

**REPLY TO:**

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

**Members**

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

**WEST VIRGINIA EDUCATION  
EMPLOYEES GRIEVANCE BOARD**

ARCH A. MOORE, JR.  
Governor

**Offices**

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

DEBORAH MYLES

v.

Docket No. 35-88-081

OHIO COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Deborah Myles, is professionally employed by the Ohio County Board of Education. On May 18, 1988 she filed a level four grievance alleging violation of W.Va. Code, 18A-4-8b in that her seniority rights were violated when she was not chosen for a position vacancy for which she had applied. A level four hearing was conducted on June 21, 1988 and the transcript and other evidence adduced at level two was formally entered into the record.<sup>1</sup> Counsel for the board submitted proposals on July 12 and grievant's representative tendered his proposals July 13, 1988.

---

<sup>1</sup> Grievant filed at level one on March 29, 1988 and the level two hearing was conducted April 18, 1988.

Grievant commenced employment with the board in 1976 and received a continuing contract of employment on April 24, 1979 to commence the next school year, 1979-80. However, in April 1979 grievant went on maternity leave; she sought reemployment in 1984. In 1985 she was employed as a full-time substitute for one year and in November 1987 she was employed in a full-time capacity to teach kindergarten at Parkview and Madison Elementary Schools; she received a probationary contract of employment for the 1987-88 school year.

On December 15, 1987 the board posted a kindergarten vacancy at Woodsdale Elementary School (two kindergarten teachers and their two aides comprise the kindergarten staff) along with a job description for the position. Three persons including grievant applied for the vacant position, however, one of the candidates withdrew her application. Grievant and the remaining candidate, Francine McKenzie, who had been substituting in the vacant position, were interviewed for the position. The interview "team" consisted of the principal at Woodsdale, Ruth Scherich, the one remaining regular kindergarten teacher and the two kindergarten aides. After she elicited some input from the three staff members with respect to the interviews and after reviewing the qualifications of both Ms. McKenzie and the grievant, Ms. Scherich determined that Ms. McKenzie was the most qualified applicant and recommended her employment to the superintendent. The superintendent so nominated Ms. McKenzie and the board hired her for the kindergarten position March 23, 1988.

Subsequent to the filing of her grievance at level one but prior to the level two hearing, grievant was notified by letter that pursuant to board action on April 12, 1988, her name had been placed "on the Preferred List pending lack of need based on student enrollments for the 1988-89 school year." (Gr. Exhibit 1, 6/21/88). During the level two hearing grievant objected to her employment status with respect to the probationary contract she received at the beginning of the 1987-88 school year. (T.8-10). It was not clear from her testimony on April 18, 1988 whether grievant wished to establish that she was more senior than the successful applicant who received the job in question, but she stated that the probationary contract did not afford her the job security she desired. If her seniority with respect to the disputed position was the issue, the board appears to agree that grievant had more overall county seniority than the successful applicant as it complied with the directives of W.Va. Code, 18A-4-8b(a) that the most senior applicant not selected for a vacant position be furnished with suggestions for improvement of his or her qualifications. Grievant was issued several suggestions by letter dated April 7, 1988 from Ms. Scherich.

Grievant contends that she and the successful candidate were equally qualified for the position in question since they both met the minimum qualifications as stated in the job description. On that basis, grievant argues, she was entitled to the position because she was more senior than Ms. McKenzie. Grievant suggests impropriety in the selection process since all members of the interview team were not trained for the task and unbiased persons should have conducted the interview as the successful candidate was already serving Woodsdale school as a substitute in the position at issue. Grievant seeks to be placed in the kindergarten position at Woodsdale Elementary School.<sup>2</sup>

The board of education contends that Ms. Scherich's determinations of the most qualified applicant was done in a careful and considerate manner. She determined that the successful applicant had at least three years more experience teaching kindergarten students than grievant, several months more experience working with kindergarten "at risk" children, completion of graduate level courses that were geared toward the early education field and was more practiced in working with team teaching and

---

<sup>2</sup> In the level four filing and in the submitted proposals, grievant requested that it be recognized that she is a tenured teacher with a continuing contract based upon W.Va. Code, 18A-2-2. When testimony was initiated at the level four hearing on June 21, 1988 pertaining to grievant's employment status, counsel for the board objected as the reduction in force issue had not been raised at the level two proceedings. Grievant's representative then agreed to "go back to the original grievance" challenging the employment of Ms. McKenzie. (T4.8). Administrative notice can be taken that issues not fairly raised or heard at levels two or four cannot be considered by the Grievance Board and the issue of grievant's employment status will not be addressed herein.

with aides. The board relies on W.Va. Code, 18A-4-8b(a) and Dillon v. Wyoming County Board of Education, 351 S.E.2d 58 (W.Va. 1986) and states that the most qualified candidate should be hired for the vacant teaching position, that these matters are discretionary on the part of the board and absent a showing of arbitrariness or other unlawful action by the board with respect to its selection process, the appointment of the successful candidate should not be disturbed.

The Grievance Board has consistently held that seniority does not ensure any employee employment to a job vacancy for which she or he has applied, but seniority may place the candidate in a preferred position. In the case of service personnel, once the minimum qualifications of the needed classification is met the most senior employee is to be employed for the vacancy although this general rule may be disturbed if the employee's evaluations or work record indicate a potential problem or the candidate does not possess the requisite skills that may be necessary for the particular position. See, Cline v. Hancock County Board of Education, Docket No. 15-88-011; Jones v. Ohio County Board of Education, Docket No. 35-86-051.

In the case of professional employees, meeting the minimal qualifications of the position is the threshold for consideration as sound policy and law demand the most qualified person be hired for the particular position. Seniority will assume importance in the selection process when the applicants possess equivalent qualifications. Dillon v. Wyoming County Board of Education, supra. Some forces which operate to disturb position appointments for this class of employees include an improper job posting, Rogucki v. Gilmer County Board of Education, Docket No. 11-87-260; a tainted selection process, Milam v. Kanawha County Board of Education, Docket No. 20-87-270-1; or arbitrary and capricious or otherwise unlawful employment decisions, Crow v. Marshall County Board of Education, Docket No. 25-87-273. On the basis of the facts and evidence adduced herein, grievant has failed to substantiate any wrongdoing on the part of school officials or the board when it employed Ms. McKenzie for the position in question.

In addition to the foregoing narration, the following findings of facts and conclusions of law are appropriate.

### FINDINGS OF FACT

1. Grievant applied for a kindergarten teaching vacancy at Woodsdale Elementary School and was presumed more senior than another applicant who was considered for the position, Francine McKenzie, who occupied the interim substitute position at Woodsdale. Grievant and Ms. McKenzie met the minimal certification requirements for the position.

2. Woodsdale's principal, Ruth Scherich, set up interviews for the two candidates and the interview team consisted of herself, the regular kindergarten teacher who would work closely with the teacher selected for the position and the two aides who would interact with the two staff teachers. Identical questions not previously made known to the candidates were posed to each of them during the interview process.

3. After completion of the interviews Ms. Scherich asked the other members of the interview team for their impressions and positive comments about the two candidates. The staff had no formal training in personnel selection matters but their use cannot be construed as adverse to grievant or favorable to Ms. McKenzie as they were not asked to make employment recommendations (T4.49) and their presence during the interview seemed logical since the position required close contact with them as co-workers and teammates.

4. The principal next conducted a thorough review of each of the candidate's qualifications including a review of their academic and teaching records. She found them to be equally qualified according to their certification and evaluative data. Grievant however had only several months experience teaching kindergarten students while Ms. McKenzie had acquired several years teaching experience in that specific grade level and had completed more coursework related to kindergarten instruction and had attended county in-service offerings relevant to that discipline. On the basis of the applicants' interview responses, Ms. Scherich also determined that grievant was not as cognizant as Ms. McKenzie of the objectives and philosophy of the kindergarten teaching program, especially the emphasis on the "at risk" students, the importance of the child's socialization process in kindergarten and the concept of team teaching/aide utilization the program stressed.

5. On the basis of her objective and subjective findings that Ms. McKenzie was the most qualified candidate, Ms. Scherich recommended to the superintendent that Ms. McKenzie be employed for the vacant teaching position at Woodsdale school and the board formally hired her to the position March 23, 1988. Grievant protested the employment and filed a level one grievance on March 29, 1988.



6. Ms. Scherich issued grievant a letter dated April 7, 1988 in which recommendations were made that grievant could improve her qualifications for kindergarten teaching by focusing future graduate work in that area, by contacting appropriate county personnel for relevant information regarding use of the classroom aide, by attending in-service training for the "at risk" school programs and by continued experience teaching in the kindergarten grade level.

7. Grievant presented no evidence that she was discriminated against during the selection process, that the selection process was tainted or that the selection itself was arbitrary and capricious or contrary to law and she offered no legal precedent to support her position that her seniority rights were violated and she was entitled to instatement to the kindergarten position at Woodsdale school.

#### CONCLUSIONS OF LAW

1. W.Va. Code, 18A-4-8b(a) provides that decisions of a county board of education affecting the filling of vacant teaching positions must be based primarily upon the applicants' qualifications for the job, with seniority having a bearing on the selection process when the applicants have otherwise equivalent

qualifications or where the differences in qualification criteria are insufficient to form the basis for an informed and rational decision. Dillon v. Wyoming County Board of Education, 351 S.E.2d 58 (W.Va. 1986); Kilmer v. Wayne County Board of Education, Docket No. 50-86-324; Haines v. Mineral County Board of Education, Docket No. 27-87-275-2.

2. County boards of education have substantial discretion in matters relating to the hiring and assignment of school personnel but the discretion must be exercised reasonably, in the best interests of the school system and not in an arbitrary or capricious manner. State ex rel. Hawkins v. Tyler County Board of Education, 275 S.E.2d 911 (W.Va. 1980); Beverlin v. Board of Education, 216 S.E.2d 554 (W.Va. 1975); LeMaster v. Cabell County Board of Education, Docket No. 06-87-074-1.

3. The discretionary exercise of a board of education to employ and assign professional personnel for a specialized position in a designated school should not be disturbed when the action was taken in good faith for the benefit of a school system and was not arbitrary. Hawkins v. Tyler County Board of Education, supra; Tenney v. Barbour County Board of Education, Docket No. 01-87-166-2; Haines v. Mineral County Board of Education, supra.

4. Under W.Va. Code, 18A-4-8b(a), where one candidate for a position is clearly more qualified, the seniority of another applicant will not be sufficient to justify denying the position to the more qualified applicant. Kilmer v. Wayne County Board of Education, supra; Haines v. Mineral County Board of Education, supra.

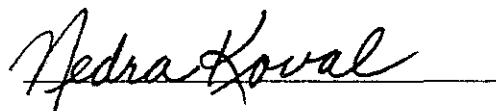
5. The board made an accurate and rational decision that the successful applicant was more qualified for the position in question than was the grievant.

6. The grievant has failed to prove by a preponderance of the evidence that the school board acted arbitrarily, capriciously or in a discriminatory manner against her or that she is entitled to reinstatement to the kindergarten position at issue.

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Ohio 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: August 1, 1988

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

NEDRA KOVAL  
Hearing Examiner