



**REPLY TO:**  
111 - 19th Street  
Wheeling, WV 26003  
Telephone: 233-4484

**WEST VIRGINIA EDUCATION AND  
STATE EMPLOYEES GRIEVANCE BOARD**

**ARCH A. MOORE, JR.**  
Governor

**Offices**  
240 Capitol Street  
Suite 508  
Charleston, WV 25301  
Telephone: 348-3361

**Members**  
James Paul Geary  
Chairman  
Orton A. Jones  
David L. White

ROBERT KING

v.

Docket No. 43-87-308-3

RITCHIE COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Robert King, has been employed by the Ritchie County Board of Education as a substitute custodian since 1986. He filed a grievance on September 23, 1987 alleging violation of W.Va. Code, 18A-4-8b when a less senior employee was selected for a full-time custodian position he (grievant) sought. He did not prevail at the lower grievance levels and filed an appeal to level four on November 20, 1987. A hearing was scheduled for December 23, 1987 but continued for cause and matters were held in abeyance upon the request of grievant's counsel pending settlement negotiations. The case was rescheduled for September 22, 1988 to supplement the record developed at the October 20, 1987 level two hearing.

After a year-long effort on his part to obtain employment, grievant was initially hired as a substitute custodian in September 1986. During the spring of 1987 several full-time custodial III positions were posted and filled. By approximately the third week in August one position remained for an evening itinerant custodian. The vacancy notice stated that a High School Diploma or GED was required and noted an August 27, 1987 closing date. Grievant applied for the position on August 25, 1987 and told school authorities at that time that he would take a GED test to obtain a diploma. (Level Two Findings of Fact No. 12, 10/27/87). Grievant was issued a letter dated August 27, 1987 from the superintendent stating that board action on August 24, 1987 approved his employment as a substitute custodian for school year 1987-88 pending his completion of custodial training and receipt of his GED.

Although the record is not entirely clear, it appears grievant had initially filled out a Ritchie County Schools application on July 12, 1985. He indicated 10th (grade) for "Education" and two years attendance at Tanney High School, Tanney, West Virginia. In June 1987 he applied for a full-time position of Custodian III. Apparently, he was informed by the school administrators that a high school diploma was now required for employment. He then altered his original application to reflect four years high school and circled "Diploma" on the document. He testified at level two that he was "called to the service" in his junior year and later took two years "farm training" in Gilmer County and he believed the training was equivalent to that of a high school education. Because of that belief,

he stated, he amended the original application. Grievant submitted another application on August 25, 1987 when he applied for the Custodian III vacancy at issue. He listed three years at Tanney High, three years U.S. Army and two years Farm Training. Grievant completed one GED test August 31, 1987 and the remaining four on September 10, 1988.

With respect to the custodial training that grievant attended, it appears that all newly-hired and other custodial staff were scheduled to attend the hands-on three-day session. At the level four hearing the school superintendent characterized the event as not only a training procedure but also a competency evaluation for which he received a written report on each attendee/participant. He had not advised the participants that they would be evaluated nor had he told the job candidates who attended that a selection decision would be made based upon an evaluation of their work performance at the session. He said the evaluations were not placed in the employees' files but were housed in his office. (T4. \_\_).

Board minutes of August 24, 1987 confirm its rehiring of grievant and also memorialize the first-time hiring of Janice Scott to a similar substitute custodial position pending her completion of the custodial training session. Board minutes of September 14, 1987 indicate school board members were "polled" August 27, 1987 to act on several hiring recommendations but the full-time custodial position in question was kept on "[h]old until September 14, 1987." Presumably later in the evening of September 14, the board voted 3-2 to employ Janice Scott for

the contested position. At some time on the 14th, grievant submitted to school officials a document, dated that day, from the PRT Vocational-Technical Center which listed his GED scores and indicated he had passed the tests.

Grievant raises several issues. He contends and argues that when the contested job was posted he had already met the qualifications for custodian as he had been so classified upon his employment as a substitute custodian in 1986; that the board had no authority prior to July 1, 1988 to require that a service employee possess a high school or equivalent diploma;<sup>1</sup> and that the board's use of an evaluation prepared by the custodial training firm to select the successful applicant for the position vacancy was inappropriate and contrary to W.Va. Code, 18A-4-8b and State Board Policy No. 5300 requirements that properly conducted open and honest evaluations of past service be considered for said selection. Grievant contends that his employment work performance, including substitute assignments on the evening shift, had never been evaluated but, likewise, no complaints had been tendered with respect to his performance on any assignment. Grievant contends that on September 14, 1987 he was the most senior substitute candidate holding the designated classification and in accordance with W.Va. Code, 18A-2-8b, he was therefore entitled

---

<sup>1</sup> The 1988 amendment to W.Va. Code, 18A-2-5 effective July 1, 1988 requires that newly-hired service personnel possess a high school or equivalent diploma.

It is unclear why the board/superintendent included the educational requirement for this particular position in 1987 but the school superintendent conceded that there was no written board policy at that time on the subject. He stated the requirement "was discussed" by the board after the June custodial hirings, probably in July or August. (T4.18, 23).

to the custodial position at issue. Grievant requests instatement to the position and appropriate back wages and benefits, including seniority.

The school board did not respond to grievant's allegations that its use of educational requirements and training evaluations to fill the position was improper. It posits that the most qualified applicant was selected who possessed "full" qualifications and superior training evaluations and grievant did not possess a GED at the time the position closed for applicants.

The evidence and law in this instance preponderates in grievant's favor. School law requires that a board of education fill service personnel positions on the basis of the candidates' seniority, qualifications and evaluations of past service. The secretive "training" evaluations held by the superintendent were not proper evaluation instruments to be considered when assessing the work performance of a board employee who is vying for a position opening. Further, absent a legal requirement, appropriately approved and written board policy or clearly demonstrated positional necessity, the qualification imposed by the board in 1987 that a current service employee without a high school education who already held a title for a particular classification obtain a high school or equivalency diploma to secure continued employment or to obtain a position opening in the same classification was unwarranted.

In addition to the foregoing narration, the following findings of fact and conclusions of law are made.

## FINDINGS OF FACT

1. Grievant was initially employed by the respondent board as a substitute custodian in September 1986; his application materials indicated that he did not possess a high school diploma.

2. Several full-time vacancies for custodians were posted and filled by the school board in the spring of 1987.

3. Grievant was advised or came to believe that his continued employment with the board was dependent on whether he possessed a high school diploma. In June 1987 he altered his application to reflect a high school education as he believed his 2-year participation in farm training after his release from the armed forces was equivalent to a high school diploma.

4. When told by school officials that educational requirements for employment were not satisfied by farm training, grievant advised school officials that he would take a test for a high school equivalency diploma (GED).

5. A full-time evening custodial position was again available after mid-August 1987. The position posting stated a qualification requirement of high school or equivalent diploma and noted a closing date of August 27, 1987. The high school requirement was not shown to be board policy and appeared suddenly for this particular position.

6. Grievant applied for the Custodial III position on August 25, 1987 and filled out a new application listing the correct education he had obtained via high school and subsequent training.

7. On August 24, 1987 grievant was rehired as a substitute custodian pending his attainment of the GED and completion of custodial training August 24, 25 and 26, 1987. Janice Scott was newly hired as a substitute custodian pending her completion of the training.

8. The school board contracted with Winans Services to provide hands-on custodial training to its employees. Winans issued grievant a "Certificate of Appreciation" dated August 26, 1987 stating that he (grievant) "has successfully completed the Basic Custodial I Course and is now a certified custodian." (Grievant Exhibit No. 2, 9/22/88).

9. The custodial training had a purpose not made known to the participants by the school superintendent. Participants were evaluated on their performance and reports were issued to the school superintendent. An unsigned report dated August 26, 1987 purportedly evaluating grievant's work training on a rating scale made several additional disparaging remarks about his job understanding, performance, productivity, dependability and co-operation. This evaluation did not comport with State Board Policy No. 5300 which requires regular open and honest evaluations of an employee's work performance.

10. Board members were contacted by telephone and "polled" on employment selections on August 27, 1987 but did not act on the custodial position at issue. The matter was put on hold until the board was scheduled to meet on September 14, 1987.

11. On September 14, 1987 grievant furnished school officials with a document which proved he had passed the GED test. At the school board meeting on September 14, 1987, Janice Scott was hired for the disputed custodial position by a 3-2 vote upon the superintendent's recommendation.

12. The school superintendent maintained that grievant was not fully qualified when the position closed August 27, 1987 and the successful candidate, Janice Scott, was selected because she was fully qualified and had superior training evaluations from Winans.

13. The board's stated position that its non-selection of grievant was predicated upon grievant not being fully qualified when the position closed is contrary to its own hiring practices. School board minutes demonstrate that it routinely hired persons provisionally, pending the completion of some act by the employee or the fulfillment of some other employment requirement.

CONCLUSIONS OF LAW

1. W.Va. Code, 18A-4-8b(b) requires a board of education to make decisions affecting the promotion and filling of service personnel positions on the basis of seniority, qualifications and evaluations of past service. Phares v. Randolph County Board of Education, Docket No. 42-86-232-2.

2. Qualifications shall mean that the applicant for a service personnel position holds a classification title in his category of employment. W.Va. Code, 18A-4-8b(b).

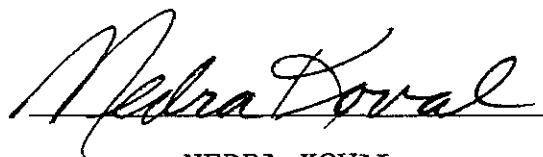
3. Absent a clear positional need a school board may not impose unwarranted qualification standards as selection determinators to fill service personnel positions or otherwise deviate from the statutory requirements for such determinations.

4. Grievant was classified as a custodian, had no adverse evaluations of his past work performance and was entitled to be selected for the custodial position at issue on the basis of his superior seniority.

Accordingly, the grievance is **GRANTED** and the Ritchie County School Board is Ordered to instate grievant to the evening Custodian III position effective September 14, 1987 with back wages, benefits and seniority less appropriate set-off for substitute wages earned during the employment period.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Ritchie 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: October 31, 1988

A handwritten signature in cursive script, reading "Nedra Koval", written over a horizontal line.

NEDRA KOVAL  
Hearing Examiner