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

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CAROLYN TRUMAN

v.

Docket No. 89-27-558

MERCER COUNTY
BOARD OF EDUCATION

DECISION

Grievant Carolyn Truman, a service employee of Respondent Mercer County Board of Education, alleges that she was denied the position of Payroll Coordinator in violation of W.Va. Code §18A-4-8b.¹ The grievance was denied at Levels I, II, and III. The Level IV appeal, filed September 15, 1989, requested a decision on the record compiled at the lower levels. With receipt of Respondent's proposed findings of fact and conclusions of law, this matter may be considered.²

¹Grievant also alleged Mercer County Policy GCD-R was violated. However, because the policy was not submitted into the record, no consideration can be given to the allegation.

²No proposals have been received from Grievant. Since she was notified of the deadline for submission thereof and that deadline has passed, it is assumed she has waived her briefing rights.

The evidence establishes that Grievant's first employment with Respondent was as the Payroll Coordinator, beginning January 1983, and that she resigned from that position in 1985, transferring to Respondent's JROTC Department. Teresa Harvey replaced Grievant as Payroll Coordinator. In April 1989, apparently because Ms. Harvey was to be transferred, the coordinator position was posted and Grievant applied. However, Ms. Harvey reconsidered her decision to transfer, also applied for the position, and was appointed to it.

The Level II and III evaluators found that Ms. Harvey was properly given the position because the 925 days she had been Payroll Coordinator was longer than Grievant's 539 days as the coordinator.

It is well-settled that Code §18A-4-8b(b) mandates, "If the most senior candidate for a service position is qualified for the position and has had satisfactory evaluations, he or she is entitled to the position." Moon v. Wayne Co. Bd. of Educ., Docket No. 50-88-245 (Apr. 20, 1989). Grievant testified that her evaluations were good and the evidence indicates that Ms. Harvey's evaluations were also satisfactory. However, while probably both Grievant and Ms. Harvey were qualified for the position since they had both served in it, the record does not so establish, nor does it establish which applicant had greater seniority, if qualified.

Code §18A-4-8b(b) provides in pertinent part,

Qualifications shall mean that the applicant holds a classification title in his category of employment as provided in this section and must be given first opportunity for promotion and filling vacancies. Other employees then must be considered and shall qualify by meeting the definition of the job title as defined in section eight, article four of this chapter, that relates to the promotion or vacancy. . . .

For purposes of determining seniority under this section an employee's seniority begins on the date that he enters into his assigned duties.

There is no classification title of "Payroll Coordinator," nor is there any definition of any such job title. While the record establishes that Grievant is classified as a Secretary III, it does not establish that she was classified as a secretary while she was coordinator and the record does not otherwise indicate in what classification the coordinator position is. Such information is critical for determining whether Grievant was qualified for the position³ and whether Respondent incorrectly considered seniority, as Grievant contends, for, if the coordinator position is classified as a secretarial position, Grievant is qualified and her seniority may have been greater than Ms. Harvey's since the time she has served with JROTC would count to such seniority.

³Grievant in her testimony referred to the job description of the Payroll Coordinator position but it was not entered into evidence. She stated that three years experience in a payroll office and a high school diploma or GED were required for the position when she applied in 1983. That evidence does not fulfill Grievant's burden in this matter of establishing that she was qualified for the position.

In addition to the findings of fact and conclusions of law contained in the foregoing discussion, the following are appropriate:

Findings of Fact

1. Grievant, Payroll Coordinator from 1983 to 1985 and a Secretary III thereafter, applied for the position of Payroll Coordinator in June 1989.

2. Grievant was denied the position on the basis that the successful applicant, who was Payroll Coordinator after Grievant had left the position, had greater seniority as Payroll Coordinator.

3. No evidence was submitted on whether the successful applicant had been employed by Respondent prior to becoming Payroll Coordinator or, if so, in what position.

4. No evidence was submitted showing in which classification is the position of Payroll Coordinator.

Conclusions of Law

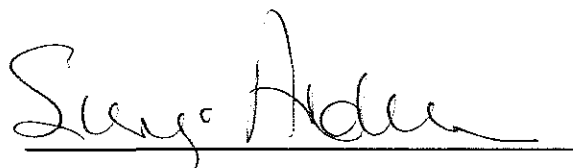
1. It is incumbent upon a grievant to prove the allegations of his or her complaint by a preponderance of the evidence. Hanshaw v. McDowell Co. Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988); Andrews v. Putnam Co. Bd. of Educ., Docket No. 40-87-330-1 (June 7, 1988).

2. In that the evidence does not establish the classification of the Payroll Coordinator position, Grievant has not established she was qualified for the position, and

even if qualified therefor, the evidence does not establish that Respondent incorrectly determined seniority. Grievant has not established that the time she spent as Secretary III counted toward seniority for the coordinator position, or, if so, whether her seniority as secretary was greater than the successful applicant's.

The grievance is accordingly **DENIED**.

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

A handwritten signature in cursive script, reading "Sunya Anderson", is written over a horizontal line.

**SUNYA ANDERSON
HEARING EXAMINER**

Dated: November 15, 1989