



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

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

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

GASTON CAPERTON
Governor

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

PAMELA GUM

v.

DOCKET NO. 13-88-223

HARRISON COUNTY BOARD OF EDUCATION

DECISION

Grievant, Pamela Gum, is employed as a teacher by the Harrison County Board of Education (Board). Ms. Gum filed a level one grievance on September 27, 1988 in which she alleged a violation of W.Va. Code §18A-4-8b(a) when she was not selected to fill a teaching vacancy at South Harrison High School although she was the senior applicant. The grievance was denied at level two, the Board waived consideration at level three and the matter was appealed to level four on November 22, 1988. Both parties agreed that a decision could be made on the lower level record which was filed on March 6, 1989. Proposed findings of fact and conclusions of law had been submitted by February 27, 1989.

The facts in this matter are undisputed. The grievant, presently in her eighth year of employment with the Board, is certified to teach biological sciences, grades 7-12, and physical education, grades K-12. The grievant's assignment for the 1988-89 school year was to teach seventh and eighth grade science at Broadway Junior High School. On August 5, 1988 a position vacancy was posted for a biological science teacher at South Harrison High School. The grievant applied for this position and by letter dated August 18, 1988 Superintendent Robert Kittle advised her that her transfer to South Harrison High School had been approved by the Board.

While inquiring as to her schedule at the high school the grievant learned that she would also be required to teach physical science. She was uncertain as to whether she was qualified and found that it would be necessary for her to complete three additional college courses in order to gain certification in physical science. She immediately registered for one of the classes and investigated the possibility of obtaining a temporary certificate or a permit to teach until she could complete the course work and become fully certified.

The position at South Harrison was reposted on September 8 for biology and physical science. Robert Skidmore, Administration Liaison Officer, notified the grievant by letter dated September 12 that the Board had abolished the previous posting and revoked her transfer. The reason given

for the action was that posting had been erroneous as it did not reflect the physical science assignment. The reposted position was later awarded to James E. Lynn who is certified in both biological and general science, grades 7-12.

The grievant argues that because she is eligible to obtain a permit which would allow her to teach physical science and she was the most senior applicant, the Board should not have rescinded the transfer. The Board argues that the grievant was not properly certified to teach physical science and therefore did not meet the minimum qualifications for the position. The Board denies the grievant could have obtained a permit to teach the physical science classes as State Board of Education Policy 5202 Section 7(A)(1) provides that a superintendent may request a permit in order to staff a position only if the county is unable to employ a professionally certified educator. As there was a fully certified teacher available, a request to issue the grievant a permit would have been improper.

The grievant's argument is without merit. W.Va. Code §18A-4-8b(a) provides that professional positions shall be awarded to the most qualified applicant. Seniority is controlling only when two applicants possess such similar qualifications so as to make a determination on that basis impossible. While the grievant's expectations have been frustrated because of the inaccurate posting of the position, it does not affect the controlling factor - that she

was not the most qualified applicant for the position as properly posted.

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

Findings of Fact

1. The grievant is employed by the Harrison County Board of Education and is presently assigned as a seventh and eighth grade teacher at Broadway Junior High School.

2. On August 5, 1988 a position was posted for a biology teacher at South Harrison High School. The grievant applied for the position and the Board approved her transfer to be effective October 3.

3. The grievant became aware that the position also required that she teach one or more classes of physical science. As she was certified only in the area of biological science, she investigated the matter and discovered that she would need to complete three additional courses to gain certification in the area of physical science. She immediately registered for one of the courses and inquired as to the possibility of securing either temporary certification or a permit.

4. On September 8 the Board reposted the position, this time as a biology/physical science teacher, and rescinded the grievant's transfer due to the erroneous first posting.

5. The reposted position was later awarded to another employee who had less seniority than the grievant but was certified in both biological and general sciences.

Conclusions of Law

1. County boards of education have substantial discretion in matters relating to the hiring of school personnel but such discretion must be reasonably exercised, in the best interest of the schools and not in an arbitrary and capricious manner. Dillon v. the Board of Education of the County of Wyoming, 351 S.E. 2d 58 (W.Va. 1986); Smith v. Wyoming County Board of Education, Docket No. 55-87-209 (Jan. 29, 1988); Crow v. Marshall County Board of Education, Docket No. 25-87-273.

2. Under W.Va. Code §18A-4-8b(a), 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. the Board of Education of the County of Wyoming, 351 S.E. 2d 58 (W.Va. 1986); Haines v. Mineral County Board of Education, Docket No. 27-87-275-2 (May 26, 1988); Kilmer v. Wayne

County Board of Education, Docket No. 50-86-324-1 (April 14, 1987).

3. The Board made an accurate and rational decision that the grievant was not qualified for the position in question.

Accordingly, the grievance is **DENIED**.

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

DATED: March 29, 1989

Sue Keller

SUE KELLER
HEARING EXAMINER