



REPLY TO:
401 Davis Avenue
Suite 315
Elkins, WV 26241
Telephone: 636-1123

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

**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

JANICE MAGRO

v.

DOCKET NO. 30-88-151

MONONGALIA COUNTY BOARD OF EDUCATION

DECISION

Grievant, Janice Magro, is employed as a teacher by the Monongalia County Board of Education (Board). Ms. Magro filed a level four grievance appeal on August 10, 1988 in which she alleged that she had been appointed to teach special education during summer school and that the position was thereafter denied her. An evidentiary hearing had previously been held at level two and the matter was submitted for decision on the record at level four.

It is uncontroverted that in the spring of 1988 the grievant applied for a teaching position for the summer session. She was notified by letter dated June 10, 1988 that the Board had approved her appointment to teach special education from July

5 through August 15.¹ Later that month the grievant received a second letter rescinding her employment informing her that she would not be teaching the summer session as another applicant had been found to have more seniority. (T.3)

The grievant argues that the position was to be filled by the most qualified applicant with seniority becoming determinative only when all other factors are equal. The Board asserts that the position was filled based upon seniority and certification and that certification was the only factor used to determine whether an applicant was qualified.²

This issue has been decided by the W.Va. Supreme Court of Appeals and addressed on numerous occasions by the Education and State Employees Grievance Board. Without question, professional positions are to be filled by the most qualified applicant whether it be for a regular position or a temporary summer school assignment. As this was not the criteria applied by

¹Although the grievant argues that the Board has acted in breach of contract the record indicates that contracts were issued for summer employment after the grievant received the letter rescinding the offer of employment. The letter of June 10 which notified the grievant that the Board had approved her employment will not be construed as a contract when it clearly was not.

²The record reflects that the successful applicant is regularly assigned as a special education teacher while the grievant is not; however, this factor alone may not be determinative of who is most qualified for the position in question. Consideration of the class to be taught and the applicants' training and experience will reveal the most qualified individual.

the Board, the position was improperly filled. As it has not been established whether either the successful applicant or the grievant was the most qualified applicant a granting of relief will be contingent upon further evaluation by the Board.

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

Findings of Fact

1. The grievant is employed as a teacher by the Monongalia County Board of Education. Her numerous certifications include special learning disabilities. She has additionally completed graduate work in the areas of behavioral disorders and mental retardation. Although regularly assigned to teach sixth, grade, music, and study group, the grievant previously taught special education during the summer session of 1987.

2. In the spring of 1988 the grievant applied for a teaching position during the upcoming summer session. She was notified by letter dated June 10, 1988 that the Board had approved her appointment to teach special education from July 5 through August 15.

3. The grievant was later notified that her summer employment had been rescinded as another applicant had been discovered to have more seniority.

4. The criteria applied by the Board in filling the position was certification and seniority. No effort was made to determine whether any candidate was the most qualified for the position to be filled.

Conclusions of Law

1. The filling of a teaching position must be based primarily on the applicants' qualifications with seniority being determinative only when the applicants have otherwise equivalent qualifications or where the differences in qualifications are insufficient to form the basis for an informed and rational decision. Dillon v. Board of Education of Wyoming, 351 S.E. 2d 58 (W. Va. 1986).

2. While certification is one area to be considered when determining the most qualified candidate for a position it alone is not controlling. Other factors which may and should be considered are education and experience. Lafayette v. Randolph County Board of Education, Docket No. 42-87-227 (January 29, 1988).

3. The Board acted improperly in filling a teaching vacancy based solely upon the seniority of the properly certificated applicants.

Accordingly, the grievance is **GRANTED** to the extent that the Board is **Ordered** to reevaluate the applicants for the summer school position. If the grievant is determined to have been the most qualified applicant she is to be awarded all compensation which she would have earned, less any appropriate set-off.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Monongalia 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 any intent to appeal so that the record can be prepared and transmitted to the appropriate Court.

DATED:

November 29, 1988

Sue Keller

SUE KELLER

HEARING EXAMINER