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LOUISE SMITH

v.

Docket No. 29-88-203

MINGO COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Louise Smith, is currently employed by the Mingo County Board of Education (Board) as a Custodian III assigned to Gilbert Elementary School. She filed a grievance at Level I on September 27, 1988 alleging she had been improperly denied an aide position at Gilbert for which she had applied. A Level II hearing was held October 12, 1988 and a subsequent decision was adverse to the grievant and the Board voted to uphold that decision on October 17, 1988. A Level IV hearing was held November 22, 1988. The parties submitted proposed findings of fact and conclusions of law by December 19, 1988.

In September 1988 the position of Special Education Aide at Gilbert was posted and seven or eight persons, including grievant, made application. The Board ultimately accepted the

recommendation of Mr. Harry Cline, Superintendent of Schools, that Ms. Janis Hatfield be awarded the position. Grievant contends she was the more qualified applicant and the Board's decision was a direct violation of newly enacted W.Va. Code §18A-5-8(d), which in pertinent part provides:

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.

The Board maintains its decision was in accordance with these provisions and the successful applicant was clearly more qualified than the grievant. The record supports the Board's position.

Grievant has been employed as a Custodian for approximately ten (10) years and has always received favorable job evaluations. Her duties at Gilbert bring her into daily contact with the students there, including those in the Trainable Mentally Impaired (TMI) classroom, and she occasionally is called upon to provide assistance with their supervision. According to the grievant, she has provided emergency medical attention for students and helps with the collection of lunch tickets and cafeteria clean-up. She has completed thirteen (13) college hours.¹

¹A copy of grievant's grade report (Employee's Exhibit No.2) reveals she has completed three (3) hours in American History, four (4) hours in Music, three (3) hours in Western Civilization and three (3) hours in Social Problems. Grievant stated she was not enrolled in a specific college program but was only pursuing a general course of studies.

According to the Board's records (Joint Exhibit No.1), Ms. Hatfield worked as a secretary/bookkeeper for several area businesses for approximately nine (9) years before she was hired by the Board as a substitute aide in February 1984. She worked as such until January 5, 1987 when she was first regularly employed as an E.C.E. Aide. Ms. Hatfield completed the 1987-88 school term at Gilbert and was assigned to Hardy Union Elementary School during the 1987-88 school term. She has completed seven (7) college hours in data processing and physical science.

It is apparent, from the testimony of Mr. John Fullen, Personnel Director, that the examination of the applicants' respective qualifications was not an in-depth one² but a comparison of the grievant's credentials with those of Ms. Hatfield indicates the latter is clearly more suited for the position in question. While the grievant may be familiar with the students at Gilbert, her duties there are those of a custodian and any experience she has had relative to the responsibilities of an aide has been only incidental.

²Significant in this regard is the fact that no interviews were conducted and Mr. Fullen still relied on the definition of qualifications found in W.Va. Code §18A-4-8b(b) despite the deviation from those provisions in §18A-5-8(d). It should also be noted that the Board has not complied with the latter's directive to establish and make available to its service personnel a written policy to be used when regular service personnel who are employed in a different category of employment other than an aide are to be employed in an aide position.

In addition to the foregoing, the following findings of fact and conclusions of law are incorporated herein.

FINDINGS OF FACT

1. Grievant, Louise Smith, has been employed by the Mingo County Board of Education as a Custodian for approximately ten (10) years and is currently assigned to Gilbert Elementary School.

2. Pursuant to a posting of a special education aide position at Gilbert, grievant, Ms. Janis Hatfield and others made application and the Board awarded the job to Ms. Hatfield.

CONCLUSIONS OF LAW

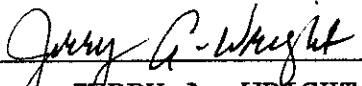
1. Notwithstanding the provisions of section eight-b [18A-4-8b], article four of this chapter, an aide shall be employed on the basis of (1) qualifications (2) seniority. Qualifications shall not include additional college credits beyond that currently required (W.Va. Code §18A-5-8(d)).

2. It is incumbent upon a grievant to prove all the allegations constituting the grievance by a preponderance of the evidence. Butler v. McDowell County Board of Education, Docket No. 33-88-208 (March 31, 1989); Lucas v. Mercer County Board of Education, Docket No. 27-88-180 (December 15, 1988); Helton v. Kanawha County Board of Education, Docket No. 20-87-028-1 (October 26, 1988).

3. By virtue of her previous experience as an aide, Ms. Janis Hatfield was the more qualified for the position in question and the grievant has failed to prove by a preponderance of the evidence that the Board acted improperly in filing said position.

Accordingly, the grievance is **DENIED**.

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


JERRY A. WRIGHT
Chief Hearing Examiner

Dated: April 10, 1989