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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**
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DORA M. JONES

v.

DOCKET NO. 20-86-084

KANAWHA COUNTY BOARD OF EDUCATION

DECISION

Grievant, Dora M. Jones, was employed by the Kanawha County Board of Education on November 15, 1984 as a substitute cook assigned to George Washington High School. In December, 1984 a decision was made to add a permanent half time Cook I position to the staff at George Washington but about that time a hiring freeze was put into effect and the position was not posted until May 31, 1985.¹ Grievant applied for the position and it was awarded to Debbie Borgman in November, 1985. This grievance was filed alleging that the position was not filled within twenty days as required by law and that grievant should have been awarded the position because she had worked it for a year as a substitute. A level two hearing was conducted on December 18, 1985 and a written decision was filed on January 2, 1986.

¹The personnel office was advised to hold all jobs that were vacant or newly created until there was a firm understanding of the staffing needs for the ensuing year.

The evidence reveals that several applications were filed for this position and Stanley Cobb, director of personnel of Kanawha County Schools, determined that Ms. Borgman was most senior and reported that information to the principal at George Washington. The principal requested that he not be required to select the senior applicant and was refused; he thereafter accepted a position in another school system and failed to fill the Cook I position before his departure. Accordingly, the position was not filled at that school term.

After school resumed in the fall the new principal did not fill the position because he preferred grievant over Ms. Borgman. It was at this time that the matter of the evaluations of grievant and Ms. Borgman arose and Mr. Cobb concluded that there had been a deliberate attempt to manipulate the selection process after Ms. Borgman applied for the job. Accordingly, Mr. Cobb did not place much weight on the fabricated evaluations.² Mr. Cobb testified that the decision to hire Ms. Borgman in the position was based solely on seniority; that because

²At the level four hearing the evidence of Ms. Borgman's evaluations became an issue; there had been no findings of fact at the level two hearing on this question. The two evaluations from George Washington High School had been done on October 22 and 25, 1985 by an unidentified person and were "unsatisfactory" in all categories. This contrasted sharply with other evaluations from other schools rating Ms. Borgman as "excellent".

grievant and Ms. Borgman were both classified as substitute Cooks and working in that classification qualifications were irrelevant; that after eliminating the suspect evaluations, both grievant and Ms. Borgman's evaluations were acceptable. He stated that the position was not filled sooner because of the foregoing complications but that grievant was not prejudiced by the delay.³

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

FINDINGS OF FACT

1. Grievant was employed as a substitute Cook at George Washington High School and worked in that capacity for one year.

³Code, 18A-4-8b provides that all service personnel vacancies shall be filled within twenty working days from the posting date. It appears that the reason for this provision is to discourage the practice of delay in filling a position to manipulate the selection process as was done here. However, grievant has not shown and the hearing examiner does not perceive how grievant was prejudiced by the delay in the instant case, which was contrived to assist grievant. In fact, had Ms. Borgman, the senior applicant, not been selected it would appear that she could have more appropriately pursued that point in a grievance proceeding.

2. In May, 1985 a half time Cook I position was posted and grievant applied.
3. Grievant was not the most senior substitute Cook applicant for the position and the position was awarded to the most senior applicant.
4. The school officials concluded that two of the evaluations of the applicant selected had been fabricated in an effort to manipulate the selection process.

CONCLUSIONS OF LAW

1. The Cook I position at George Washington High School was filled in accordance with Code, 18A-4-8b on the basis of seniority, qualifications and evaluation of past service.

For the foregoing reasons the grievance is denied and the decision at level two of the grievance procedure is affirmed.

Either party may appeal this decision to the Circuit Court of Kanawha County and such appeal must be filed within thirty 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 7-29-86