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

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JOANN HAMMOND

v.

Docket No. 89-23-044

LOGAN COUNTY BOARD OF EDUCATION

DECISION

Grievant Joann Hammond is an Aide IV at Crooked Creek Elementary School for Respondent Logan County Board of Education. On or around September 8, 1988, she filed the following grievance at Level I, alleging a "[v]iolation of seniority law [W.Va. Code §18A-4-8b[(b)]"]:

. . .I have been employed by the Logan County Board of Education for eight (8) years as an aide. I bid on a secretarial position and took a secretarial skills test as required by the Board [of Education] and passed it. The job was given to a substitute employee who held a full time job at Logan-Mingo Area Mental Health, Inc. She worked one day, August 17, 1987 at a school in Logan County to establish seniority as a substitute employee.

. . .
I am¹ seeking the position in question. . .and back pay.

¹ In the alternative, Grievant seeks any "other secretarial position that comes available during the process of this grievance." Clearly, this is not an appropriate request of this Grievance Board and as such it will not be further addressed.

Grievant's complaint was denied at Levels I and II² and waived by Level III before being submitted at Level IV on February 21, 1989.³ Level IV hearing was scheduled for March 15, but prior to that date the parties agreed to submit the matter for disposition on the record compiled below and to present any proposals as to law and fact no later than March 31, 1989.⁴ Accordingly, the grievance is mature for disposition.

The facts underlying this dispute are virtually uncontradicted and will be presented, in pertinent part, as formal findings, followed by attendant conclusions of law.

² A charge of nepotism, related to the fact that the successful applicant for the position is the stepdaughter-in-law of an Assistant Superintendent of Schools for Logan County, was withdrawn at the commencement of the Level II hearing, T. 4-5, although the issue was discussed thereafter at that same hearing, e.g., T. 40-41.

³ The Level I Decision was issued September 9, 1988; the Level II, December 10; and the Level III waiver, January 12, 1989. It is unclear why the processing of this grievance required such a lengthy period of time or why Grievant waited until February 21 to file her claim at Level IV. However, neither Grievant nor Respondent has raised any timeliness concerns and none will thus be considered herein.

The Level II transcript is part of the record of this grievance.

⁴ Neither party timely offered such proposals, nor did either request an extension of time. Accordingly, Grievant's April 14, 1989 submission has not been considered.

FINDINGS OF FACT

1. Grievant Joann Hammond, an Aide IV employed by Respondent Logan County Board of Education for the past several years, had twice before August 10, 1988, taken the test offered by Respondent for certification as a Secretary. On both occasions, she failed to pass the test.

2. Grievant's service to Respondent as an Aide has never been rated unacceptable, by formal evaluation or otherwise, and at least one occasion has been found "outstanding." T. 12.

3. On August 8, 1988, Respondent posted the position of Secretary II, Omar-Douglas School, as vacant. The notice, which provided that the "successful bidder must have passed the secretarial skills test or have been employed within job classification," was effective through August 15, 1988 -- i.e., applications were accepted during the period August 8-15, 1988, inclusive.

4. Grievant took Respondent's secretarial skills test a third time on August 10, 1988.⁵ On this occasion, she

⁵ Respondent characterized the overlapping of the posting period and the testing as mere coincidence.

passed the test, although she was not aware of this until August 22, 1988.

5. Grievant applied for the position referenced supra on August 15, 1988. The results of Grievant's August 10 testing became known to Respondent's Director of Personnel on or about August 17, 1988, prior to the selection of the successful candidate.

6. The successful applicant, Teresa Clark,⁶ had taken and passed the secretarial test on March 7, 1983, and worked one day as a substitute secretary for Respondent in August 1987. Ms. Clark commenced work as Secretary II at Omar-Douglas on September 8, 1988.

7. Respondent considered Ms. Clark to have seniority over Grievant solely because of her one-day tenure as a substitute secretary in Respondent's employ, since Grievant had not previously worked in any secretarial capacity for Respondent.

8. Respondent's policy was, at least at pertinent times, to require an applicant for a job to be qualified

⁶ This woman is also referred to as "Karen Clark" in the record.

therefor on or before the first date of the posting of the vacancy notice, e.g., August 8, 1988 in this case.⁷

CONCLUSIONS OF LAW

1. "In filling a service personnel post, a county board of education in West Virginia must consider seniority, qualifications and evaluation of past service." Jervis v. Wayne Co. Bd. of Educ., Docket No. 50-88-084 (Nov. 2, 1988); W.Va. Code §18A-4-8b(b). "Seniority" in this context means that permanent service employees are due priority consideration for vacancies over substitute service personnel; "qualifications" are met by an applicant if he or she "holds a classification title in. . .[the pertinent] category of employment" or "meets the definition of the job title." Id. Evaluations of past service must be indicative of an acceptable level of performance. See Jervis, n. 7.

⁷ Respondent presented no written policy to this effect, but defended the practice by citing similar requirements of the West Virginia Civil Service System in the selection of certain state employees.

The record is not entirely clear whether Respondent requires applicants to be qualified before the first day of a vacancy notice being posted, or by that day. If it is the latter, and some applicants might thereunder become qualified after the posting period begins, the policy is additionally unreasonable, see Conclusion of Law #6, at least potentially.

2. "Aide IV" and "Secretary II" are classifications of regularly-employed service personnel. Code §18A-4-8a. Substitute secretaries are substitute service personnel. See id.

3. Grievant, by virtue of her status as a regular service employee, had "seniority" over the successful applicant, a substitute service employee. Jervis; §18A-4-8b(b).⁸

4. Grievant became qualified to be Secretary II, Omar-Douglas Center, by virtue of her passing score on Respondent's August 10, 1988 secretarial skills test.⁹ The

⁸ According to the Level II grievance evaluator,

[W.Va. Code §18A-4-8b(b)] clearly states that seniority is accrued within classification and cannot be transferred from one classification to another.

There is no such "clear statement," certainly not as it pertains to this case. The statute does provide that, for purposes of reduction-in-force, "seniority of. . .service personnel shall be determined on the basis of the length of time. . .employed. . .within a particular job classification."

Even if time-within-classification were relevant herein, it is noted that Ms. Clark has none as a secretary, but only as a substitute secretary. See Satterfield v. Marion Co. Bd. of Educ., Docket No. 24-87-253-2 (Feb. 26, 1988).

⁹ Although there are vague references in the record to "educational and experience requirements" for secretaries in Respondent's employ, the undersigned is aware of none, and it appears such do not exist, at least beyond those of Code §18A-4-8b(b). See, e.g., T. 25.

successful applicant, Ms. Clark, became qualified in like manner in 1983. Grievant's previous failures on the test are irrelevant.

5. Respondent's "policy," see Finding of Fact 8, is unreasonable. The qualification of applicants for a vacant position should be evaluated as of the time of the selection process¹⁰ and not before.¹¹

7. By virtue of her "seniority, qualifications and evaluation of past service," Grievant was and is entitled to the position of Secretary II, Omar-Douglas School.¹²

¹⁰ In so holding, the undersigned considers significant the facts that the secretarial skills examination was readily scorable; Respondent's Director of Personnel had Grievant's results before Ms. Clark was selected; and Respondent offers the test no more frequently than once per year, T. 47.

¹¹ The undersigned doubts that Respondent, under its "policy," would have ignored a job applicant's poor performance evaluation rendered or based on work conduct after the initial date of the pertinent position posting.

¹² Although the record is not absolutely clear in this regard, it strongly implies Grievant was the only applicant who completed the skills test August 10, 1988; therefore, the evidence indicates that no other regular service employee's application was improperly excluded from consideration. Since Respondent had previously selected Ms. Clark per the criteria of W.Va. Code §18A-4-8b(b) and had done so correctly save only for its misconstruction of Grievant's status, and in light of the findings of fact and conclusions of law herein, it necessarily follows that Grievant must be the lawful successful applicant.

Accordingly, this grievance is **GRANTED**, and Respondent is ordered to forthwith instate Grievant as Secretary II, Omar-Douglas School, with back-pay and -benefits related to that position since September 8, 1988, offset by pay and benefits received by Grievant for her work as an Aide IV since that date.

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



**M. DREW CRISLIP
HEARING EXAMINER**

Dated:

April 17, 1989