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WEST VIRGINIA EDUCATION AND  
STATE EMPLOYEES GRIEVANCE BOARD

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CHARLOTTE CANESTRARO

v.

Docket No. 25-88-225

MARSHALL COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Charlotte Canestraro, is regularly employed by the Marshall County Board of Education as an aide. She and several other aides filed a level one grievance in which they alleged a violation of W.Va. Code §18A-4-8b when a substitute employee was employed for a secretary/aide position vacancy. The grievance was denied at level one on September 13, 1988, level two<sup>1</sup> on October 20, 1988 and level three November 10, 1988. Only the grievant herein pursued the grievance to level four; the filing form indicated her desire that the matter be submitted for decision on the basis of the record developed below. The parties were granted leave to submit proposed findings of fact and conclusions of law by February 24, 1989.

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<sup>1</sup>A level two hearing was conducted September 26, 1988 and reference to the transcript shall be cited, T.\_\_\_\_.

Prior to the beginning of the 1988-89 school year, the respondent school board posted a multiclassified position opening for secretary/aide at Boggs Run Elementary School. Grievant, who held classification as an aide but not as a secretary, applied for the position as did some other regular employees (non-secretary) and at least one substitute secretary. Applicants were granted interviews by the respondent's Personnel Administrator. A skills test was administered at that time (T.13) to the non-secretary applicants and they were informed that a score of 85 percent would be acceptable for the secretary qualification. Grievant herein received a score of 75.6 (T.37).

The successful applicant was a substitute secretary in respondent's employ. She had already qualified as secretary for her substitute employment with an 89 percent on the secretary skills test. Accordingly, she was only required to test for the aide classification and qualified via the aide test given.

Grievant contends that her work experiences qualify her as a secretary. She had prior employment as an assistant supervisor in a laboratory, where she "did payroll", purchasing and inventory. She took a computer class and helped with office duties and typing while in the respondent's employ as an aide. Grievant also objects to respondent's determination that a score of 85 percent is necessary to pass its secretary skills test. She contends that one of the regular employee applicants, all more senior than the successful substitute applicant, should be hired for the secretary/aide position, "and see how they do" on a trial basis (T.40).

Grievant states that she does not question the objectivity and validity of the competency testing but questions the fact that the particulars on respondent's policy on competency testing had not been placed in writing and made available to all employees pursuant to West Virginia State Board of Education Policy No. 5300(7) which requires such publication of official and enforceable personnel policies.<sup>2</sup> Grievant requests that a regular service employee be hired for the position.

Respondent denies it violated the provisions for hiring service personnel set forth in W.Va. Code §18A-4-8b(b) when it hired a substitute employee rather than a regular employee for the position in dispute. It relies on a Marshall County Circuit Court case which determined, among other things, that the most senior service employee enjoys only a preferred status for promotions and vacant service positions but that there is no legal requirement in W.Va. Code §18A-4-8b(b) that the most senior service employee be hired for a posted position.

In addition to the foregoing narration, the following findings of fact and conclusions of law are made.

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<sup>2</sup>A similar grievance, Koontz v. Marshall County Board of Education, Docket No. 25-89-001 (February 28, 1989), addressed this issue. In Koontz it was held that the respondent Marshall County Board of Education must adhere to Policy No. 5300(7) and publish the criteria and standards for competency testing as well as promptly apprise all testees of their test results. Inasmuch as the issue is not dispositive herein, i.e., grievant made no specific complaint on the matter and was not prejudiced in any manner by the lack of written standards, it shall not be addressed further.

### FINDINGS OF FACT

1. Grievant is regularly employed by the respondent board of education as a school aide.

2. A secretary/aide position vacancy was posted prior to the 1988-89 school year. Grievant herein and several other regular and substitute service personnel made application for the position.

3. Regularly employed applicants, including grievant herein, were first considered and interviewed for the position. All were administered a secretarial qualifying test. The secretarial skills test included a written portion which encompassed vocabulary, spelling, grammar and arithmetic and at least one question about office machinery. Applicants/testees also were required to complete a typing assignment of three paragraphs. The testing procedure has been in place since 1987 and respondent requires a score of 85 percent of the testee in order to qualify as secretary.

4. Grievant believed that a score of 85 percent to qualify for secretary was unfair because that score would be considered passing in a school grading situation. However, she proffered no expert testimony, law or policy to support her belief.

5. Although she had some prior clerical experience, grievant herein scored 75.6 on the test and was not recommended for employment to the secretary/aide position.

6. After elimination of regular service employees who did not qualify as secretary on the basis of test scores, a substitute employee was considered, Mary Jo McKinley. She had previously received the secretary classification when she scored 89 percent on the test. She successfully passed the aide test and was therefore recommended and hired for the secretary/aide position.

#### 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 that the applicant holds a classification title in the category of employment and must be given first opportunity for promotion and filling vacancies. W.Va. Code §18A-4-8b(b).

2. W.Va. Code §18A-4-8b(b) requires that when no regularly employed applicants hold a classification title for a vacant position, a school board must then consider out-of-classification employees who shall qualify by meeting the statutory definition of the job title.

3. A board of education may require competency testing for out-of-classification employees, Cook v. Wyoming County Board of Education, Docket No. 55-87-014 (May 14, 1987), and a basic skills test and other uniformly administered selection procedures are reasonable means by which to identify qualified applicants for various positions. Moran v. Marion County Board of Education, Docket No. 24-88-178 (January 27, 1989).

4. In accord with W.Va. Code §18A-4-8b(b), school officials considered out-of-classification employees, including grievant herein, for a secretary/aide position and determined that grievant was not qualified, based on her test score which fell below the 85 percent needed to qualify.


5. Substitute service personnel, such as the successful applicant for the contested position herein, may be considered for a position vacancy when out-of-classification employees have not qualified for said position. W.Va. Code §18A-4-8b(b).

6. Grievant failed to prove that she was entitled to the secretary/aide position as a matter of law or that the school board acted in an improper or unlawful manner when it qualified, via testing, and selected a candidate other than her for the secretary/aide position.

Accordingly, this grievance is **DENIED**.

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

DATED: February 28, 1989

  
Nedra Koval  
Hearing Examiner