the facts nor about the statutes applicable, namely, WV Code §18A-4-8b, and WV Code §18A-4-8.

The applicable portion of WV Code §18A-4-8b provides:

"A county board of education shall make decisions affecting promotion and filling of any service personnel positions of employment or jobs occurring

throughout the school year that are to be performed by service personnel as provided in section eight [18A-4-8], article four of this chapter, on the basis of seniority, qualifications, and evaluation of past services.

Qualifications shall mean that the applicant holds a classification title in his category of employment as provided in this section and must be given first opportunity for promotion and filling vacancies. Other employees then must be considered and shall qualify by meeting the definition of the job title as defined in section eight [18A-4-8], article four of this section, that relates to the promotion or vacancy. If the employee so requests the board must show valid cause why an employee with the most seniority is not promoted or employed in the position for which he applies. Applicants shall be considered in the following order:

1. Regularly employed service personnel;
2. Service personnel whose employment has been discontinued in accordance with this section;
3. Professional personnel who held temporary service personnel jobs or positions prior to the ninth day of June, one thousand nine hundred eighty-two, and who apply only for such temporary jobs or positions;
4. Substitute service personnel; and
5. New service personnel."

The grievant contends that she was qualified within the meaning of WV Code §18A-4-8b and that she should not have been subjected to this "secretarial skills inventory test." The Board of Education's position, however, was that the grievant was not, simply because she was regularly employed and had more seniority than the successful applicant, qualified to fill the position of a part-time Secretary III.

The classification of Aide, Secretary I, II and III is set forth in WV Code §18A-4-8, which in pertinent part provides:

"Aide I" means those personnel selected and trained for teacher-aide classifications such as monitor aide, clerical aide, classroom aide, or general aide."

"Secretary I" means personnel employed to transcribe from notes or mechanical equipment, receive callers, perform clerical tasks, prepare reports and operate office machines."

"Secretary II" means personnel employed in any elementary, secondary, kindergarten, nursery, special education, vocational or any other school as a secretary. The duties may include performing general clerical tasks, transcribing from notes or stenotype or mechanical equipment or a sound-producing machine, preparing reports, receiving callers and referring them to proper persons, operating office machines, keeping records and handling routine correspondence. There is nothing implied herein that would prevent such employees from holding or being elevated to a higher classification."

"Secretary III" means personnel assigned to the county board of education office administrators in charge of various instructional, maintenance, transportation, food services, operations, and health departments, federal programs or departments with particular responsibilities of purchasing and financial control or any personnel who have served in a position which meets the definition of "Secretary II" herein for twelve continuous years."

The matters in this grievance are substantially the same as those in a West Virginia Education Employees Grievance Board decision, namely, Mary Adkins v. Logan County Board of Education, Docket No. 23-86-024, decided May 22, 1986. In the Adkins case, it was decided that the County Board of Education was permitted to require applicants to take a competency test when seeking a position outside of their classification.

Thus, it appears that the grievant herein who is classified as an "Aide." was seeking a position outside of her classification, namely, a "Secretary III" position. In seeking that position, the grievant failed to satisfactorily exhibit the fundamental skills necessary for that position.

In light of the fact that the grievant failed to exhibit the requisite skills, she was not qualified within the classification of Secretary III. Therefore, the Raleigh County Board of Education has shown valid cause why the grievant was not so employed in that position, in accordance with WV Code §18A-4-8b(b).

Since every applicant who sought the position was given the test and there was no question raised as to uniformity in its application, it conclusively appears that the grievance should be and is hereby denied.

#### FINDINGS OF FACTS

1. The grievant, Phyllis Beckett, is a regularly employed Aide for the Raleigh County Board of Education, having accrued over 10 years of seniority of which 7 years was accrued as a Cook from October 1975 through 1981-82. She was the most senior applicant.

2. The grievant was given the first opportunity to fill the Secretary III position.

3. The grievant applied for a part-time Secretary III position and was given a "secretarial skills inventory test" which she failed to satisfactorily accomplish and was subsequently not selected for the position.

4. An unnamed individual was selected to fill the parttime Secretary III position who had satisfactorily completed the "secretarial skills inventory test." This individual was not regularly employed by the Raleigh County Board of Education and had less seniority than the grievant.

5. Aforementioned facts were not disputed by the parties.

6. No written decision containing findings of facts or conclusions of law accompanied this appeal to level four.

#### 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 requires that regularly employed service personnel be given the first consideration in filling a position and that the Board of Education is required to show valid cause for not hiring the person having the most seniority, if requested.

5. Code §18A-4-8b provides that qualifications shall mean that the applicant hold a classification title in the category of employment sought and must be given first opportunity for promotion and filling vacancies; that other employees then be considered and

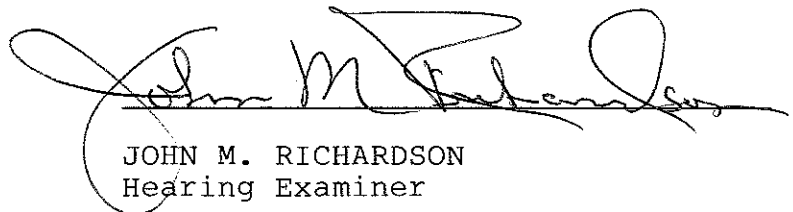
shall qualify by meeting the definition of the job title as defined in Section 8 of Article 4, that relates to the promotion or vacancy.

6. A county board of education is permitted to require a competency test for applicants seeking a position outside their classifications. 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.

For the reasons herein set forth, the grievance is denied.

Either party may appeal this decision to the Circuit Court of Raleigh County or to the Circuit Court of Kanawha 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.



JOHN M. RICHARDSON  
Hearing Examiner

DATED: September 10, 1986