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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

ARCH A. MOORE, JR.
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ROSE L. MEADOWS

vs.

Docket No. 27-86-117

MERCER COUNTY BOARD OF EDUCATION

DECISION

Grievant, Rose Lee Meadows, is presently employed by the Mercer County Board of Education and classified as a Cook II at Bluefield High School. She was first employed by the board in 1966 as a Clerical Aide at Ceres Elementary School and took care of the bills, books and did typing for the teachers and the principal. There was no other employee in the office classified as secretary. In 1975 she took a maternity leave and returned to work for the board in 1983 as a Clerk I/Cook II; since March 1, 1984 she has been classified as Cook II.¹

Grievant applied for a position as Secretary II at Cumberland Heights and was required to take a test to assess her skills and determine if she met the minimum qualifications.²

¹ By letter dated February 27, 1984 grievant requested reclassification from Clerk I/Cook II to Cook II, full time, at Bluefield High School; the board approved the request at its meeting on March 1, 1984.

² The minimum qualification for a secretary for Mercer County Schools are: 1) a high school diploma; 2) type (footnote continued)

All of the applicants were required to take the test and by letter dated December 12, 1985 grievant was advised that she failed to meet the minimum qualifications established for a secretary position; that her qualifications were lacking in the area of shorthand dictation and typing. She filed a grievance alleging that Norma Furrow, the employee who received the appointment, was a substitute secretary at Bluefield High School with less seniority than grievant; that this violated the provisions of Code, 18A-4-8b.³ She requested that she be awarded the position of Secretary II at Cumberland Heights School and the differential in pay between the two positions from the date of appointment of Ms. Furrow.

The employer's position throughout this grievance is that notwithstanding grievant's employment as a Clerical

(footnote cont.)

60 words per minute; 3) take shorthand dictation at the rate 100 wpm; 4) knowledge of modern office methods, appliances and practices, proper English usage, spelling and punctuation.

³ A level four hearing was conducted on April 18, 1986 at which time the grievant and Stephen B. Akers, director of personnel for Mercer County School, testified and introduced pertinent documents into evidence, i.e., typing and transcription tests of grievant and Ms. Furrow, job descriptions of various classifications in Mercer County, etc. In these exhibits it is also stated that Mrs. Harvey, the personnel secretary who administered the test, stated that grievant was unable to take the dictation or type the letter that was dictated to her. Grievant offered to take another refresher course in shorthand as she had done in 1982 or 1983.

Aide at Ceres for several years during which time she performed secretarial type work, grievant was never classified as a secretary and therefore acquired no seniority; that she failed to meet the minimum qualifications for the Secretary II position.⁴ It is further contended that the two decisions of the State Superintendent of Schools relied upon by grievant are inapposite and distinguishable and thus of no assistance.⁵

In addition to the foregoing factual recapitulation the following specific findings of fact are appropriate:⁶

⁴ Dr. Akers testified at the level two hearing that the job had changed drastically since grievant had last worked as a Clerical Aide at Ceres from 1966 to 1975. The board contends further that it must be empowered to determine minimum qualifications of non-classified employees unless the methods are shown to be unreasonable and arbitrary.

⁵ The hearing examiner agrees that Dobbs v. Bd. of Educ. of Cabell Co. and Hartley v. Marshall Co. Bd. of Educ. are of limited value in determining the merits of the instant grievance. The Hartley decision was considered and applied in Hammond v. Logan Co. Bd. of Educ., decided by this hearing examiner on April 30, 1986. The instant case differs from the Hammond case in that here all the applicants were required to take the test, substitute secretaries as well. This appears to be the most equitable approach if the most qualified applicant is being sought.

⁶ The record of this grievance does not contain a written decision of the level two grievance evaluator with findings of fact and conclusions of law as contemplated by Code, 18-29-6. This is an incomplete record and henceforth the grievance will be remanded 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).

1. Grievant has been employed intermittently by the Mercer County Board of Education since 1966; she had never been classified as a secretray.

2. Grievant applied for a position as Secretary II at Cumberland Heights School and along with all other applicants was required to take a minimum qualification test for shorthand and typing skills.

3. Grievant did not meet the minimum qualifications for the Secretary II position in that she was unable to take dictation at the prescribed rate and to transcribe from her notes; spelling and punctuation errors were also evident.

4. Ms. Norma Furrow, a substitute secretary at Bluefield High School, was awarded the position on the basis of the qualification test; Ms. Furrow had less seniority with the Mercer County Board of Education than grievant.

CONCLUSIONS OF LAW

1. Code, 18A-4-8b requires a board of education to promote and fill service personnel positions on the basis of seniority, qualifications and evaluations of past service.

2. Code, 18A-4-8b provides that an employee's seniority begins on the date he/she enters into the 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.

3. Code, 18A-4-8b provides that qualifications shall mean that the applicant holds a classification title in his/her 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 section 8 of Article 4, that relates to the promotion or vacancy.

4. Grievant did not acquire seniority in a secretarial classification by virtue of her classification as Clerical Aide or Cook with the Mercer County Board of Education.

5. A board of education may establish basic skills test for qualifying for the position of secretary including shorthand and typing tests; the only requirements are that the tests must be uniformly administered and fairly applied.

5. Grievant was not qualified for the position of Secretary II and her qualifications were not enhanced by virtue of her previous employment as Clerical Aide at Ceres School. Grievant has not shown that the test administered by the employer or the minimum requirements were arbitrarily established or administered.

7. There was no violation of Code, 18A-4-8b in the selection process of the Mercer County Board of Education in the Secretary II position at Cumberland Heights School as it related to this grievant.

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

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 Mercer 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 "Leo Catsonis", written over a horizontal line.

LEO CATSONIS
Hearing Examiner

Dated: June 4, 1986