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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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ELAINE CHERIPKO

v.

Docket No. 05-86-217-3

BROOKE COUNTY BOARD OF EDUCATION

DECISION

Grievant, Elaine Marcum, nee Cheripko, is employed by the Brooke County Board of Education as a substitute secretary. In September, 1985 grievant applied for a position as a full time secretary but another substitute secretary, Kathy Vargo, was selected. Grievant alleges violation of seniority laws, specifically, W.Va. Code, 18A-4-8b(b) and asks that she be instated in the position with seniority and back pay to the date of the initial hiring.

A level four evidentiary hearing was conducted August 18, 1986 and counsel for the parties jointly admitted several documents including a time line of the events leading to the filing of the grievance. The parties thereby

stipulated that Kathy Vargo was employed as a Substitute Cook on October 1, 1984. Grievant and Vargo both took secretary competency tests on October 18, 1984 and both were employed as Substitute Secretary October 22, 1984. On September 20, 1985 a job was posted for Secretary II/Aide Alternative Learning Center and Kathy Vargo was hired for that position October 28, 1985.

Grievant testified in her own behalf at the hearing. She stated that she had been working for the board as a substitute secretary since September, 1984 and subsequently took a qualifying secretarial competency test. She further stated that several days after taking the test she was called out to work as a substitute secretary. The testimony establishes that grievant did get called out to work as a secretary before Vargo.¹

Grievant stated that she applied for the position at the Alternative Learning Center in September, 1985, was interviewed for the job by Mr. David Leavitt and during the interview Mr. Leavitt commented about her age, that it "may be a factor". She was nineteen years old at that time. She testified that the board did not later cite

¹ Upon cross-examination, grievant stated she could not recall exactly when she had been notified of employment in 1984 as she did not bring her papers with her.

her age as a reason for her non-selection for the position. When questioned about the competency test she had taken prior to her initial employment with the county, grievant said she did not take a competency test for shorthand because she knew machine transcription "where you type with a dictaphone". She admitted, however, that she knew of no schools in the county which had facilities for machine transcription.

Further questioning revealed that grievant was aware of a memorandum issued by the board in July, 1985 outlining newly adopted job descriptions (State Classification) for position of secretary. All employees who were not presently employed as a secretary but wanting to qualify were required to take a competency test scheduled for August, 1985 and had to meet minimum standards which included shorthand abilities at 80 words per minute. Grievant nevertheless contends that when she originally tested, a secretary did not have to know shorthand. She stated that she was rehired at the beginning of the 1985-86 school year and has no reason to believe she would not be hired again for the 1986-87 year although she had not sent papers back in for this year.

Mr. Leavitt, supervisor of the Alternative Learning Center testified on behalf of the board. He stated the Center's purpose was to help those students who do not

have the skills to function at Brooke High School but nevertheless show potential for training and development which could lead to either reassignment back to the high school or attainment of a high school equivalency degree. Mr. Leavitt said because he had other administrative functions and duties with the board and was not office based at the Center, his day to day communications with its teaching and support staff was accomplished primarily via telephone. He stated that it is unwise to call staff away from their duties with students therefore it is essential that the secretary takes accurate messages; that the school does not have stenographic recording equipment and it is desirable that the secretary at the Center have shorthand skills since he dictates correspondence and frequent telephone messages.

Mr. Leavitt testified that he initially received grievant's grievance and she alleged that she was the more senior applicant for the position. He stated that he did not respond to that allegation because he did not consider her to be more senior than the other substitute secretaries he interviewed, they all having been hired the same date. He felt all the applicants were qualified in terms of their typing skills. He stated that he recommended Kathy Vargo for employment based on the test results the board had sent him which indicated she had passed

the shorthand skills proficiency testing thus she was the most qualified and could properly fill the secretarial needs at the Center. When questioned by grievant's counsel, Leavitt denied that he told her that her age would be against her but admitted that he did have some concern since she was not far removed in age from the adolescent students the Center served. He said that he did make the comment that she was pretty young but that her age had nothing to do with his final decision and recommendation to hire Kathy Vargo.

The county superintendent, Richard Whitehead, also testified for the board. He stated that prior to 1984 the approach to hiring secretaries had not been very well organized, usually with individual principals giving some type of competency test, but he wanted to have a uniform system developed. With the assistance of the staff in the business department at Brooke High School, he initiated the first competency test given October 22, 1984. From that initial testing, the county hired its first four substitute secretaries. When the board adopted the new job descriptions in July, 1985 it again offered qualifying tests.²

² The theory here was to attempt to have all new secretarial positions filled with persons who possessed shorthand skills in order that, as they moved up in classification, they would have appropriate skills to perform their duties
(footnote cont.)

He stated that Kathy Vargo had taken and passed the shorthand test in 1984 but grievant had not taken the shorthand test in 1984 or at any time subsequent when tests were announced and given. As to grievant's seniority over Vargo, Mr. Whitehead testified that both were hired the same day and that situation had not happened in the county before so he was unsure as to who would be most senior. He felt since grievant actually went to work before Vargo, then she may be the most senior.

Grievant's counsel argues that W.Va. Code, 18A-4-8 does not mention specifically that shorthand is a requirement for classification as a secretary, thus even if Brooke County did adopt such a requirement, it is not a requirement of law, therefore grievant is qualified as a secretary. Further, since she had no negative evaluations for her past performances as a substitute secretary, she was on an equal basis in that regard with the applicant who was selected. Finally, counsel contends that the board admits grievant is more senior, therefore she is entitled to the position as a matter of law.

It is true that Code, 18A-4-8b(b) requires that in filling a service personnel positions a county board of education must consider seniority, qualifications and past evaluation. However, no employee is entitled to

(footnote cont.)

since the county did not have mechanical devices for dictation and transcription.

a vacancy as a matter of law, but "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." The board has shown that grievant was given first opportunity and was considered for the position for which she applied. Twenty-seven persons applied for the job and grievant was among four who were interviewed. The board has proven that shorthand skills were essential to the performance of the job and grievant lacked said shorthand skills.

FINDINGS OF FACT

1. Grievant was employed by the board of education on October 22, 1984 as a substitute secretary. The employment was based upon competency testing for secretarial skills, but grievant did not test for shorthand since she could transcribe by dictaphone.

2. In July, 1985, the board of education adopted new classifications and duties for secretaries. The board does not have office machinery for dictation and transcription, thus shorthand skills are a requirement for new secretary employees. Some positions may not require shorthand skills but such skills may be integral to the performance of certain other positions.

3. Grievant has not availed herself of offered testing for shorthand proficiency because she can use a dictaphone.

4. Grievant applied for and was denied a position as a Secretary II/Aide. The board informed grievant that she was not the most qualified person for the position as shorthand skills were necessary at the Alternative Learning Center and the successful applicant, Kathy Vargo, could perform shorthand.

5. Grievant alleges that she is the most senior employee and therefore is entitled to the position.

CONCLUSIONS OF LAW

1. Code, 18A-4-8b(b) requires that in filling a service personnel position a county board of education must consider seniority, qualifications and past evaluation.

2. Code, 18A-4-8b(b) provides that a most senior applicant must be considered before other applicants for promotion or filling a vacant position, but a board is not required to fill a position by an applicant who does not possess skills required for the position.³

³ In Janice Jones v. Ohio County Board of Education, Docket No. 35-86-051, decided May 31, 1986, it was held that while service employees who hold the appropriate classification title and/or have earned more seniority are in a more advantageous position for promotion or filling a vacancy, there was no requirement that an
(footnote cont.)

3. Grievant did not demonstrate that the selection by the board of education was based upon considerations other than the qualifications of the successful applicant.

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 Brooke 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.



Nedra Koval
Hearing Examiner

Dated: October 3, 1986.

(footnote cont.)

applicant be given the position based solely on that criteria; that Code, 18A-4-8b(b) provided that such an employee must be given first opportunity.