



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

JOANN HAMMOND

vs.

DOCKET NO. 23-86-023

LOGAN COUNTY BOARD OF EDUCATION

DECISION

Grievant, Joann Hammond, has been employed by the Logan County Board of Education for five years and is presently classified as a special education aide IV. On August 12, 1985 she submitted a resume' for a secretarial position which had been posted for Stirrat Grade School and was advised that she would have to take a test. However, she was unable to take the test because she left for vacation the day she submitted her resume'. When she returned from vacation she learned that the position had been filled by a substitute secretary with two years seniority who had not taken a test. She filed a grievance and a level two hearing was conducted by Superintendent Sentelle on October 14, 1985.

Grievant's evidence was that she had worked as a secretary outside the school system and had also maintained her secretarial skills while working as an Aide by taking eighteen hours of college courses and performing clerical duties in her job as Aide.¹ She contended that her qualifications

¹ She also had experience as secretary-treasurer at the Monaville P.T.A., work on a church newsletter for Central Baptist Church six years previously, a high school diploma
(footnote continued)

would obviate the necessity for testing and that Code, 18A-4-8b required that service personnel positions be filled first by regular employees before substitute employees could be considered. Grievant concluded that the "unwritten policy" of the board requiring testing was unenforceable.

The employer's evidence was that there were forty to fifty applicants for the position and that it was a long standing unwritten policy of the board that applicants who were not working in a secretarial classification were required to pass a test involving secretarial skills and score an 80.² Mr. Jack D. Garrett, an assistant superintendent, had also advised grievant by memorandum dated September 23, 1985 that the person awarded the position had qualified by holding a classification title because she was working as a substitute secretary; that Code, 18A-4-8b did not apply to work outside of school service.³ Finally, the employer contends that grievant was not the most senior applicant and denied the grievance. The grievance was submitted to the hearing examiner on the basis of the evidence

(footnote continued)
in secretarial training, etc. Her evaluations as Aide had been "good" to "outstanding."

² This test was devised by a stenographic teacher at the vocational center and is designed to test the minimum requirements for the position.

³ A decision of State Superintendent of Schools Truby dated June 21, 1985, in the case of Hartley v. Marshall Co. Bd. of Educ. was also relied upon as authority for permitting the board of education to require testing of applicants who were not classified as secretaries.

presented at the level two hearing.⁴

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

FINDINGS OF FACT

1. Grievant is employed as a special education aide IV with five years seniority.

2. On August 12, 1985 she submitted an application for a Secretary II position at Stirrat Grade School; there were forty to fifty applicants for the position.

3. Grievant had no previous secretarial experience with the Logan County Board of Education but submitted secretarial experience in the private sector.

4. Grievant was unable to take a secretarial skill test required by the board of education for applicants not classified as secretaries because she was going on vacation.

5. The position was awarded to a substitute secretary who had two years experience and who was not required to take a test.

⁴ The record as presented to the hearing examiner in February, 1986 contained no written decision by the grievance evaluator at level two as required by Code, 18-29-6. This is an incomplete record and henceforth such a grievance will be remanded by the hearing examiner for compliance therewith. Cf. Burks v. McNeel 264 S.E.2d 651 (W.Va. 1980). Golden v. Bd. of Educ. of Harrison Co., 285 S.E.2d 665 (1980).

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 his category of employment and must be given first opportunity for promotion and filling vacancies; that other employees then must be considered and shall qualify by meeting the definition of the job title as defined in sections 8 of Article 4, that relates to the promotion or vacancy.

6. Grievant did not acquire seniority or qualifications in a secretarial classification by virtue of her classification and work as a special education aide IV or her extra-

curricular activities.⁵

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

8. When an incomplete record is submitted to the hearing examiner at a level four grievance hearing the grievance will be remanded with directions to comply with Code, 18-29-6.

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

Date: April 30, 1986

⁵ While the Hartley decision of the State Superintendent appears to permit testing of applicants not classified as secretaries, State ex rel. Hawkins v. Tyler Co. Bd. of Educ., 275 S.E.2d 908 (W.Va. 1981) does not condone unwritten or unofficial policies. However, the unofficial policy of the board requiring testing is not the determinative factor in the instant case.