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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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JANICE L. JONES

vs.

Docket No. 35-86-051

OHIO COUNTY BOARD OF EDUCATION

DECISION

Grievant, Janice L. Jones, was first employed in 1982 by the Ohio County Board of Education as a substitute secretary. Ms. Jones continued in this capacity for two and one half years substituting for individuals at various schools and at the administrative offices. There is no dispute that Ms. Jones filled positions designated as secretary I, II and III and all parties agree that her work was satisfactory at all assignments.

In 1985 a vacancy for a secretary III position was advertised and Ms. Jones submitted an application. Testimony indicates there were a large number of applicants and that Ms. Jones, along with several other candidates, completed a skills test and was interviewed. Another individual not previously employed by the Board of Education was subsequently offered the position. Ms. Jones contends the Board of Education has violated W. Va. Code, 18A-4-8b by requiring that she be retested when she was per se qualified for the position of secretary III and by disregarding her two

and one-half years seniority. Ms. Jones believes that her qualifications, seniority and evaluations of past service entitles her to the position by law.

The Board of Education asserts that the test scores indicted Ms. Jones to be deficient in shorthand and, by her own admission, she had no experience with word processing equipment, both of which were required skills for the position.

W.Va. Code, 18A-4-8b(b) states that a county board of education shall make decisions affecting the filling of service personnel positions on the basis of seniority, qualifications and evaluations of past service.

Qualifications being defined as the applicant holding a classification title in his category of employment. These employees must be given first opportunity for promotion and filling vacancies.

Seniority must also be considered when filling vacancies. W.Va. Code, 18A-4-8b specifically states that applicants are to be considered in the following order:
"...(4) substitute service personnel; and (5) new service personnel.

The grievant's interpretation of this statute is to require that the Board of Education offer her the advertised position. A closer reading shows that while employees who hold the appropriate classification title and/or have earned more seniority than other applicants are in a more advantageous position for promotion or filling a vacancy, there is no requirement that any individual be offered a position based

solely on this criteria. Section 18A-4-8b(b) states that an employee who holds a classification title in his category of employment must be given first opportunity for promotion and filling vacancies. The following sentence states: "Other employees must then be considered and shall qualify by meeting the definition of the job title as defined in section eight (W.Va. Code, 18A-4-8), article four of this section, that relates to the promotion or vacancy."

Neither is seniority a guarantee of requested employment. Section 18A-4-8b(b) provides that substitute service personnel shall be considered prior to new service personnel but again there is no requirement that the present employee be promoted or transferred. This is made even more clear by the provision that: "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."¹ While the grievant was entitled to the opportunity or consideration in filling the vacancy before a new employee, she was not guaranteed the position by law.

The administration has set forth its reasons for not recommending the grievant for the position and the grievant responds as follows: (1) the board was without authority to alter the job description of secretaries as set forth in W.Va. Code, 18A-4-8 by adding a requirement of word processing techniques.

¹ Ms. Jones was not the most senior substitute secretary to apply for the advertised vacancy but was second in seniority.

All secretaries as defined in W.Va. Code, 18A-4-8 are required to operate office machines and like all individuals whose work is affected by technology, a secretary must keep her job skills updated in order to be marketable. Today the ability to operate word processing equipment is nearly as mandatory as using a typewriter, both of which would properly be considered office machines. Therefore the board did not alter the statutory job description.

(2) That the board acted improperly in requiring the grievant be retested when she applied for a position for which she was per se qualified.

To prohibit a board from retesting employees who wish to transfer to another position within the same classification, because all individuals in any classification are "per se qualified", fails to take into consideration any variation of duties and responsibilities required in different positions within the same classification and deprives the employer of the opportunity to evaluate applicants as to their individual skills and abilities. This is particularly true of substitute personnel who generally function on a short term basis under circumstances that may differ greatly from a regular position. There may be no opportunity for the employer to accurately assess the individual's skill and suitability for a particular position if retesting is disallowed.

(3) Shorthand is not a skill relevant to the position for which the grievant applied as the job description of secretary III allows transcription from notes, stenotype, mechanical equipment or a sound producing machine and the grievant had observed that the administrators, as a general rule, wrote rather than dictated correspondence.

Dr. Lawrence Jones, Director of Student Services and the immediate supervisor of the secretary here in question testified that shorthand was a skill necessary in this particular position as the individual would be required to take long detailed telephone messages and that accuracy was imperative.

Based on this testimony it appears that the requirement of shorthand skills was necessary to satisfactorily complete the duties of the position.

(4) The validity of the test is questionable as it was not a standardized test but a letter dictated by another employee and that no pass-fail criteria was established; therefore the evaluation was done on a subjective and discretionary basis.

Testimony at the level two hearing indicated a one page letter was dictated at a rate of eighty words per minute. The grievant's letter contained in excess of twenty errors which included incorrect capitalization, deleting words and substitution of words. (T.pp. 103-107). Even if consideration is given for possible flaws in the administration and evaluation of the test the number of errors is too substantial to be disregarded.

When the position of secretary III was advertised, this grievant was entitled to the first opportunity for filling the vacancy. When it was found that she was lacking skills necessary to satisfactorily fulfill the duties and responsibilities of the position, another individual who did possess the required skills was offered the position. The grievant did not suffer a violation of any statutory rights and the board did not act improperly. Therefore the decision rendered at level two is affirmed and this grievance is hereby denied.

FINDINGS OF FACT

1. The grievant was first employed as a substitute secretary by the Ohio County Board of Education in 1982.
2. For the following two and one half years the grievant substituted for individuals who were classified as secretaries I, II or III.
3. The grievant was not offered a full time secretary III position in 1985 due to her poor performance on a shorthand test and her lack of word processing skills.

CONCLUSIONS OF LAW

1. In filling a service personnel position a board must consider seniority, qualifications and past evaluations. W.Va. Code, 18A-4-8b
2. Current employees must be given first consideration in the filling of a position. Nonemployees may be considered

only after those individuals who hold the classification title of the position for which they are applying are given first opportunity for promotion or filling a vacancy.
W.Va. Code, 18A-4-8b.

3. Applicants who are presently employed as substitute service personnel must be considered before new service personnel when filling a vacant position.

4. A board of education may require present employees to be retested when the employee wishes to apply for another position within the same classification.

5. Requiring secretarial applicants to possess word processing skills is not an alteration of the statutory job description of secretaries inasmuch as that description requires an ability to operate office machines.

6. 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 individual who does not possess skills requisite for the position.

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

Dated: 5/30/86

Sue Keller

SUE KELLER
Hearing Examiner