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**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**

GASTON CAPERTON
Governor

Offices
240 Capitol Street
Suite 515
Charleston, WV 25301
Telephone 348-3361

WILLOE ASHWORTH

v.

Docket No. 89-40-560

PUTNAM COUNTY BOARD OF EDUCATION

D E C I S I O N

Willoe Ashworth is, and was during school year 1988-89, vocational department chairperson at Hurricane High School (HHS), an institution operated by Respondent Putnam County Board of Education. On or around July 20, 1989, she instituted the following grievance:

Violation of. . .[W.Va. Code §] 18A-4-8b(a) in regard to the posted position of mathematics at . . .HHS. Grievant is both qualified and most senior applicant for the position. Relief sought is to be granted said position.

After bypass of Level I,¹ denial at Level II² and waiver at Level III, Grievant advanced her claim to Level IV on

¹ Grievant's immediate supervisor during 1988-89, HHS Principal Howard Lovejoy, retired at the end of that term, and it is unclear from the record when his successor assumed his duties. Under these peculiar circumstances, action amounting to commencement of this grievance at Level II is deemed reasonable.

² Respondent's Superintendent Dr. Samuel P. Sentelle erred in issuing a "Level II Decision" on July 27, 1989,
(Footnote Continued)

September 20 for resolution on the evidence presented at the lower planes. The parties were allowed until October 6 to present fact-law proposals, and with the receipt of the same from Respondent by that date, this matter is mature.³

The facts are essentially without dispute. In late May 1989, Howard Lovejoy, then HHS Principal, advised Grievant that the position of a business mathematics teacher retiring from her department would be posted as a general mathematics vacancy. He explained that an instructor more broadly certified in mathematics would permit business math students to receive either business or math credits as they chose. When Grievant advised Mr. Lovejoy that a business math specialist could also offer this variety, he added there was an additional need for someone to cover sections of algebra I and geometry for 1989-90 as well, and so the flexibility of a math generalist was desirable.

On June 7, the job appeared in a Putnam County Schools Vacancy Bulletin, as follows:

(Footnote Continued)

prior to Grievant's hearing at that step. That pronouncement was withdrawn and Level II hearing conducted on August 9 before Paul Callahan, Assistant Superintendent and Dr. Sentelle's designee. Mr. Callahan issued the official Level II decision on August 15.

³ Grievant did not timely file proposed findings of fact and conclusions of law. However, a review of her late submission does not reveal it to support any change in this outcome.

VB491--TEACHER--MATHEMATICS, 9-12, AND SECRETARIAL
STUDIES, 9-12, PREFERRED, OR MATHEMATICS,
9-12--HURRICANE HIGH SCHOOL

Grievant, whose only certifications are in business education, grades 7-12, and business education including business mathematics, 7-12, and who has nineteen years' seniority with Respondent, applied for but was not offered the position. Instead, Mr. Arnold C. Chapman, who holds a certificate in mathematics, 7-12, but not secretarial studies, was selected.⁴

Grievant alleges that she was qualified for the position and most senior, and that her non-selection was therefore in error. Professional positions must be filled based on qualifications primarily, with seniority coming into play only if the top candidates are equally qualified. W.Va. Code §18A-4-8b(a); Dillon v. Bd. of Educ. of the Co. of Wyoming, 351 S.E.2d 58 (W.Va. 1986). It is undisputed that mathematics is a totally separate certification from business education, with or without the "including business mathematics" addendum. Therefore, Mr. Chapman was qualified

⁴ Whether or not Mr. Chapman had seniority with Respondent at the time he was hired to fill the post in question is of no importance due to the outcome herein.

Grievant's business education certification encompasses qualification in "secretarial studies."

for the position⁵ as it was posted, and Grievant clearly was not.⁶ See W.Va. Code §18A-3-1.

The remainder of this Decision will be presented as formal findings of fact and conclusions of law.

⁵ Grievant seemed to hint at impropriety in the posting itself, but failed to develop any evidence or present any argument in this regard. Further, there is no information as to precisely what classes Mr. Chapman is covering at HHS, although it is assumed from Grievant's statement, see n. 6, that he is teaching business math half-time.

While it might be contended that at least some of this information was excluded by Respondent's counsel's successful objections at Level II, this case has been submitted for decision on the record as created below, without any supplementation.

The record was not developed as to whether there were more than two applicants for this HHS job and Grievant has raised no issue involving other candidates.

⁶ At T. 10, Grievant testified as follows:

I filed this grievance because I felt as though I had no other choice. Being department chairperson, I represent the business education department of . . . HHS.

It is my belief and that of others that business math classes should stay in the business education department, because, number one, we do not want a decrease in the number of students that we serve, and because, number two, our vocational funding will be affected.

. . . We would be decreasing our faculty from four down to three-and-a-half.

It appears Grievant may have been complaining of the decrease in the size of her staff as much as her non-selection for the vacant post. To the extent this is true, it is questionable whether the education employees grievance procedure is an appropriate vehicle for such concerns.

FINDINGS OF FACT

1. Grievant applied for a position with Respondent which required certification in mathematics, grades 7-12.
2. Grievant does not hold this certification and was denied the position.

CONCLUSIONS OF LAW

1. Professional positions must be filled primarily on the basis of qualifications. W.Va. Code §18A-4-8b(a).
2. Grievant was not certified, and thus not qualified, for the job in question and her non-selection was therefore appropriate.⁷ Id.; Code §18A-3-1.

Accordingly, this grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Putnam County and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code §18-29-7. Neither

⁷ It is recognized that persons not appropriately certified at the time a job is filled may nevertheless be deemed qualified therefor if they are projected to become so certified prior to their work entry date, or if they are eligible for a permit to teach in the subject-area of the position. W.Va. Code §§18A-3-1, 18A-3-2(3). Grievant did not claim either contingency pertinent to her situation.

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.

A handwritten signature in dark ink, appearing to read 'M. Drew Crislip', is written over a horizontal line.

M. DREW CRISLIP
HEARING EXAMINER

Dated: October 19, 1989