



Members
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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

HELEN HINZMAN

v.

Docket No. 89-18-64

JACKSON COUNTY BOARD OF EDUCATION

DECISION

Grievant Helen Hinzman, an Aide IV for Respondent Jackson County Board of Education, filed this grievance at Level I on January 13, 1989. It was denied there and at Levels II, and III and Grievant filed at Level IV on March 1, 1989. Although Grievant initially requested a hearing at Level IV, the parties thereafter agreed to have this matter decided on the evidence presented at the lower levels, and the Level II transcript and exhibits were provided.¹ Proposed findings of fact and conclusions of law, with briefing, were submitted by the parties on and before May 24, 1989.

¹A hearing scheduled for March 28, 1989, was continued at the request of the parties and rescheduled for April 26, 1989. On April 18, 1989, Grievant's representative sent notice that the parties had agreed that this case could be decided on the evidence submitted at the lower levels and the hearing was cancelled.

Grievant contends,

I am more seniored th[a]n the successful applicant for the Ripley Elementary School Chapter I aide position. Under W.Va. Code 18a-4-8b, I should have been placed in that position. I also feel like I'm as qualified as the applicant. The relief I am seeking is to get the job I applied for.

There is little dispute as to the facts in this matter. On November 4, 1988, Respondent posted a position for a Chapter I Teacher Aide at Ripley Elementary School. Chapter I is a special program for remedial education and the aide who was to fill the posted position was to work on improving the reading, language and mathematical skills of the educationally deprived children qualifying for the program. Eight individuals applied for the position, but only Grievant, who has been a Special Education teacher's aide for Respondent for six years, was interviewed because, as the most senior applicant, Respondent was prepared to place her in the position were she qualified.

However, Grievant's interview convinced the review committee that she was not qualified for the Chapter I teacher's aide vacancy because she lacked communication skills considered necessary. Her answers to questions were, in its opinion, too brief and sometimes vague, and she used poor grammar repeatedly (Tr. 17, 23). The committee did not

recommend that Grievant be placed in the position. Accord-
ingly, Grievant was denied the same.²

Grievant argues that under W.Va. Code §18A-4-8b(b) the most senior service employee is entitled to a service position as long as her or his evaluations have been satisfactory and she or he is qualified for the position. Grievant further contends that the employee is qualified if he or she "holds a classification title in his category of employment." Code 18A-4-8b(b). Since Grievant's evaluations have been satisfactory and she holds the title of teacher's aide, she claims entitlement to the Chapter I job as a matter of law.

Grievant's point might be well-taken³ were it not that Code §18A-4-8b(b) is superseded in pertinent part by Code §18A-5-8(d),⁴ as follows,

Notwithstanding the provisions of section eight-b [§18A-4-8b], article four of this chapter, an aide shall be employed on the basis of (1) qualifications, including, but not limited to, education, training and experience, and (2) seniority. Qualifications shall not include additional college credits beyond that currently required.

²Initially a substitute filled the position and thereafter Respondent hired Ms. Rebecca Deem permanently.

³See Moon v. Wayne Co. Bd. of Educ., Docket No. 50-88-245 (April 20, 1989), and cases cited therein.

⁴W.Va. Code §18A-5-8 was enacted at the Third Executive Session, 1988, prior to the posting of the position in this matter.

This provision allows a county board of education to expand the §18A-4-8b(b) definition of "qualifications" for an aide position. The only restriction that subsection (d) imposes upon a board of education is that it cannot insist upon additional college credits "beyond that currently required."⁵ Accordingly, with that exception, as long as the added qualification(s) are reasonably necessary for effective performance of the duties of the position, the qualification(s) will be accepted and the board's decision that an individual not having them is not entitled to the position will be upheld.

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

Findings of Fact

1. Grievant has been employed by Respondent for six years as a special education aide, working with physically handicapped and otherwise-impaired children.

2. Grievant was the most senior applicant for a Chapter I teacher reading and math aide position at Ripley Elementary School, posted November 1988. The Chapter I program is designed to teach educationally disadvantaged children remedial reading and mathematics.

⁵The obvious reference is to those credits required by Code §18A-4-8.

3. Grievant was denied the Chapter I aide position because the interview committee determined that she was not qualified for it, as she lacked communication skills. The interviewers found her answers vague and short and her grammar poor.

4. The job description for a Chapter I teacher aide includes the "required qualification" of "ability to read, write, compute and communicate."

5. A Chapter I aide works with a total of about 40 children. The aide works with small groups of students, with one through nine children in each group, for one-half hour periods each schoolday.

6. A Chapter I teacher aide is responsible for planning the instruction, and instructing, monitoring and evaluating the assigned group of students under the general supervision of the Chapter I teacher (Tr. 15).⁶

7. Grievant has had no experience teaching reading other than one limited effort at helping a boy with his reading.⁷

⁶The teacher has his or her own group of students which the teacher instructs.

⁷At hearing Grievant was asked what she told the interview committee when asked if she had any experience in reading instruction and she testified, "Well, I think that...we had a boy, Charlie Hackney, in our room oncest...but...it wasn't really my job to learn him to read...." (T. 9).

8. The children in the Chapter I program often are behind their peers in language development (Tr. 16). Such children's progress in the program would be hindered by an instructor's use of poor grammar (Tr. 17).

9. The interview committee properly determined that Grievant had poor communication skills.⁸

10. It was reasonable for Respondent to require adequate communication skills, in particular reasonably good grammar, of a Chapter I teacher aide.

Conclusions of Law

1. While W.Va. Code §18A-4-8b provides in pertinent part that "Qualifications shall mean that the applicant holds a classification title in his category of employment...", W.Va. Code §18A-5-8(d) allows a board of education to require further qualifications reasonably necessary for the effective performance of the duties of an aide.


2. In that it was reasonable for Respondent to require a Chapter I teacher aide to have adequate communication skills, Respondent did not contravene Code §18A-5-8(d)

⁸That Grievant had poor communication skills, in particular that she used very poor grammar, is amply supported by her testimony of record, for almost no answer of even moderate length fails to exhibit some ungrammatical usage.

in requiring such skills as a qualification for the Chapter I teacher aide position.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County or the Circuit Court of Jackson County and such appeal must be filed within thirty (30) days of receipt of this decision. See 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

Dated: June 13, 1989