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

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JULIANA D. PALSA

v.

Docket No. 89-15-304

**HANCOCK COUNTY
BOARD OF EDUCATION**

D E C I S I O N

Grievant Juliana D. Palsa alleges that she was improperly denied the music teaching and band director position at Wells Junior High posted November 10, 1988, because she was equally qualified as the successful applicant and had the greater seniority as a substitute teacher. The grievance was denied at Level I on January 13, 1989, and at Level II on March 29, 1989, after hearing of January 25, 1989. Consideration was waived at Level III on May 8, 1989.¹ Grievant filed at Level IV on June 21, 1989, requesting a decision made on the record below. That record was received July 20, 1989. With receipt of Grievant's proposed findings

¹The record provides no explanation for the considerable delays in issuance of the Level II decision and Level III notice of waiver.

of fact and conclusions of law on August 14, 1989, this matter may be decided.²

The posting of the position referred to by Grievant was the second. In August 1988 the job was first posted, Grievant applied, and another candidate was selected. However, that candidate turned down the position and Ms. Ann Ford, a substitute with Respondent Hancock County Board of Education, filled the position temporarily, and the position was reposted. Ms. Ford, Grievant, and other candidates applied, and Ms. Ford was given the appointment in January 1989 as a regular professional employee of Respondent.

Grievant's argument is based on Dillon v. Bd. of Educ. of County of Wyoming, 351 S.E.2d 58 (W.Va. 1986), Syl. Pt. 1, which provides:

Under W.Va. Code, 18A-4-8b(a) (1983), decisions of a county board of education affecting teacher promotions and 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.

At the time of the appointment neither Grievant nor Ms. Ford had any professional teaching experience with Respondent other than as a substitute. Grievant contends that she had the greater seniority because she worked 142 days during the

²Since the parties were notified that the deadline for serving their proposals was August 9, 1989, and no proposals have been received from Respondent, it is apparent that Respondent has waived its right to submit proposals.

1987-1988 school year plus some during the 1988-1989 school year while Ms. Ford had been a substitute only since the beginning of the 1988-1989 school year.³

Grievant's argument on seniority need not be addressed because she failed to show that her qualifications were equal or better than Ms. Ford's.⁴ Accordingly, Grievant did not establish a violation of Code §18A-4-8b(a).

The evidence on the qualifications of Grievant and Ms. Ford was sparse. Grievant, a 1986 graduate of Duquesne University with certification to teach both instrumental and vocal music in grades K through 12, testified that she graduated with a 3.403 grade point average and that she has also taught music to private students. She moreover had been a clarinet instructor with a high school marching band. Tr. 11-12. Grievant conceded that her substitute teaching had usually been at the elementary level and had been in various areas of teaching. The implication is that a minority of Grievant's substitute teaching had been in music.

³Grievant cites Harkins v. Ohio Co. Bd. of Educ., 369 S.E.2d 224 (W.Va. 1988), Davis v. Marshall Co. Bd. of Educ., Docket No. 25-88-096 (July 11, 1988), and Talerico v. Harrison Co. Bd. of Educ., Docket No. 17-88-021-3 (June 23, 1988), as supportive of her argument.

⁴Grievant also failed to present any evidence whatsoever on the qualifications of the other candidates for the position.

While Grievant supplied little information on Ms. Ford, there is no dispute that she was fully certified for the position and that she had taught music for six years in Tyler County. Ronald Daugherty, the Principal of Wells Junior High School, who interviewed the applicants, liked Ms. Ford's background, experience, and how she conducted herself. He noted that she had taught private lessons. "The impression I received from the lady was that she was a mature person, and I felt she was quite capable of handling the situation that we were going to place her in." Tr. 30.⁵ Finally, when she was appointed Ms. Ford had already proven herself in the position, especially drawing encomia from parents of band members.

Grievant's argument utterly ignores that Ms. Ford, having taught for six years, was a more experienced teacher than she was. Experience is critical in evaluating comparative qualifications. See State ex rel. Oser v. Haskins, 374 S.E.2d 184 (W.Va. 1988). Indeed, the Court in Oser found the appellant, who had taught full-time for several years, more experienced than the successful applicant in that case,

⁵At the hearing Grievant contended that Mr. Daugherty's judgment was too subjective and that his reliance on Ms. Ford's maturity was discriminatory against candidates of Grievant's age. Since Grievant's proposals do not address these arguments, they are apparently abandoned. In any case, they are not meritorious arguments that the interview/selection process was flawed. Compare Kizer v. Roane Co. Bd. of Educ., Docket No. 44-88-143 (Jan. 12, 1989); Milam v. Kanawha Co. Bd. of Educ., Docket No. 20-87-270-1 (May 2, 1988).

who, like Grievant, had only been a substitute, and, based in part on that finding, held the appellant the more qualified applicant.

In addition to 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 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. "A county board of education shall make decisions affecting promotion and filling of any classroom teacher's position occurring on the basis of qualifications." W.Va. Code §18A-4-8b(a).

3. Grievant failed to establish by a preponderance of the evidence that her qualifications were equal or superior to the successful applicant, Ms. Ford, who had six years' experience teaching music in Tyler County. See State ex rel. Oser v. Haskins, 374 S.E.2d 184 (W.Va. 1988).

4. Grievant failed to establish a violation of Code §18A-4-8b(a).

Accordingly, the grievance is **DENIED**.

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

DATED: August 28, 1989