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**WEST VIRGINIA EDUCATION AND
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PAMELA R. BARTLEY

v.

DOCKET NO. 01-88-062-2

BARBOUR COUNTY BOARD OF EDUCATION

DECISION

Grievant, Pamela R. Bartley, is employed by the Barbour County Board of Education as a substitute service personnel employee. Ms. Bartley filed a level four grievance appeal on April 20, 1988 in which she alleged that she had been RIFFED and was not given a position that had become available or the training in order to qualify for the job within a given time although the superintendent had stated the job was to be hers. A level four hearing was held on July 20 and proposed findings of fact and conclusions of law were filed by both parties on August 17.

The facts of this matter are uncontroverted. The grievant had been employed by the board of education during the 1986-87 school year as a teacher's aide IV. After that year the position was eliminated as part of a reduction in force and the grievant was placed on a preferred recall list. During the 1987-88 year the grievant was periodically employed as a substitute aide while attending Fairmont State College. A position of bus operator was posted on February 4, 1988 and the grievant submitted application for the position on February 9.

Superintendent William Phillips requested an opinion from the West Virginia School Service Personnel Association as to whether a RIFFED employee who was on the preferred recall list but not certified as a bus operator or a certified substitute bus operator would be entitled to the position. The association advised that the RIFFED employee would have to be awarded the position and trained. In reliance upon this interpretation Superintendent Phillips indicated to the grievant that she would be awarded the position if she became qualified. A special training session was scheduled immediately and was to be completed by February 26.

On February 16 Superintendent Phillips recommended to the board of education that the grievant be hired to fill the position contingent upon the completion of her training. The board took no action upon the recommendation and directed the superintendent to seek legal advice as to which applicant was more entitled to the position. At a special meeting on February 18 the board approved employment of the most senior substitute bus operator who had applied for the position.

The grievant argues that the board should not have hired a replacement before March 3, that her training would have been completed before that time and that she was entitled to the position by virtue of her placement on the preferred recall list since no regular employee had applied.

The board argues that it was required to fill the position within twenty days and that RIFFED employees are to be recalled only for position openings in the classification where they were previously employed or to any lateral position for which they are qualified or have certification and/or licensure. The grievant was not qualified as a bus operator when the position was filled by the most senior, qualified applicant.

While the board may have had a moral or ethical obligation to grant the position to the grievant after she completed the required training there appears to have been no legal requirement that it do so. While the grievant reasonably expected the position based upon the representations of the superintendent, the statutory guidelines do not require that RIFFED employees be trained to qualify for positions in other classifications.

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

Findings of Fact

1. The grievant was employed as a teacher's aide during the 1986-87 school year.
2. The grievant's position was eliminated prior to the 1987-88 school year as part of a reduction in force.
3. The grievant was placed upon the preferred recall list and was periodically employed as a substitute aide for the 1987-88 term.
4. On February 9 the grievant applied for a posted position of bus operator.

5. In reliance upon an opinion of the West Virginia School Service Personnel Association the superintendent advised the grievant that the job would be hers if she become qualified.

6. Special training sessions were scheduled for the grievant and were to be completed by February 26.

7. In February Superintendent Phillips recommended to the board of education that the grievant be hired to fill the position contingent upon the successful completion of her training.

8. The board did not act on the recommendation but directed the superintendent to seek legal advice regarding which applicant was more entitled to the position.

9. In February the board filled the position with another applicant who was the most senior, qualified substitute bus operator.

Conclusions of Law

1. W.Va. Code, 18A-4-8b(b) requires that all service personnel positions be posted a minimum of 5 working days. The vacancy shall be filled within 20 working days from the posting date.

2. Service employees who are terminated as part of a reduction in force and are placed on a preferred recall list are entitled to reemployment in the classification(s) they were previously assigned or to any lateral position for which they are qualified, certified or licensed. W.Va. Code, 18A-4-8b(b).

3. The grievant was not qualified for the position of bus operator at the time it was filled and there was no requirement that the board to hold the position open for her until such time as she secured the necessary licensure.

Accordingly, the grievance is DENIED.

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

Sue Keller

SUE KELLER
HEARING EXAMINER