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SHELIA LUCAS

v.

Docket No. 27-88-180

MERCER COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Shelia Lucas, is employed by the Mercer County Board of Education (Board) as a special education teacher assigned to Princeton Junior High School. She filed a grievance on June 30, 1988 alleging a summer school teaching position had been improperly filled. A Level II hearing was held August 12, 1988 and a decision at that Level was adverse to the grievant. The Board failed to hold a Level III hearing within timelines contained in W.Va. Code §18-29-4(c) and upon appeal to Level IV, the parties indicated a decision could be made on the record developed at Level II.¹

¹The transcript of that proceeding is hereinafter referred to as (T.____).

The parties do not essentially dispute the sequence of events giving rise to the grievance. On May 24, 1988 two (2) special education teacher positions for summer school were posted with the qualifications listed as "a valid West Virginia teaching certificate with endorsement in Mental Retardation".² Grievant and Ms. Gloria Johnson made application and Ms. Johnson was awarded one of the positions. Grievant contends she was the more qualified and more senior applicant and the Board's decision to hire Ms. Johnson was a violation of W.Va. Code §18A-4-8b(a).³ She requests as relief the amount of pay she would have received if awarded the position.⁴ The Board contends Ms. Johnson was the more

²It is not clear from the record why grievant objected only to the manner in which one of these positions was filled.

³Grievance forms for Levels I through IV all contain the allegation that a "person with less seniority hired for summer school position" with no mention of qualifications. At the Level II hearing, however, the parties addressed the issues of qualifications and seniority as they applied to the filling of the position.

⁴Grievant also asserted during Level II proceedings that she should have minimally received a statement of reasons for her rejection with suggestions for improving her qualifications in accordance with W.Va. Code §18A-4-8b(a).

qualified applicant and its actions were in accordance with applicable law.

Grievant has nine (9) years of experience as a special education teacher and holds teaching certificates with endorsements in the areas of Educable Mentally Impaired (EMI), Trainable Mentally Impaired (TMI) and Learning Disabled. (T.7) She taught TMI students for one and one-half (1½) years at Thorn Elementary and EMI students at Princeton Junior High for approximately two and one-half (2½) years. For the past three or four years grievant has taught LD students at Princeton Junior High. (T.18) Ms. Johnson is also a special education teacher assigned to the same school. She has four years experience in the Mercer County School System teaching TMI students and has served as a summer school special education teacher for at least one summer. (T.21) According to Ms. Margaret Pace, Director of Special Education, Ms. Johnson had also completed training in Elmore curriculum methods which the Board had incorporated in its program for TMI and Physically, Mentally Impaired (PMI) students. (T.21)⁵ It was also Ms. Pace's testimony that the summer school special education program served mainly TMI students and Ms. Johnson's experience with the Elmore curriculum that had been used in a previous summer

⁵ It was not made clear at the Level II hearing just what methods the curriculum involved but it was generally conceded that it was a rather new approach for teaching TMI students.

with those students made her the more qualified applicant. (T.21)

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

FINDINGS OF FACT

1. Grievant, Shelia Lucas, is employed by the Mercer County Board of Education as a special education teacher assigned to Princeton Junior High School; Ms. Lucas holds a teaching certificate with endorsements in the areas of TMI, EMI and LD and for the past three or four years has taught LD students at Princeton Junior High.

2. In June 1988 grievant and Ms. Gloria Johnson made application for two posted summer school special education teaching positions at Princeton Junior High and Ms. Johnson was awarded one of the positions.

3. The summer school special education program in Mercer County serves mainly TMI students with emphasis on the Elsmore curriculum.

4. Ms. Gloria Johnson is a certified special education teacher with an endorsement in TMI and training in the Elsmore curriculum; she has four years experience teaching TMI students

and has taught such students using the Elsmore curriculum during at least one summer school session.

5. By virtue of her more recent experience with TMI students, knowledge of the Elsmore curriculum and prior summer school experience, Ms. Gloria Johnson was the more qualified applicant for the position in question.

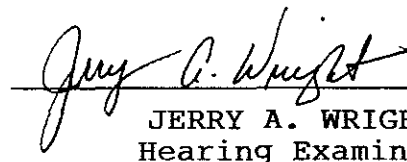
CONCLUSIONS OF LAW

1. When a grievance contains allegations that a position has been filled in violation of the provisions of W.Va. Code §18A-4-8b(a), the grievant must prove by a preponderance of the evidence that the interview/selection process used to fill the position was flawed or that his or her qualifications exceed those of the successful applicant(s). LeMaster v. Cabell County Board of Education, Docket No. 06-87-074-1 (June 16, 1988); Johnson v. Cabell County Board of Education, Docket No. 06-87-248-1 (July 20, 1988).

2. The grievant has failed to prove by a preponderance of the evidence that she was more qualified for the summer school special education position at Princeton Junior High School than the successful applicant or that the Mercer County Board of Education otherwise acted arbitrarily or capriciously in the filling of said position.

According, the grievance is **DENIED**; however, the Mercer County Board of Education is hereby **ORDERED** to furnish the grievant, Shelia Lucas, with a letter which specifically and fully explains what steps she needs to take in order to improve and enhance her professional skills and abilities.

Either party may appeal this decision to the Circuit Court of Mercer County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. (W.Va. Code §18-29-7) Neither the West Virginia Education and State Employees Grievance Board nor any of its Hearing Examiners is a party to such appeal and should not be so named. Please advise this office of your intent to appeal so that the record can be prepared and transmitted to the appropriate Court.


JERRY A. WRIGHT
Hearing Examiner

Dated: December 15, 1988