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**CHARLOTTE BLANKENSHIP,
KAREN MAY and
SANDRA CLEMONS**

v.

Docket No. 89-29-575

**MINGO COUNTY
BOARD OF EDUCATION**

D E C I S I O N

Grievants, employed by Respondent Mingo County Board of Education as substitute secretaries, allege that Respondent violated W.Va. Code §18A-4-8b(b) in hiring less senior substitute secretaries for two secretary positions and Grievants Blankenship and May additionally make the same allegation with regard to a clerk position. The grievances, filed separately, were denied at Levels I and II, and Respondent waived consideration of them at Level III. They were appealed to Level IV and, upon request of Grievants, consolidated, and hearing was held October 26, 1989. Both Grievants and Respondent have submitted proposed findings of fact and conclusions of law.

On June 26 and July 5, 1989, Respondent posted notices of vacancies for Secretary II positions at Beech Creek Elementary School and Tug Valley High School, respectively,

and on July 18, 1989, for a Clerk¹ position at Respondent's Curriculum Center. Grievants Blankenship and May applied for all three positions and Grievant Clemons applied only for the secretary positions. On August 14 Grievants Blankenship and Clemons were required to take a Specific Aptitude Test Battery (SATB), designed by the United States Department of Labor (DOL) to test aptitude for an administrative clerk position, which is not dissimilar to a secretarial position, and administered by a Counselor of the West Virginia Employment Security Office,² and a typing test. On August 15 Grievant May took the same tests and also on that date Respondent promulgated its "Policy on the Employment of Secretaries for the Mingo County Schools," which provides as follows:

It will be the policy of the Mingo County Board of Education to have the West Virginia Employment Security Office test all applicants for the position of secretary.

The three highest scores will be chosen from the applicants.

The Superintendent will make the recommendation on [the basis of] test scores and seniority.

¹The posting did not designate whether the position was a Clerk I or a Clerk II.

²The testing given was actually broader than the SATB, constituting the General Aptitude Test Battery, which tests for aptitude in a variety of areas. Only those parts of the GATB that constitute the SATB were scored, however.

The grades on the SATB were "H," "M," and "L," which the West Virginia Department of Employment Security interprets as follows:³

- H - The individual's scores equal or exceed those of workers judged to be satisfactory in the occupation. If he is also qualified on the basis of factors other than aptitudes, there is a good probability that he will do well on the job.
- M - The individual's scores are close to those of workers judged to be satisfactory in the occupation. The probability of his doing well on the job are somewhat lower than those in the "H" category. However, he may be considered for the job.
- L - The individual's scores are similar to or below those of workers found to be unsatisfactory in the occupation. The probability of his being satisfactory on the job are low and he should be considered for other jobs which utilize his stronger aptitudes. However, an applicant may be considered for a job for which he scores "L" if strongly warranted by one or more of the following conditions:
 - 1. Factors other than aptitudes (interests, training, experience, motivation, etc.) indicate that he will do well on the job.
 - 2. There is reason to believe that applicant's test scores do not truly reflect his ability: e.g., his scores may be influenced by a lack of exposure to standardized tests: he is educationally deficient or culturally deprived.

Three scores were given on the typing test: Grades on speed and accuracy, with 1 being the lowest and 10 the highest, and a "net score" expressed in words per minute (wpm), which resulted from reducing the actual number of words per minute typed by any errors made.

³The record indicates that the interpretation here provided is supplied by DOL.

On the SATB Grievants May and Blankenship received an "M" and Grievant Clemons an "L." On the typing test Grievant May scored 1 on speed and 5 on accuracy with a net score of 25 wpm; Grievant Clemons, 1 on speed and 6 on accuracy with a net score of 20 wpm; Grievant Blankenship, 1 on speed and 3 on accuracy with a net score of "no score." The counselor who administered the test testified that, if the individual types less than 23 actual words per minute, no score results.

Everett Conn, Jr., Superintendent of Mingo County Schools, testified that the policy was instituted because, with changes in technology, especially the widespread use of computers, skilled employees, especially typists, are needed. He explained that, in deciding on who would fill the positions, seniority was considered because only present employees of Respondent were considered and all three successful applicants were substitute secretaries for Respondent. The only qualifications otherwise considered for the job were the test results. He testified that in each instance, consistently with the policy, the successful applicant was chosen from the top three scorers. He also stated that, regarding the SATB scores, while he considered those applicants having "M" scores if among the top three scorers, the three successful applicants had all scored "H." Their typing scores were as follows: speed 10, accuracy 6, net score 77 wpm; speed 1, accuracy 2, net score 30 wpm; and speed 1, accuracy 2, net score 24.

Respondent appears to have followed its policy in making its selections. Grievants contend that W.Va. Code §18A-4-8b(b) mandates that the "most senior applicant must be selected if he is qualified and has good evaluations of his past service with the board of education." Grievants' proposed conclusion of law 1. Grievants contend that, as substitute secretaries, they already hold the classification title of "Secretary" and are therefore qualified by definition and that therefore "the tests should have no meaning." Grievants' proposed conclusions of law 7 and 8. Alternatively, Grievants argue that the SATB testing was invalid for assessing secretarial competency and that Respondent apparently gave little weight to the typing portion, which Grievants concede was "a valid determination of secretarial skills."⁴ Grievants also argue that Respondent was required to "comply with the provision of [West Virginia Board of Education] Policy No. 5300(7) and apprise all testees of requirements and results prior to and after testing." Grievants' proposed conclusion of law 4. Grievants moreover

⁴Counsel for Grievants also contended at hearing that it is improper to require typing skills for a clerk position. However, since no mention of that argument is made in Grievants' proposals and addressing the issue would not affect the outcome of this decision, it is not here addressed.

Moreover, the proposals do not make any argument based on the fact that Grievants May and Blankenship had been tested by Respondent for typing and spelling skills in 1985.

argue that no pass-fail level was established. In conclusion, Grievants assert,

The test upon which the board based its decision in the present case is invalid because (a) the Respondent misinterpreted the nature of the test and the intended use of the "H", "M", and "L" designations, (b) the policy authorizing the test did not go into effect until midway through the selection process, and (c) the grievants were already qualified for the vacancies by statutory definition.

The parties agree that the "seniority dates" for Grievants May, Clemons and Blankenship were March 3, 1986, February 2, 1987, and May 25, 1988, respectively, and Respondent concedes that Grievants therefore had more seniority than the substitute secretaries who were selected. Respondent maintains that following the policy was proper, since it is not arbitrary or capricious and since the testing properly assessed the competency of the applicants. Respondent maintains that it was proper to hire the most qualified applicant and also asserts that Grievants were not qualified for the positions.

In addition to the findings of fact contained in the foregoing discussion, the following conclusions of law are appropriate:

Conclusions of Law

1. It is incumbent upon a grievant to prove the allegations of his or her complaint by a preponderance of the evidence. Hanshaw v. McDowell Co. Bd. of Educ., Docket

No. 33-88-130 (Aug. 19, 1988); Andrews v. Putnam Co. Bd. of Educ., Docket No. 40-87-330-1 (June 7, 1988).

2. Grievants are correct in arguing, "The most senior applicant [for a service position] must be selected if he is qualified and has good evaluations of his past service with the board of education. West Virginia Code §18A-4-8b(b); Moon v. Wayne County Board of Education, Docket No. 50-88-245 (April 20, 1989); King v. Ritchie County Board of Education, Docket No. 43-87-308-3 (October 31, 1988); Jervis v. Wayne County Board of Education, Docket No. 50-88-084 (November 2, 1988)." Respondent's policy allowing the awarding of a secretarial position to an applicant less senior than another qualified applicant, i.e., awarding the position to the applicant considered the "most qualified," is contrary to Code §18A-4-8b(b) and is therefore invalid insofar as it is contrary thereto.

3. Because the record establishes that Grievants have never been classified other than as substitute secretaries, there is no support of record that they are qualified for a Clerk position or have any seniority as clerks.

4. "If two or more people with the same employment status. . . need to be compared [e.g., for hiring purposes], the person with the most time-in-service in the relevant classification of employment has the greatest seniority. Basham v. Kanawha Co. Bd. of Educ., Docket No. 89-20-581 (Nov. 21, 1989)." Abbott v. Boone Co. Bd. of Educ., Docket No. 89-03-288 (Nov. 30, 1989). Since all applicants

considered were substitute secretaries, the "time-in-service" as substitute secretaries must be considered for determining their relative seniority.⁵ Accordingly, for the Secretary II positions⁶ Grievant May had the greatest seniority of the applicants considered by Respondent and Grievants Clemons and Blankenship had the second and third highest seniority, respectively.⁷

5. The evidence establishes that either the Grievants have not been evaluated as substitute secretaries or their evaluations have been satisfactory. They must therefore be considered to have been evaluated as at least satisfactory.

6. While a service employee's holding a classification title ordinarily qualifies him for any position in that

⁵"Under Code §18A-4-8b(b), substitute service staff members do not accrue regular-employment seniority in the same manner as permanently-hired service personnel do." Abbott. For example, where a substitute secretary and a regular secretary, both employed by a board of education, apply for a secretary position with that board, the regular secretary has greater seniority than the substitute for that position. See Jervis.

⁶"Each class title listed in section eight [§18A-4-8], article four of this chapter shall be considered a separate classification category of employment for service personnel, except for those class titles having Roman numeral designations, which shall be considered a single classification of employment." Code §18A-4-8b(b). Accordingly, Secretary I and II positions are in the same classification.

⁷The record indicates that Respondent considered other applicants who had been cooks and aides longer than Grievants had been substitute secretaries as having greater seniority for the secretary positions. That was of course contrary to Code §18A-4-8b(b).

classification, that is not the case where after the employee was so classified the board of education reasonably determined that further qualifications are required for its positions in that classification and accordingly began requiring employees to submit to updated testing to qualify for those positions. See Basham. Accordingly, Grievants' being classified as substitute secretaries did not qualify them for the secretary positions since Respondent's added requirements for secretarial positions were reasonable. See Conclusion of Law 8.

7. West Virginia Board of Education Policy 5300(7)⁸ requires that a board of education "apprise all testees of requirements and results prior to and after testing," Koontz v. Marshall Co. Bd. of Educ., Docket No. 25-89-001 (Feb. 28, 1989), as Grievants contend. However, while Respondent should have apprised Grievant Blankenship of the meaning of the "no score" she was provided as the score on the typing test, no prejudice to the grievant resulted.⁹ See Koontz. Accordingly, no relief is warranted.

8. Insofar as Respondent's policy required the SATB and a typing test for determining whether an applicant is

⁸Section 7 of the policy provides, "All official and enforceable personnel policies must be written and made available to every employee of each county board of education."

⁹The record indicates that there was no further opportunity for the grievant to retake the test, had she known the meaning of her scores.

qualified for a secretarial position, it is valid. Cook v. Wyoming Co. Bd. of Educ., Docket No. 55-87-014 (May 14, 1987); Koontz; Basham. Grievants' concession that the typing test is valid is supported by the record and Grievants have not shown that it was arbitrary or capricious for Respondent to require the administrative clerk SATB for secretarial positions and to consider the results thereof, along with the applicant's scores on a typing test, in determining if the applicant is qualified. Moreover, Grievants advance no support for their contention that it was improper to require and consider such testing since the policy mandating such was promulgated on August 15. While such a purely legal argument need not be addressed where no support has been provided, the argument appears meritless in any case. The policy's requiring further testing was uniformly applied, for all applicants were required to take the test, and the decisions on whom to appoint were made after the policy was promulgated.

9. Grievants correctly argue, however, that, due to the fact that Respondent improperly considered the top three scorers on the tests, it failed to clearly demarcate which scores were passing and which failing.

Regarding the SATB, an "M" must be considered a passing score. While the interpretation of that grade is somewhat ambiguous, stating that the "scores are close to those of workers judged to be satisfactory in the occupation[,]" thereby indicating that the scores may be slightly less than

those of a satisfactory employee, Mr. Conn's testimony that an individual with an "M" score could be considered (if among the top three) established that an "M" score does not disqualify an applicant. The interpretation of the "L" score, on the other hand, clearly supports that an "L" is a failing grade, for it states that the scores "are similar or below those of workers found to be unsatisfactory" in the occupation. Moreover, just because the interpretation allows an employer to consider an applicant who scores "L" if "strongly warranted" by certain conditions, the employer is not required to do so.¹⁰ Accordingly, in scoring "L," Grievant Clemons failed the SATB.

Regarding the typing test, a score of speed 1, accuracy 2, and net score 24 must be considered passing since those were the lowest of the scores of the successful applicants. Grievant Blankenship's scores of speed 1, accuracy 3 and no net score were clearly failing.

10. Grievant Clemons was therefore disqualified from the secretarial positions by her "L" score on the SATB and

¹⁰In any case, the evidence regarding Grievant Clemons, the only one of the three who scored an "L," does not "strongly warrant" that she can be a competent secretary or clerk for Respondent, although the record indicates that she has been successful as a substitute secretary for Respondent (she had worked four years as a fingerprint technician for the Federal Bureau of Investigation, requiring the clerical skill of filing, and she kept the books for her church and her husband's carpentry business). Moreover, her scores on the typing test also do not support that she would be a competent secretary. See discussion, infra.

Grievant Blankenship was disqualified by her typing scores. However, by scoring "M" on the SATB and 1 on speed and 5 on accuracy, with a net score of 25 wpm, Grievant May was not disqualified. Since she was additionally the most senior applicant for both Secretary positions, she was entitled to one of them.

The grievances of Grievants Clemons and Blankenship are accordingly **DENIED** and the grievance of Grievant May is **GRANTED** insofar as she requests instatement to one of the Secretary II positions. Respondent is hereby **ORDERED** to instate Grievant May into one of the secretarial positions. Respondent is also **ORDERED** to provide Grievant May back pay minus appropriate set-off.

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



SUNYA ANDERSON
HEARING EXAMINER

DATE: December 18, 1989