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IRENE DORSEY

v.

DOCKET NO. 34-87-041-4

NICHOLAS COUNTY BOARD OF EDUCATION

DECISION

This grievance comes before the West Virginia Education Employees Grievance Board on appeal from a level three decision denying the grievance. On February 24, 1987, this grievance was assigned to John M. Richardson, Hearing Examiner, whereupon a notice was duly issued setting the grievance for hearing on March 4, 1987. Upon the request of the grievant's counsel, to which there was no objection by respondent's counsel, the hearing was continued to March 23, 1987.

On March 23, 1987, the level four hearing was held and the parties, in writing, waived the requirement that a decision be rendered within thirty days. Subsequently, the respondent filed a brief containing proposed findings of fact and conclusions of law on April 14, 1987 and the grievant filed proposed findings of fact and conclusions of law on April 20, 1987.

In her grievance the grievant, Irene Dorsey, complains that

she is a regularly employed Aide III and that she applied for a position as a Clerk II. Thereafter, the respondent board hired Mary Catherine Frame, a substitute classified as an aide, who had been substituting in the posted position for approximately one week. The grievant seeks to be instated to the position together with accrued seniority from the date the position was filled.

The evidence reveals that the position of Clerk II at the Summersville Junior High School was posted and prior to the position being filled, a committee consisting of the principal, vice-principal and secretary interviewed each applicant.<sup>1</sup> None of the applicants held the classification of Clerk or Clerk II. Based upon their work record and the interview, the applicants were graded/ranked according to four categories which were:

- (1) Seniority
- (2) Job related work skills
- (3) Work history as related to the job
- (4) Evaluation of past services

Each of these categories was given equal weight and were accorded a score/rank of 1 to 5 with the score/rank of 1 being the highest in each category.

No skills tests were administered to determine the abilities of the applicants in any of the areas covered by the classification/

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<sup>1</sup>The record reveals that there were five applicants, namely, Sandra Hess, Irene Dorsey, Shirley Keenan, Lula Board, and Mary Catherine Frame.

definition provided in WV Code §18A-4-8, which in pertinent part, provides:

"Clerk I" means personnel employed to perform clerical tasks.

"Clerk II" means personnel employed to perform general clerical tasks, prepare reports and tabulations and operate office machines.

Based upon the recommendation of the interviewing committee, the least senior applicant, Mary Catherine Frame, was recommended to the superintendent, who in turn, recommended her to the respondent board. On November 3, 1986, the board hired Ms. Frame and noted that a letter had been sent to Sandra Hess, the most senior applicant, explaining why she was not selected, together with recommendations for improvement of her qualifications.

The grievant asserts that even though she was not the most senior applicant, the selection of Ms. Frame was a violation of WV Code §18A-4-8b(b).<sup>2</sup>

WV Code §18A-4-8b(b), in pertinent part, provides:

(b) A county board of education shall make decisions affecting promotion and filling of any service personnel positions of employment or jobs occurring throughout the school year that are to be performed by service personnel as provided in section [§18A-4-8], article four of this chapter, on the basis of seniority, qualifications and evaluation of past service.

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<sup>2</sup>It is clear that this grievance does not involve a moot or abstract question since it is quite feasible that the grievant could have been awarded the position had she qualified, via a skills test, and Sharon Hess (the more senior applicant) had failed. As is noted herein, no such test was utilized to determine qualifications.

Qualifications shall mean that the applicant holds a classification title in his category of employment as provided in this section and must be given first opportunity for promotion and filling vacancies. Other employees then must be considered and shall qualify by meeting the definition of the job title as defined in section eight [§18A-4-8], article four of this section, that relates to the promotion or vacancy. If the employees 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. Applicants shall be considered in the following order:

- (1) Regularly employed service personnel;
- (2) Service personnel whose employment has been discontinued in accordance with this section;
- (3) Professional personnel who held temporary service personnel jobs or positions prior to the ninth day of June, one thousand nine hundred eighty-two, and who apply only for such temporary jobs or positions;
- (4) Substitute service personnel; and
- (5) New service personnel.

Noticeably absent in the selection process was any objective means in arriving at the score/rank given in the category of "Job Related Work Skills".<sup>3</sup> This combined with the altogether absent factor of giving preference to regularly employed personnel over substitute personnel, renders the instant selection process invalid.

In addition to the foregoing, the following findings of fact and conclusions of law are incorporated herein.

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<sup>3</sup>This board has approved skills tests when appropriately designed and uniformly applied in order to determine qualifications. Adkins v. Logan County Board of Education, Docket No. 23-86-024; Beckett v. Raleigh County Board of Education, Docket No. 41-86-107.

### FINDINGS OF FACT

1. Grievant, Irene Dorsey, is a full time Aide III regularly employed by the Nicholas County Board of Education.

2. The grievant applied for a position as Clerk II at the Summersville Junior High School. She was not hired.

3. The successful applicant, Mary Catherine Frame, was a substitute Aide having less seniority than the grievant.

4. None of the five applicants were classified as a Clerk or Clerk II. ✓

5. No skills were administered.

6. No objective criteria was used in determining qualifications.

7. The grievant was second in seniority among the five applicants. ✓

8. The selective process did not give any consideration to the regularly employed status of the applicants as required by WV Code §18A-4-8b(b).

### CONCLUSIONS OF LAW

1. Pursuant to WV Code §18A-4-8b(b), a county board of education shall make decisions to promote and fill service personnel positions on the basis of seniority, qualifications and evaluation of past service. Adkins v. Logan County Board of Education, Docket No. 23-86-024; Beckett v. Raleigh County Board of Education, Docket No. 41-86-107.


2. WV Code §18A-4-8b(b) provides that regularly employed personnel shall be considered before substitute service personnel.

3. The grievant has failed to prove as a matter of law that she would have been employed had not the selection process been flawed. May v. Mingo County Board of Education, Docket No. 29-87-029-4; Lilly and Moten v. Fayette County Board of Education, Docket No. 10-86-251-4.

4. The grievant has proven by a preponderance of the evidence that the selection process was contrary to the requirements of WV Code §18A-4-8b(b), and therefore, the position was unlawfully filled.

Accordingly, the filling of the Clerk II position is null and void and to that extent, the grievance is GRANTED and the Nicholas County Board of Education is ORDERED to post and fill the position in accordance with WV Code §18A-4-8b(b). To the extent that the grievant herein seeks instatement to the position, that request is DENIED.

Either party may appeal this decision to the Circuit Court of Nicholas 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: May 28, 1987