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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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BEATRICE LISH

v.

Docket No. 05-86-218-3

BROOKE COUNTY BOARD OF EDUCATION

DECISION

Grievant, Beatrice Lish, was employed by the Brooke County Board of Education as a Cook I when she filed this grievance in November of 1985. In September, 1985 grievant applied for a position as a full time secretary but a substitute secretary employed by the board, 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 retroactive seniority and salary awarded.

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 grievant was first employed as a Substitute Cook on September 13, 1979 and subsequently as a Cook I on February 25, 1985. Kathy Vargo was employed as a Substitute Cook on October 1, 1984, took a secretary competency test on October 18, 1984 and was employed as a Substitute Secretary October 22, 1984. Grievant

took a secretary competency test August 14, 1985 but did not test for shorthand. On September 20, 1985 a job was posted for Secretary II/Aide Alternative Learning Center and Kathy Vargo was hired for that position on October, 1985.

Grievant testified in her own behalf at the hearing. She stated that after she applied for the position at the Alternative Learning Center she was granted an interview. She claimed that she had prior secretarial experience which was noted on her resume but was not asked for verification of that experience.¹ She stated that she had taken the county secretarial test but never received word of her test results. She claims equal qualifications based on ability and past secretarial experience and greater seniority to that of the person who was hired; therefore, she should have been awarded to the position.

Upon cross-examination, grievant admitted that she did not take shorthand and therefore did not test for shorthand when she took the county secretary competency test in August, 1985. 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

¹ Grievant stated that she worked as a secretary at a hospital for three years performing clerical duties such as filing, answering the phone and typing X-ray reports. She said she also worked part-time for five years at a bank.

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. She stated that although she had intended to do so, she had never made any effort to improve her shorthand.²

Grievant said when she was interviewed by David Leavitt of the Center, he told her that although she was not classified as a secretary or substitute secretary, she was considered for the position because she was the only regularly employed person who applied for the job. She was told that she was otherwise qualified but did not have shorthand skills. Grievant said she told Mr. Leavitt that she could do dictaphone typing but admitted to the board's counsel that she knew of no schools or offices in the county which had dictaphone equipment.

² After Vargo was hired for the position in question, grievant elected to take the shorthand test on January 16, 1986 but she did not pass the proficiency test. Grievant said she took the test because Kathy Vargo had told her she did not know shorthand but passed the proficiency test using longhand, thus, she thought she would attempt to pass using longhand. She admitted she had not seen Vargo's test so she did not know for fact that Vargo passed the test using longhand.

Mr. Leavitt, Director of Attendance of Federal Programs and 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 requisite 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. The school does not have stenographic recording equipment, he stated, thus it is desirable and he recommends that the secretary at the Center have shorthand skills since he dictates correspondence and frequent telephone messages.

Leavitt stated that out of twenty-seven applicants, grievant was the only regularly employed person and the three others considered and granted interviews were classified as substitute secretaries. He felt all four were qualified in terms of their typing skills but he recommended Kathy Vargo for employment based on the test results the board had sent him which indicated she had passed the shorthand skills pro-

testimony in

ficiency testing. Thus, in his opinion, she was the only qualified person for the job who could properly fill the secretarial needs at the Center.

The county superintendent, Richard Whitehead, also testified for the board. He stated that prior to 1984 the approach to hiring secretaries had been somewhat haphazard. Usually an individual principal gave some type of skills based 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.³ He stated that Kathy Vargo had taken and passed the shorthand test in 1984 but grievant had not taken the shorthand test in 1985 and failed her 1986 attempt. Mr. Whitehead said the board did not have any mechanical means for dictation or transcription.

Grievant's counsel argues that W.Va. Code, 18A-4-8 does

³ 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 or possibly into the board offices or other places where shorthand was essential, they would have appropriate skills to perform their duties.

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.⁴ Therefore, he contends, grievant is qualified as a secretary based on her test results, prior experience and knowledge of dictaphone transcription. Further, since she had no negative evaluations for her past performances as an employee with the county, she was on an equal basis in that regard with the applicant who was selected. Finally, counsel states that grievant has seniority as a regular employee, therefore should have been fully considered for the position before a substitute employee.

It is true that 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. The law is specific about who is entitled to first opportunity for promotion or filling a vacancy and "the applicant [who] holds a classification title in his category of employment...must be given first opportunity...". Other employees who qualify must then be considered. The board has shown that three other applicants did hold the classification of secretary and were

⁴ Brooke County has no mechanical means to dictate or transcribe, therefore its requirement is reasonable and necessary. Code 18A-4-8 does state that a secretary may have to transcribe from notes, i.e., some shorthand method.

considered for the position as well as grievant.

As far as grievant's seniority is concerned, "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 three other applicants who were classified as secretary were to be given first opportunity and one of those persons was employed. The board has shown that it informed grievant she was not as qualified as the person selected for the position since she lacked shorthand skills. The board has represented that it does not possess mechanical means to transcribe dictation and has proven that shorthand skills, the ability to transcribe from notes, was essential to the performance of the job. The law does not require a board of education to hire someone who does not possess the specific skills needed to perform their duties.

FINDINGS OF FACT

1. Grievant was employed by the board of education as a Substitute Cook in 1979 and as a Cook I on February 25, 1985.

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 at 80 words per minute 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 claims past secretarial experience and took the board's proficiency test in August, 1985, but did not take the shorthand test as she does not know shorthand and can use a dictaphone. Grievant tested for shorthand using longhand in January, 1986 but did not pass the test.

4. Grievant applied for and was denied a position as a Secretary II/Aide. Grievant and three other persons, each of them classified as substitute secretary, were considered for the position.

5. The board informed grievant that she was not the most qualified person for the position as shorthand skills were necessary at the Alternate Learning Center and the successful applicant, Kathy Vargo, could perform shorthand. Vargo held the classification title of substitute secretary.

6. Grievant alleges that she is the most senior employee, meets the statutory definition of secretary 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 an applicant who holds a classification title in his category of employment must be given first opportunity for promotion or filling of vacancies. Other qualifying employees may then be considered.


3. When an employee with the most seniority is not employed in a vacant position for which she applies, the board must show just cause if the employee so requests.

4. A board is not required to fill a vacancy with an applicant who does not possess skills required for the position.

5. Grievant did not demonstrate that the selection by the board of education was based upon consideration 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.

A handwritten signature in cursive script, reading "Nedra Koval", written over a horizontal line.

NEDRA KOVAL
Hearing Examiner

Dated: October 3, 1986