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WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD
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FEB 3 1989

W.Va. Education Employees
Grievance Board

Offices
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DINA JONES

v.

DOCKET NOS. 02-87-324,325,326

1/31/89

BERKELEY COUNTY BOARD OF EDUCATION

DECISION

Grievant, Dina Jones, is presently employed by the Berkeley County Board of Education (Board) as a print shop operator. Ms. Jones filed three level one grievances on September 28, 1987 in which she alleged a violation of W.Va. Code §18A-4-8b when she was improperly denied the position of accountant II, a violation of W.Va. Code §18A-4-8b when a position was created and filled without having been posted thereby depriving her an opportunity to apply for the position and violations of W.Va. Code §§18A-4-8b, 18A-4-8 and 18A-4-15 when she was assigned as a substitute print operator although she was not substituting for a regular employee and had been denied the rights and privileges to which she was entitled after having worked for thirty consecutive days. The grievances were denied at

levels one and two; level four appeals were filed December 17, 1987. A level four hearing was held on March 4, 1988; however, due to a delay in the production of the transcript, proposed findings of fact and conclusions of law were not submitted until December 8, 1988.

The grievant was first employed by the Board in December 1985 as a substitute print shop operator. The grievant apparently worked in this position on a more or less regular basis throughout 1986 and 1987 but alleges that on at least one occasion she was "laid off" for one day which deprived her of benefits which she would have received had she worked for a period of 30 days. The grievant did work continuously from August 10 through September 17 and argues that W.Va. Code §18A-4-15 provides that after working for a period of 30 days an employee is entitled to regular employment status.¹ She requests that she be awarded back pay as a regular, full-time employee from September 11 through December 15, 1987 when she was hired as a print shop operator on a regular, full-time basis.

The Board argues that there were no position vacancies in the print shop until December 1987 and that the grievant's employment until that time was to meet a temporary need, but concedes that the grievant is entitled to all

¹ This grievant did not work on Friday, September 18, 1987 at the direction of a supervisor but returned to her duties on Monday, September 21.

the rights afforded by W.Va. Code §18A-4-15 effective September 11 when she had completed a thirty day period of employment.² Inasmuch as the Board concedes this issue, no further discussion is warranted.

The second issue to be decided is whether the Board improperly filled a position within the finance department which had not been posted. The grievant argues that she submitted an application for the position of substitute accountant on August 13, 1988 in response to a posting dated August 10 but was never included on the substitute list. When she began grievance proceedings to contest having been excluded, she was offered the opportunity to take a basic skills test. Upon successfully completing the test she was placed on the substitute list for the position of accountant sometime after September 30. When an assignment became available it was offered to Morgan Brannan who had an earlier seniority date, as she had been placed on the list immediately following the posting. The grievant argues that her seniority was improperly determined and requests that she be awarded seniority as substitute accountant effective August 13, 1987, the date she applied for employment in that classification.

²See Board's proposed findings of fact and conclusions of law, page 11.

The Board asserts that when a vacancy occurred in the Accounting Department it accepted applications for both full-time and substitute employment. A committee reviewed the seniority, applications, qualifications and evaluations of the applicants and determined which applicants were qualified for the positions. The grievant did not hold the classification title of accountant and was not otherwise deemed to be qualified. Those applicants who were considered qualified were interviewed with several being placed on the substitute list at that time. When the grievant inquired as to why she was not included on the substitute list Dr. Alan Canonico, Assistant Superintendent for Personnel, advised her that she had not been determined qualified but that she could be considered as she was taking a class in accounting at the vocational center and if she could pass a basic skills test.³ After successfully completing the test on September 30 the grievant was placed on the substitute list in the classification of accountant at the next Board meeting. The Board denies that a position was created and filled without posting but asserts that temporary help was obtained to clear up a backlog of work in the Finance Department. That help was secured from the

³ Although the Board mentions that the grievant was taking two business related courses at the time it is clear that she became qualified at the time she passed the test and not upon completion of the classes as she was placed on the substitute list prior to the end of the semester.

substitute list developed as a result of the August 10 posting. Morgan Brannan, determined to be the most senior substitute following the interviews, worked on a day-to-day basis (generally three days a week) from September 2 through through October 22.

The third issue involves whether the grievant's seniority rights were violated when a regular position of accountant II was filled by an applicant from outside the school system. On August 10, 1987 the position of accountant II was posted. The grievant timely submitted an application and was interviewed; however, the position was awarded to Anthony Hoffmaster who had not previously been employed by the Board. The grievant argues that she was qualified for the position at the time of her application although she was not given the opportunity to demonstrate her ability until she was given a basic skills test after Mr. Hoffmaster was hired. As the posting stated no requirements of formal training or completion of a basic skills test the grievant asserts that she was entitled to the position on the basis of her seniority, qualifications and evaluations of past service.

The Board asserts that the grievant did not hold the classification title of accountant and was determined by the committee to be otherwise not qualified for the position while the successful candidate had earned a baccalaureate degree in accounting. The Board argues that while it must consider seniority, qualifications and past evaluation it is

not required to fill the position with an unqualified applicant.

The position of accountant II is statutorily classified as service personnel and is defined as "...personnel employed to maintain accounting records and to be responsible for the accounting process associated with billing, budgets, purchasing and related operations." Service personnel positions are to be filled on the basis of seniority, qualifications and evaluation of past service. An individual may become qualified by holding a classification title in the category of employment or by meeting the definition of the job title. W.Va. Code §18A-4-8b(b). Neither the grievant nor the successful applicant held the classification title at the time of the posting. The review committee determined that the successful applicant met the definition of the job title by having earned a baccalaureate degree in accounting but did not offer the grievant the opportunity to meet the definition of the job title. The grievant later met the definition of the job title by passing a basic skills test and is presently listed as a substitute accountant indicating that she is now considered to be qualified and capable of performing in that category of employment.

The record does not disclose the criteria or reasoning of the review committee which determined whether an applicant was qualified for the positions of accountant II and substitute accountant. While the position description contains no educational or experience requirements the Board

has established by its actions that acquiring a college degree or passing a basic skills test demonstrates qualification. The grievant was improperly denied the opportunity to establish that she was qualified until after the position was filled. While the Board may correctly argue that it is not required to hire an unqualified applicant, it is required to fairly determine the qualifications of all the applicants prior to filling a position.

There appears to be no statutory prohibitions against a Board requiring certain formal qualifications of its service personnel; however, when no qualifications are stated on the position description all applicants must be considered on an equal basis. In this instance all applicants should have been given an opportunity to take the basic skills test prior to filling the positions of accountant II and substitute accountant. As the grievant qualified by testing and had earned nearly two years of seniority as a substitute employee with the Board she was more entitled to the position than the successful applicant.⁴ While the Board may have considered Mr. Hoffmaster more qualified than the grievant by virtue of his educational degree, due to the emphasis placed on seniority and the definition of qualification,

⁴W.Va. Code §18A-4-8b requires that applicants be considered in a specific order which gives substitute personnel priority over new service personnel.

service personnel positions, unlike professional positions, are not necessarily filled by the most qualified applicant.⁵

Findings of Fact

1. The grievant was first employed by the Berkeley County Board of Education in December 1985 as a substitute printer.

2. The grievant worked as a printer throughout the 1986-87 school term although she apparently was not substituting for a regular employee. The record does not establish that she worked regularly or for a period exceeding 30 consecutive days.

3. The grievant was re-employed as a substitute printer for the 1987-88 school term and worked continuously from August 10 through September 17, a period of 38 days.

4. In August 1987 the Board posted position vacancies for accountant II and substitute accountant. The grievant was determined to be unqualified for both positions.

5. The position of accountant II was awarded to an individual not previously employed by the Board.

⁵As the grievant has prevailed on the issue regarding the filling of the position of accountant II, it is unnecessary to address the issue regarding the position of substitute accountant.

6. As a result of the August 10 posting several applicants were placed on the substitute list.

7. Due to a backlog of work temporary help was secured from the substitute accountant list during September and October. The individual determined to be the most senior substitute was awarded that assignment.

8. After some inquiry by the grievant as to why she was not included as a substitute accountant she was given a basic skills test. Having successfully completed the examination she was then added to the substitute list in the classification of accountant at the next Board meeting. The grievant signed a substitute personnel contract dated November 10, 1987 for this position.

9. The successful applicant for the position of accountant II was apparently determined to be qualified by virtue of a college degree in accounting and was not required to take the basic skills test.

10. The job description for accountant II which was attached to the posting included no qualifications, educational or otherwise, for the position.

11. The Board hired the grievant as a regular employee classified as a printer effective December 15, 1987.

Conclusions of Law

1. A county board of education shall make decisions affecting the promotion and filling of service personnel positions on the basis of seniority, qualifications and evaluation of past performance. Qualifications shall mean the applicant holds a classification title in the category of employment or by meeting the definition of the job title as statutorily defined. Additionally, applicants are to be considered in a specific order which places substitute personnel ahead of new service personnel. W.Va. Code §18A-4-8b(b); Dorsey v. Nicholas County Board of Education, Docket No. 34-87-041 (May 28, 1987); Phares v. Randolph County Board of Education, Docket No. 42-86-232 (January 29, 1987).

2. A board of education is not required to fill a position with an applicant who does not possess the skills required to perform the duties of a position; Woods v. Nicholas County Board of Education, Docket No. 34-86-302 (April 10, 1987); Jones v. Ohio County Board of Education, Docket No. 35-86-051 (May 31, 1986) and may require competency testing for applicants outside the classification. Cook v. Wyoming County Board of Education, Docket No. 55-87-014 (May 28, 1987); Barnett v. Lewis County Board of Education, Docket No. 21-87-005 (May 29, 1987); Adkins v. Logan County Board of Education, Docket No. 23-86-024 (May 22, 1986).

3. Applicants who do not hold the appropriate classification title and must qualify by meeting the definition of

3. Applicants who do not hold the appropriate classification title and must qualify by meeting the definition of the job title shall do so using a standard method and not in an arbitrary manner, i.e., requiring one applicant to take a test while another has advanced education.

4. The Board wrongfully denied the grievant the position of accountant II as she was qualified as demonstrated by the basic skills test and had more seniority than did the successful applicant.

Accordingly, the grievance is **GRANTED** and the Board is Ordered to place the grievant in the position of accountant II with all back pay and benefits due her less any appropriate set-off.

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

DATED:

January 31, 1989

Sue Keller

SUE KELLER

HEARING EXAMINER