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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**
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CARL PORTER

v.

Docket No. 15-87-205-3

HANCOCK COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Carl Porter, is employed by the Hancock County Board of Education and is classified as a Custodian I. On or about July 15, 1987 grievant filed a level four appeal protesting the board's selection of an employee other than he for a job vacancy, mail clerk/warehouseman. At the request of the parties, a level four evidentiary hearing was conducted in New Cumberland, West Virginia on August 27, 1987. After the hearing, counsel for the respective parties indicated they would submit stipulated proposed findings of facts; these were received November 17, 1987. Grievant's counsel filed proposed conclusions of law by letter dated November 25, 1987.

The crux of this dispute involves application of W.Va. Code, 18A-4-8b(b) as it relates to the filling of vacant service personnel positions. Grievant acknowledges that the statute requires a board of education to consider the applicant's seniority, qualifications and evaluations of past service to fill said vacancies. Although he has just a few years overall county seniority, it is grievant's position that he has the most seniority in the position that was advertised, mail clerk/warehouseman, by virtue of occasional and later continuing substitute work in that classification. He also contends that he was more qualified for that particular position because of his on-the-job experience gained during the lengthy period of time that he occasionally and continuously substituted as a mail clerk/warehouseman. Grievant requests reinstatement to the position of mail clerk/warehouseman effective June 8, 1987 with all back pay and benefits thereto.

The board of education interprets the statute differently. It is the board's contention that since neither grievant nor the applicant who was selected for the position held a classification title as mail clerk/warehouseman, then the applicant who was the most senior and otherwise qualified to perform the job had to be employed.

In addition to the foregoing recitation, the following specific findings of fact and conclusions of law are appropriate.

FINDINGS OF FACT

1. Grievant was employed by the Hancock County Board of Education on September 25, 1984 as a Custodial and Mail Truck substitute as designated on his contract. Grievant was regularly employed on January 1, 1985 and was classified as a custodian; he has remained in that classification to date.

2. Grievant's primary assignment was at Oak Glen High School and his evaluations by that principal have been good to excellent.

3. The individual who held the position of mail clerk/warehouseman was not in good health and grievant was assigned to substitute for him on numerous occasions, each time receiving the appropriate compensation for the classification. In January 1987 the ill employee was on sick leave and grievant substituted continuously as mail clerk/warehouseman at that time until the absent employee retired; grievant was again paid at the rate of that job classification.

4. When the former mail clerk/warehouseman resigned in March 1987, the position was posted and open for bids; grievant apparently continued in the position during the period of posting.

Altogether, from January 1, 1985 until June 1987 grievant worked in excess of 270 days as a mail clerk/warehouseman.

5. The county superintendent conferred with the board's legal counsel and recommended to the board on May 26, 1987 that grievant be employed in the position of mail clerk/warehouseman. The superintendent had determined that none of the fourteen applicants were classified in the position and all were qualified with good evaluations. He concluded that grievant was the most qualified by virtue of his experience and excellent work record on-the-job while substituting as mail clerk/warehouseman.

6. The board did not act on that recommendation because of concern that employees more senior than grievant were among the applicants. Accordingly, on June 8, 1987 the superintendent recommended and the board accepted a person other than grievant to fill the position; the successful applicant had the most overall county seniority at sixteen years while grievant had two and one-half years seniority.

7. Board members testified that their primary consideration was the successful applicant's superior overall county seniority as the classification did not require special skills or testing in order for an employee to qualify for the position.

CONCLUSIONS OF LAW

1. A county board of education shall make decisions affecting promotion and filling of any service personnel positions on the basis of seniority, qualifications and evaluation of past service. W.Va. Code, 18A-4-8b(b).

2. In the grievance proceeding it is incumbent upon the grievant to prove the elements of the grievance by a preponderance of the evidence. Young v. Kanawha County Board of Education, Docket No. 20-87-210-1.

3. The grievant has failed to prove that the board of education acted improperly in its selection of the most senior service personnel applicant for the position of mail clerk/warehouseman when no applicant was presently so classified and the classification does not require experience, training, special skills or ability to perform the job and testing is not a prerequisite for qualification.

Accordingly, this grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Hancock 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:

December 11, 1987

Nedra Koval

NEDRA KOVAL
Hearing Examiner