



**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

NORMAN MORGAN

VS:

DOCKET NO: 13-86-227-4

GREENBRIER COUNTY BOARD OF EDUCATION

**DECISION**

This grievance comes before the West Virginia Education Employees Grievance Board on appeal from a level two decision followed by a waiver of the Greenbrier County Board of Education to this Board. A level four hearing was held on September 17, 1986, at Beckley, West Virginia, before John M. Richardson, Hearing Examiner.

The grievant, Norman Morgan, complains that he had been assigned a teacher's position, teaching summer school for six continuous years prior to the summer of 1986. However, for the summer of 1986, the grievant was not selected to teach summer school, while Stephen O'Neil, a junior high school teacher and coach, was selected.

The evidence reveals that grievant was hired as a teacher by the Greenbrier County Board of Education in August 1970, and has been continuously employed each year since that date. The grievant presently has a B.A. degree plus 15 hours, and during the regular school year, teaches Social Studies courses at Greenbrier East High

School.<sup>1</sup>

Stephen O'Neil was hired by the Greenbrier County Board of Education in November 1969 and began his teaching duties in January 1970. Mr. O'Neil also has a B.A. degree plus 15 hours. During the regular school year, Mr. O'Neil teaches Social Studies courses at White Sulphur Springs Junior High School.<sup>2</sup>

Basically, the grievant contends that he is better qualified and has more "summer school seniority" than does O'Neil and, therefore, the Respondent violated the provisions of WV Code §18A-4-8b, in selecting O'Neil rather than the grievant. (Emphasis added)

The Respondent argues that both grievant and O'Neil were qualified but O'Neil had the greatest seniority and in conformity with WV Code §18A-4-8b, Mr. O'Neil was selected because of his greater seniority.

WV Code §18-5-39, deals with the establishment of summer school programs and in pertinent part provides:

Inasmuch as the present county school facilities for the most part lie dormant and unused during the summer months, and inasmuch as there are many students who are in need of remedial instruction, it is the purpose of this section to provide for the establishment of a summer school program, which program is to be separate and apart from the full school term as established by each county. . .

The county boards of education may employ as teachers for the summer school program any certified teacher. . .

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<sup>1</sup>Grievant has primarily taught World Cultures during the past three regular school years, and, in addition, has taught Contemporary America and Consumer Economics during summer school.

<sup>2</sup>Mr. O'Neil teaches American Studies and West Virginia History  
(Footnote cont.)

Thus, it is clear that a county board of education may establish a summer school program which is separate from the full school term and they may hire any certified teacher. However, in filling of any classroom teacher's position, the Legislature has mandated that the provisions of WV Code §18A-4-8b(a), be applied and which in pertinent part provides:

A county board of education shall make decisions affecting promotion and filling of any classroom teacher's position occurring on the basis of qualifications. If the applicant with the most seniority is not selected for the position a written statement of reasons shall be given to the applicant with the most seniority with suggestions for improving the applicant's qualifications.

(Emphasis added)

In this grievance, it appears that the educational credentials of the grievant and Mr. O'Neill are nearly identical and the sole basis for selection relied upon by the Board of Education, after determining both teachers were certified and qualified, was seniority.

This Board has in previous decisions established that the filling of a classroom teacher's position must first be done on the basis of qualifications, and thereafter, the matter of seniority and evaluations should be considered.<sup>3</sup>

In this grievance, the Respondent examined the qualifications and determined that both teachers were qualified and certified. There-

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(footnote cont.)

during the regular school year and had no previous experience teaching summer school prior to the summer of 1986. During the 1986 summer school, Mr. O'Neill taught American History, American Economics, World Cultures, and Contemporary America.

<sup>3</sup>See Brumfield v. Kanawha County Board of Education, Docket No. 20-86-126-1; Slade v. McDowell County Board of Education, Docket No. 13-86-050; and Sharp v. Kanawha County Board of Education, Docket No. 20-85-001.

after, the Respondent looked to seniority and determined that Mr. O'Neil had the greatest seniority.

It is at this point that the grievant contends that he had been teaching summer school for six years and O'Neil had no summer school experience, therefore, he (the grievant) had the greater seniority since the summer program is separate from the regular school term. However, WV Code §18A-4-8b(a) also provides in pertinent part that:

(a) The seniority of professional personnel shall be determined on the basis of the length of time the employee has been professionally employed by the county board of education. For purposes of establishing seniority as hereinafter provided, when an employee holds valid certification or licensure in one or more areas, the seniority shall accrue in each area. Employment for a full employment term shall equal one year of seniority, but no employee may accrue more than one year of seniority during any given fiscal year. Employment for less than the full employment term shall be prorated. A random selection system established by the employees and approved by the board shall be used to determine the priority if two or more employees accumulate identical seniority.

Therefore, it is clear that the Legislature did not intend that more than one year of seniority could be accrued in any given fiscal year, whether or not the employment/seniority accrued during the regular term or summer school.

In as much as the grievant and Mr. O'Neil are comparably qualified, the Respondent acted properly when it turned to the next criteria, namely, seniority.<sup>4</sup> Since the parties do not contest the date when the grievant and Mr. O'Neil were originally hired, it is apparent that Mr. O'Neil has the most seniority and was properly

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<sup>4</sup>The matter of O'Neil's evaluation was never raised as an issue; it is however, noted that grievant's 1986 regular term and 1985 summer school evaluations were all "satisfactory and effective."

selected.<sup>5</sup>

#### FINDINGS OF FACT

1. Grievant, Norman Morgan, was hired in August 1970, and had a B.A. degree plus 15 hours.
2. Stephen O'Neil was hired in November 1969, and had a B. A. degree plus 15 hours.
3. Grievant had previously taught Social Studies in summer school for six years.
4. Stephen O'Neil had no previous summer school experience prior to his summer school assignment in 1986.
5. Both grievant and Stephen O'Neil were certified to teach Social Studies for grades 7 thru 12.

#### CONCLUSIONS OF LAW

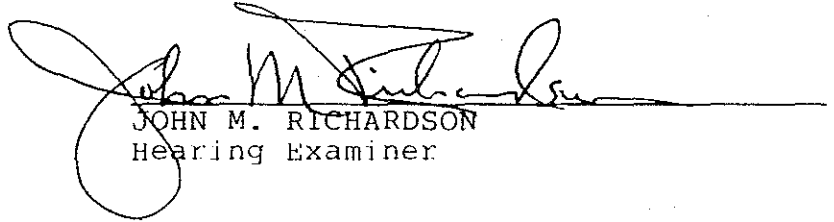
1. Where the qualifications of applicants for a classroom teacher's position are similar, then the criteria of seniority may be relied upon in the selection process.
2. Pursuant to WV Code §18A-4-8b(a), no more than one year of seniority may be accrued during any given fiscal year.
3. For professional personnel, summer school employment/seniority does not accrue separately from regular school term employment/seniority. Seniority is accrued only in accordance with WV Code §18A-4-8b(a).

For all of the foregoing reasons, the grievance is denied.

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<sup>5</sup>O'Neil was hired in November 1969, and had at least eight months more seniority than did the grievant, who was hired in August 1970.

Either party may appeal this decision to the Circuit Court of Greenbrier County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. (WV 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.



JOHN M. RICHARDSON  
Hearing Examiner

DATED:

Oct. 27, 1986