



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

Members
James Paul Geary
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

LINDA SHOEMAKER

v.

DOCKET NO. 14-87-256-2

HAMPSHIRE COUNTY BOARD OF EDUCATION

DECISION

Grievant, Linda Shoemaker, who is employed by the Hampshire County Board of Education as a teacher, filed a level one grievance on August 28, 1987 in which she alleged that an extracurricular position for which she applied was not filled on the basis of qualifications and/or seniority. The grievance was denied following an evidentiary hearing at level two and the board waived participation at the level four hearing conducted on November 12, 1987.

The grievant contends that the position of cheerleading sponsor was posted and that she submitted an application but that she was neither interviewed nor her qualifications discussed.

When the grievant became aware in mid-July that the position had been awarded to another applicant her husband called the Athletic Director to inquire as to how the successful applicant had been chosen. As that individual had no response the grievant then requested of the Superintendent the reason why she was not chosen. Although the exact date of her request is unknown Superintendent Grey Cassell responded by letter dated August 4. That response in its entirety is as follows: "I do not know of any school case that requires a statement of reasons concerning the filling of an extra curriculum assignment; however, Mrs. Chase applied first and I agreed to recommend her for the assignment." The grievant argues that this action constitutes a violation of W.Va. Code, 18A-4-8b(a) which requires the position to be filled on the basis of qualifications.

The position of the board is that W.Va. Code, 18A-4-8b is inapplicable as extracurricular assignments are mutually agreed upon, supplemental contracts as set forth in W.Va. Code, 18A-4-16. (T. p.7) The board also argues that the grievance was not timely filed as the position was filled on July 6 and a level one grievance was not filed until August 28. (Level II decision)

Findings of Fact

1. The Hampshire County Board of Education advertised a vacancy for the position of cheerleading sponsor in June 1987.

2. The grievant and one other individual applied for the position, however, the grievant was never interviewed nor were qualifications discussed with her.

3. The grievant learned in mid-July that the other applicant had been awarded the position. Her husband unsuccessfully attempted to learn of the selection process and the grievant, the most senior applicant, requested a reason for her failure to receive the position. Although the exact date of her request is unknown Superintendent Cassell's response, dated August 4, indicates the request was made within 15 days of the time the grievant became aware that the position had been filled.

4. By letter dated August 4, 1987 Superintendent Cassell indicated that the successful candidate received the position because her application was the first to be submitted.

Conclusions of Law

1. W.Va. Code, 18A-4-16 provides that assignment of teachers and service personnel to extracurricular positions shall be made

only by mutual agreement of the employee and the superintendent, or designated representative, subject to board approval. Both parties shall agree upon the terms and conditions of the assignment which shall be in writing and remain separate from the regular contract of employment.

2. W.Va. Code, 18A-4-8b requires that decisions affecting the promotion and filling of any classroom teacher's position be made on the basis of qualifications.

3. Extracurricular activity contracts are not exempt from procedural requirements and rights afforded by statute. Smith v. Board of Education of the County of Logan, 341 S.E. 2d 685 (W.Va. 1985); Hosaflook v. Nestor, 346 S.E. 2d 798 (W.Va. 1986) and Williams v. Roane County Board of Education, Docket No. 44-86-160-1.

4. This matter was pursued in compliance with W.Va. Code, 18-29-4(a) which requires that an employee respond to a grievable action within fifteen days following the occurrence of the event or within fifteen days of the date on which the event became known to the grievant or within fifteen days of the most recent occurrence of a continuing practice giving rise to the grievance.

Accordingly the grievance is **GRANTED** and the board **ORDERED** to evaluate both applicants and to fill the position of cheerleader sponsor on the basis of qualifications. If the grievant is determined to be the most qualified applicant she is to be awarded any lost wages incurred for the 1987-88 school term.

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

January 29, 1988

Sue Keller

SUE KELLER

Hearing Examiner