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**WEST VIRGINIA EDUCATION  
EMPLOYEES GRIEVANCE BOARD**

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Connie Strickland

v.

Docket No. 2-86-013

KANAWHA COUNTY BOARD OF EDUCATION

DECISION

Grievant, Connie Strickland, has been employed by the Kanawha County Board of Education for twenty-five years and is currently serving as a teacher of gifted students at George Washington High School. On June 26, 1985 an announcement of a vacancy for the position of Coordinator of Pupil Transportation was posted and grievant applied; she was not selected and filed a grievance alleging that she was the better qualified applicant for the position. A level two hearing was conducted on October 31, 1985 and the grievance was denied on November 7, 1985.<sup>1</sup>

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<sup>1</sup> At the meeting of the Kanawha County Board of Education on November 21, 1985 a motion was made and carried to review the record of this grievance and issue a decision based on the record. A motion to deny the grievance failed for lack of a second and the motion to grant the grievance failed on a 2-2 vote. It was assumed that this "unusual situation" was tantamount to a waiver of the grievance to level four. Code, 18-29-4(c) requires the waiver to be in writing and notification to grievant.

At the level two hearing it was established that in May, 1984 a class action had been filed by the Office of Civil Rights of the United States Department of Education (OCR) alleging that special education students were not receiving the instructional time of other students because of excessive time involved in transportation of these students. In response thereto Kanawha County Schools proposed to create this new position to coordinate and improve the transportation of special ed students. Deadlines were established by OCR for implementation of the plan as of August 1, 1985; the position was posted on June 26, 1985 and ex-Superintendent Acord directed deputy superintendent Jack McClanahan to set up an interview committee, select the two top applicants and he (Acord) would make the decision.<sup>2</sup> A structured type interview was conducted whereby all ten applicants were asked the same questions and each

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<sup>2</sup> Qualifications for the position were a high school education and three years of supervisory experience, administrative degree (college) preferred, knowledge of special education and the planning of transportation services for special ed students as well as regular transportation problems; transportation experience was highly desirable.

member of the interview committee rated each answer.<sup>3</sup> A summary assessment for each applicant was developed by the committee which included experience, references, positions held, strengths and weaknesses and total interview score. The names of Jerome Lewis and grievant were selected as the top two applicants by the committee and given to Mr. Acord -- he selected Mr. Lewis.<sup>4</sup>

Mr. Beckett, director of transportation of Kanawha County, testified that the interview committee was not so much interested in the applicant's knowledge of special education in general

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<sup>3</sup> In addition to Mr. McClanahan, the members included:

Carl Young - associate superintendent of schools  
George Beckett - director of transportation  
John Lyons - assistant superintendent of schools  
James Simmons - associate superintendent of schools  
Paul Boggess - director, elementary personnel  
and,  
JoAnn Litton - director, elementary instructional services

<sup>4</sup> Mr. Lewis is a high school graduate with two years of college and seven years seniority with Kanawha County Schools, including several years of supervisory experience in school transportation and experience specifically in transportation of special ed students as well as several years of experience with Chemical Tank Lines in Kanawha County. He had been terminal manager of the St. Albans terminal and was a state certified instructor of bus operators in transportation of special ed students. Grievant on the other hand, has an AB and MA and ninety hours of doctoral work at COGS and a three page resume of outstanding academic achievements.

and the various exceptionalities in which grievant appeared to excel but more in providing these students transportation to and from school. He participated in constructing the job description and did not recall that it was the intent to require the applicant to have extensive skills in the various types of behavior of special ed students as contended by grievant but to find someone who could deal solely with special ed students in safely and expeditiously routing and scheduling their transportation; that these skills were not readily available in an academic setting but were acquired by actual experience.<sup>5</sup> He stated that he recommended Mr. Lewis because he met all the qualifications for the position and had extensive experience in transportation, in scheduling of bus routes, had served as a terminal supervisor for him for several years and had been a dispatcher for Chemical Tank Lines; that he needed someone who could give immediate attention to the problems created by the OCR order and that Mr. Lewis had the highest score of all the applicants under the structured interview scoring.

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Mr. Beckett reiterated this testimony at the level four hearing and stated that he had an AB in Math, an MA in Public Administration and several post-masters hours in Education Administration and Business Administration but could not relate any of those academic skills to the requirements of the job he performed or to the job in question; that it is something that requires a lot of time to gain experience with maps, mechanics, road conditions, etc. He also stated that Mr. Lewis had been doing an excellent job since August 1, 1985 -- doing things that no one else had been able to accomplish in the area of transportation of special ed students.

Ex-superintendent Acord testified that he made the decision to recommend Mr. Lewis solely because he believed him to be the most qualified, primarily because of his experience in scheduling and knowledge of the routes that would be involved. He was keenly aware of the order of OCR to make these improvements in transportation of the special ed students and needed immediate help -- help which Mr. Lewis could provide. He testified further that since Mr. Lewis was hired there had been a seventy eight percent improvement in the problems affecting the transportation of these students.<sup>6</sup>

At the level four hearing, grievant presented the testimony of eight witnesses who testified primarily as to grievant's qualifications for the position in relation to the job require-

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<sup>6</sup> Mr. Acord stated that he did not consider seniority in the selection but only considered qualifications; that if the two finalists had been equal in qualifications he would have considered seniority, but in his opinion they were not equal. He further stated that he did not give grievant a letter stating what she needed to do to improve her qualifications because she had not requested such a statement. He did not talk personally with either finalist because he knew both personally and had a good knowledge of the work records of both (T. 82).

ments stated in the posting or as to the actual requirements of the job.<sup>7</sup> One witness, Dr. Paul A. Leary, professor of educational administration at the College of Graduate Studies (COGS), testified that grievant was "inordinately qualified to supervise" but he had counseled her against applying for the position because "it was substantially below her skill profile and she would be over-qualified"; that "having mastered it she would be somewhat bored by it." John Lyons, assistant superintendent of Kanawha County Schools, had been grievant's principal at Herbert Hoover High School while grievant was head of the English department and had rated grievant high on the committee scoring.<sup>8</sup> Mr. Paul Stewart, director of

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<sup>7</sup> At the outset counsel for the board of education made a motion to dismiss the grievance on the basis of Code, 5-11-13 in that grievant had filed a complaint with the Human Rights Commission (HRC) alleging the same grounds as in this grievance and on March 3, 1986 the HRC had issued a determination of "no probable cause". However, Code, 5-11-13(b), is a procedural rule abating any other action until a determination is made; the determination of "no probable cause" was not a ruling on the merits and does not preclude the level four hearing because there was nothing pending before the HRC at the time of the instant hearing. The motion to dismiss is therefore denied. It is noted, however, that grievant did not allege "discrimination" in the instant grievance as she had in the HRC complaint. In fact, in this grievance she is not alleging "discrimination", "favoritism" or "reprisal" but merely that she is more qualified.

<sup>8</sup> He added that all of the applicants were "real close" with only two points separating grievant and Mr. Lewis and there had been no favoritism for Lewis or bias against grievant; that it was a fair interview and no one on the committee attempted to cut off grievant in the presentation of her qualifications or otherwise deprived her of an opportunity to present her case.

school transportation for the West Virginia Department of Education, testified that an academic background would not prepare a person for this position as well as actual experience in scheduling transportation of special ed students; that there was no substitute for "hands on experience."<sup>9</sup> Counsel for the board of education had a continuing objection to much of grievant's evidence of her supervisory experience and qualifications on the grounds that the only question before the hearing examiner was whether the board abused its discretion in selecting Mr. Lewis over grievant on the basis of the evidence presented at the interview and that grievant was conducting a "super interview" at level four.

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

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<sup>9</sup> In response to this evidence grievant testified that she had not listed three years of scheduling experience she had while working with special ed students at Carver and Ben Franklin junior high centers on her resume because she thought the committee either knew or would inquire about it, which they did not. She also stated that she had been at meetings with Mr. Beckett over that three year period concerning the scheduling and transportation of these students and he should have known of this experience. Mr. Beckett denied much of grievant's testimony, stating that he had no knowledge of this experience in transporting these children and had never attended a meeting with her concerning that matter.

## FINDINGS OF FACT

1. Grievant has been employed by the Kanawha County Board of Education for twenty-five years and is currently a teacher of gifted students. She has an AB from Glenville, an MA from West Virginia University and is a doctoral candidate at COGS, lacking only a dissertation. She has an extensive academic background in special education and enjoys an excellent reputation in this field.

2. On June 26, 1985 the position of Coordinator of Pupil Transportation was posted in accordance with a plan proposed by the Kanawha County Board of Education to the Office of Civil Rights to remedy a complaint that special education students were not receiving the instructional time of other students because of the inordinate loss of time in transporting these students to school. The plan represented that the sole responsibility of this coordinator would be to improve the transportation services for these students and this phase of the plan was to be completed by July 1, 1985, thereafter amended to November 1, 1985. Grievant applied for this position and it would have amounted to a promotion for grievant.

3. The Coordinator of Pupil Transportation position was to be an administrative position and the job description was formulated on the basis of qualifications and experience

required to safely and expeditiously transport special ed students from all over Kanawha County and to coordinate the activities of the various terminal managers in the county.

4. There were ten applicants for the position and an interview committee provided the applicants with a structured interview consisting of a series of predetermined questions designed to facilitate the evaluation of the qualifications of the applicants. The questions had been developed by an associate superintendent of pupil services and the director of transportation and the answers were scored by each member of the interview committee. All the applicants were given a fair opportunity to present all the material desired regarding their qualifications and there is no evidence of unfair treatment of grievant in this regard.

5. A summary assessment for each applicant was developed by the interview committee and this data was provided to ex-superintendent Acord; grievant and Mr. Jerome Lewis were identified as the two top candidates. The committee rated Mr. Lewis two points higher on the interview assessment than grievant.

6. Qualifications for the position were:

a high school education and three years of supervisory experience required; administrative degree (college)

preferred; knowledge of special education and the planning of transportation services for these children as well as regular transportation problems; transportation experience highly desirable.

Comprehensive job goals were included in the announcement and twenty items were listed under "performance responsibilities."

7. Ex-superintendent Acord testified that he made the decision to recommend Mr. Lewis solely on the basis that he believed him to be the most qualified and because he could provide the most immediate relief to the problem identified by the Office of Civil Rights; there is no probative evidence that this decision or the decision to hire Mr. Lewis was predicated upon any reason other than the relative qualifications of all the applicants.

8. Mr. Lewis is a high school graduate with two years of college and seven years of seniority with Kanawha County Schools; he had actual supervisory and other experience in scheduling transportation for special ed and other students as supervisor of the St. Albans bus terminal as well as several years of experience gained as chief dispatcher for Chemical Tank Lines prior to his employment by Kanawha County Schools.

9. Grievant's supervisory experience is primarily in an academic setting and her superior knowledge of special

education is conceded; Mr. Lewis has superior supervisory experience in the area contemplated by the position of coordinator of pupil transportation as well as superior knowledge and qualifications in the area of scheduling and routing transportation for special ed and other students in Kanawha County.

10. There is no evidence showing or tending to show that the grievant did not have a fair and adequate opportunity to present any and all evidence of her qualifications to the interview committee or that this committee discharged its functions in an arbitrary or capricious manner.

11. Grievant has failed to demonstrate that the hiring of Mr. Lewis over grievant or the other applicants was arbitrary or capricious or an abuse of discretion.

#### CONCLUSIONS OF LAW

1. Code, 18A-2-1 provides for the employment of professional personnel by the county board of education only upon the nomination and recommendation of the superintendent. This provision vests a great deal of discretion in county boards of education in the selection and employment of professional personnel.

2. There is no showing that the applicant selected was not the most qualified applicant for the position of coordinator

of pupil transportation or that the decision of the superintendent and/or county board of education was arbitrary or capricious or amounted to an abuse of discretion.

3. Code, 18A-4-8b provides that a county board of education shall make decisions affecting promotion and filling of classroom teacher's position occurring on the basis of qualifications and this includes administrative positions where the appointment would amount to a promotion. 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.

For the foregoing reasons the grievance is denied. Grievant is entitled, however, to a written statement of reasons for her non-selection with suggestions for improving her qualifications.

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  
Chief Hearing Examiner

Dated: July 24, 1986