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**SANDRA BARNETT and
THELMA DAVISSON**

v.

DOCKET NO. 21-87-005-2

LEWIS COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievants, Sandra Barnett and Thelma Davisson, have both been employed by the Lewis County Board of Education since 1972 and presently serve as Aides IV. On November 10, 1986 they filed a level one grievance in which they alleged a violation of W.Va. Code, 18A-4-8b when neither of them was hired to fill a secretarial position later awarded to an individual who was not an employee of the board. An evidentiary hearing was held before the Lewis County Board of Education on December 17, 1986 following which an appeal was filed at level four on January 13, 1987. Both parties agreed that a decision could be based upon the record supplemented with oral closing statements heard on February 13, 1987. Proposed findings of facts and conclusions of law were submitted by both parties; the level three transcript

and record were received on May 14, 1987.¹

Sometime early in the 1986-87 school term a vacancy for a secretarial position at the Alum Bridge School was posted. Fourteen applications were received and eleven of the applicants accepted interviews. The candidates were required to complete a typing assignment which consisted of typing a written memo and composing and typing a letter from information which was provided. Following the interview and the typing exercise the interview committee ranked the applicants and then recommended an individual from outside the system for the position.

The grievants cite W.Va. Code, 18A-4-8b, which requires that school service personnel positions must be filled on the basis of seniority, qualifications and evaluations of past service and that regular employees must be considered before other categories of applicants. Using this criteria they argue the position should be awarded to the grievant who prevails in a seniority tie-breaking procedure.

¹A review of the record indicates no written level one grievance response. The level two appeal filed on November 13, 1986 was responded to by Assistant Superintendent Joseph Mace who determined that relief could only be granted at level three or four. Following an evidentiary hearing at level three a decision was issued denying the grievance. It is noted that this decision did not include findings of fact and conclusions of law as required by Code, 18-29-6. Grievance evaluators are urged to include these findings and conclusions in their decisions to avoid remand for compliance therewith. See, Burke v. McNeel, 264 S.E. 2d 651 (W.Va. 1980); Golden v. Harrison County Board of Education, 285 S.E. 2d 655 (W.Va. 1981).

The respondent asserts that it properly considered seniority, qualifications and past evaluations of the grievants and that it considered all of the applicants in the order outlined in W.Va. Code, 18A-4-8b(b). The grievants were ranked in the lower half of the applicants' ranking based on the results of the interview and typing exercise and there is no requirement that the most senior candidate be selected if they are not qualified for the position.²

In addition to the foregoing it is appropriate to make the following specific findings of fact and conclusions of law.

Findings of Fact

1. Grievants have been employed by the Lewis County Board of Education since 1972 and presently hold the classification of Aide IV.

2. After the grievants applied for a secretarial position, they were interviewed and required to complete a typing exercise.

3. Of eleven applicants, the grievants were ranked ninth and tenth based on the results of the interview and the typing exercise.

²Both grievants indicate that unfamiliarity with the typewriter contributed to their poor performance; however, there is no indication that any of the other applicants used another machine or were afforded any other advantage which would account for their better performances. Grievant Barnett also indicates that she may not have received the proper instructions for the typing exercise (as to which project to complete first). Cheryl West, the individual who administered the tests, was not called as a witness to corroborate this allegation or provide any information regarding the procedure used.

4. The position was awarded to an individual who was not an employee of the board at that time.

5. W. Va. Code, 18A-4-8b(b) requires that service personnel positions be filled on the basis of seniority, qualifications and evaluations of past service. Qualifications shall mean that the applicant holds a classification in this category of employment and must be given first opportunity for promotion and filling of vacancies. Other employees may then be considered and shall qualify by meeting the job definition as defined in Section 8 of Article 4, that relates to the promotion.

6. Grievants argue that they have met the definition of Secretary II as demonstrated by past work experience and training.

7. W. Va. Code, 18A-4-8b(b) requires that applicants for service personnel positions be considered in the following order: (1)regularly employed service personnel,...(5)new service personnel.

Conclusions of Law

1. A county board of education is permitted to require a competency test for applicants seeking a position outside their classification. Mary Adkins v. Logan County Board of Education, Docket No. 23-86-024.

2. Regularly employed service personnel must be given first consideration for promotion or filling of vacancies; however, a board of education is not required by W.Va. Code, 18A-4-8b to offer a position to any individual who does not possess skills requisite for the position. Janice L. Jones v. Ohio County Board of Education, Docket No. 35-86-051.

3. The grievants have failed to prove any violation of W.Va. Code, 18A-4-8b in the filling of the secretarial position at the Alum Bridge School.

Accordingly, the grievance is **DENIED**.

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

DATED May 29, 1987

Sue Keller

SUE KELLER

Hearing Examiner