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

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ROSE MARIE CUSICK

v.

Docket No. 89-15-179

HANCOCK COUNTY BOARD OF EDUCATION

DECISION

During the 1988-89 school year, grievant Rose Marie Cusick served as a substitute teacher for respondent Hancock County Board of Education (HCBE). In April 1989 she advanced this grievance to level four:

On Dec. 19, 1988, the Hancock Co. Board of Education voted to hire Terri Grysko as the 4th grade teacher at Cove Elementary School. I feel I am equally, if not more qualified and more experienced than the person who was hired. To resolve the grievance I should be placed in stated position.

The record indicates adverse decisions on the grievance at levels one through three January 14, March 29 and April 10, 1989, respectively. A level four hearing was held August 2, 1989.<sup>1</sup> Prior to hearing, specifically, June 15, 1989, grievant

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<sup>1</sup>Grievant appeared on her own behalf and testified briefly  
(Footnote Continued)

submitted a letter to HCBE's counsel and requested a change of relief pursuant to W.Va. Code §18-29-3(k). She asked for a continuing contract, tenure, compensation based on regular teaching wages, from January 25, 1989, to semester's end, and the contested fourth grade position at Cove Elementary School (CES). At hearing grievant stated that she would accept any open position for the 1989-90 school year. HCBE did not object to the forms of relief sought by grievant; thus, she proceeded with her newly-stated issues. In mid-August, grievant submitted fact and law proposals on all issues presented but HCBE declined submission. By letter dated September 18, 1989, grievant's representative advised the undersigned that "all the resolutions of stated grievance have been met . . . [except] the difference in pay . . . ." <sup>2</sup>

HCBE has not responded to grievant's September communication. Accordingly, the narrowed issues to be considered in this grievance are whether grievant's qualifications were adequately considered for the contested position and, if not, whether she was entitled to the position and is now due the salary difference between a "long-term" substitute teacher and "regular"

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(Footnote Continued)

to supplement the February 3, 1989 level two proceedings. The transcript of the level two hearing had been previously submitted.

<sup>2</sup>The undersigned presumes that grievant was regularly employed for the 1989-90 school year and granted the continuing contract and tenure she sought.

teacher, i.e., paid holidays and leave days for second semester 1988-89.

The essential facts in this matter are not in contention. Grievant's professional credentials include permanent certifications in Elementary Education 1-8; Language Arts 1-9; Social Studies 1-9; and Reading Specialist K-12. She has attained a Master's Degree in Reading, and was completing the Master's plus fifteen designation at the time of the grievance. Grievant's employment history with HCBE is extensive. Her initial employment with HCBE began in 1969. She completed a three-year probationary period and served as a regularly employed tenured teacher until the end of the 1975-76 school year. She took a leave of absence for maternity in 1976-77 and was unable to return to teaching for another year due to her infant's grave medical condition. She resigned her tenured position June 13, 1978.

Prior to the 1979-80 school year, grievant spoke to HCBE's superintendent and indicated a desire to return to the classroom. Because there were no vacancies, HCBE placed her on the substitute teacher list. From that school year until the end of 1985-86 grievant taught from four to 120.5 days per year with the exception of 1981-82 when she was not called out. HCBE characterizes substitute teaching as "short-term" or "long-term," the long-term assignments being those of extended duration at one teaching assignment. During 1986-87 grievant taught 145.5 days; 1987-88, 148.5 days; and 1988-89, 157 days. Most of the employments were long-term.

During the entire school year 1987-88, grievant taught a first grade class as a long-term substitute at CES. In Fall 1988 she was employed for the first semester as a sixth grade long-term substitute at CES. Shortly after school began, an ailing CES fourth grade teacher who had increasing difficulties coping with her students had notified CES Principal Carol Bernadino of a possible retirement at the end of the school year. In October 1988 the teacher was hospitalized and Terri Grysko was employed as a substitute during the regular teacher's confinement. According to Ms. Bernadino's testimony, Ms. Grysko was able to contain the several fourth grade students whose unruliness and noise-making had become subject of complaint from other CES staff when their classes were disrupted. Three weeks later, in November 1988, the regular fourth grade teacher advised she could not return due to her health problems and would thus resign her employment with HCBE. Thereafter, the fourth grade position was posted as a vacancy for regular employment.

Grievant and Ms. Grysko were among the substitute teacher applicants; however, no regularly employed county teacher requested a transfer to the vacancy.<sup>3</sup> Ms. Grysko was selected for the position after Ms. Bernadino interviewed the candidates. Grievant testified that she inquired about Ms. Grysko's

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<sup>3</sup>According to Ms. Bernadino, HCBE's policy was to first grant the request of any regularly employed teacher for transfer to an open, posted position before it considered substitute staff or non-employees for the vacancy.

employment. She said Ms. Bernadino told her that Ms. Grysko already held the position and she, Ms. Bernadino, did not want to disrupt the students again (T2.12,15). Ms. Bernadino testified that her prime concern was to employ a disciplinarian. She said her selection was based on the performance of the candidate, as she knew it to be, and she did not delve into other aspects of qualifications. See T2.23-29.

Ms. Bernadino's professional judgment as an eleven-year principal cannot be overlooked, but the record suggests that expediency governed her choice in this case. Ms. Bernadino did not examine grievant's scholarship, scrutinize her evaluations or recognize her extensive experience. By her own admission, Mrs. Bernadino knew very little about either Ms. Grysko's or grievant's qualifications and had evaluated their substitute teaching performances comparably.

On the other hand, grievant proved that she was clearly more qualified than Ms. Grysko for the elementary teaching position. In addition to attaining greater academic accomplishment and holding more areas of relevant certification than Ms. Grysko, grievant demonstrated a sixteen-year history of teaching excellence. In 1972 her principal nominated her for Leader of American Elementary and Secondary Education. From 1983 through 1988, HCBE's Principals Allison, Barnabei, Bernadino, Dayoub and Oboryshko evaluated grievant's substitute teaching and, much of the time, grievant had exceeded standards on the various evaluative criteria in the majority of the evaluations. Her abilities as a disciplinarian were also

lauded. In 1985-86 she taught a sixth grade class from January 8 until April 11, 1986, and Principal Oboryshko commented on the evaluation form that,

Mrs. Cusick did a fine job. She was well prepared and helped the transition from teacher[-]sub[-]teacher go smoothly. Mrs. Cusick is strict with the students [and] they know what is expected of them . . . this is good.

Gr. Ex. Nos. 1-4.

Granted, few students had become unruly while their regular teacher was debilitated and unable to exercise proper control and continuing the substitute teacher's services was the least disruptive manner of filling the position. However, the circumstances of this vacancy were not so compelling as to justify the exclusion of candidates other than the temporarily assigned substitute. HCBE is obligated to hire the most qualified applicant for a professional position, W.Va. Code §18A-4-8(a). Dillon v. Bd. of Educ. of the Co. of Wyoming, 231 S.E.2d 58 (W.Va. 1986).

Moreover, lawful principles governing the employment of teachers must not be ignored. Candidates must be fairly evaluated and given equal opportunity for consideration and judgment of their qualifications. State ex rel. Oser v. Haskins, 374 S.E.2d 184 (W.Va. 1988). The rationale that a candidate can qualify for a contested position by virtue of his or her performance as a substitute in the vacated position is unacceptable. This is not to say the qualities of substitute-applicant performing competently in the position must be ignored. See generally Palsa v. Hancock Co. Bd. of Educ., Docket No. 89-15-304 (Aug. 28, 1989) (Incumbent substitute selected for

position had been praised by parents but was otherwise deemed more qualified because she had more teaching experience than unsuccessful applicant). However, when the substitute performance appears to be the only basis for judging qualifications and no meaningful examination of the totality of each candidate's qualifications had occurred, then the selection is arbitrary and unlawful.

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

#### FINDINGS OF FACT

1. Grievant applied for a teaching vacancy at CES in November 1988 but was not employed for the position.

2. Grievant holds a Master's plus 15 and is certified in Elementary Education, Language Arts, 1-9; Social Studies, 1-9; and Reading Specialist, K-12. She has a sixteen-year history of regular and substitute teaching service with HCBE, a history distinguished by principals' evaluations of above-average teaching performance. Her evaluative data included one principal's commendation of her skills as a disciplinarian during an extended substitute assignment with a sixth grade class.

3. The successful applicant, Terri Gysko, is certified in Elementary Education, 1-6, and Language Arts, 4-8. Gr. Ex. 1. She had been in HCBE's employ approximately three years as a substitute.

4. Ms. Grysko fortuitously substituted for three weeks in the position before it was vacated. She was selected because she had successfully disciplined a few students in her charge, and because CES's principal did not want the students disrupted again.

5. CES's principal did not review or consider grievant's full-time teaching experiences, relevant multi-certifications, evaluations of past service or professional and academic accomplishments. The principal conceded that evaluations she had conducted of grievant and the successful applicant were comparable. In addition, she was unaware of another principal's commendation of grievant's skill as a disciplinarian, the teacher quality she deemed essential for the position.

6. If a regular teacher had applied for the disputed position, CES's principal would have recommended the regular teacher, per county policy, and the students would have been thus disrupted. Moreover, grievant was not given an opportunity to compete for the position in the same manner afforded Ms. Grysko.

7. Grievant's requests at level four for placement in the CES position and award of a continuing contract and tenure were mooted by subsequent events which resolved those issues.

#### 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. A county board of education in West Virginia has substantial discretion in matters relating to the hiring of school personnel, but must exercise the same in an open and reasonable and not arbitrary and capricious manner. Dillon v. Bd. of Educ. of the Co. of Wyoming, 351 S.E.2d 58 (W.Va. 1986).

3. A county board of education in West Virginia is obligated to hire the most qualified applicant for professional positions. W.Va. Code §18A-4-8b(a); Dillon.

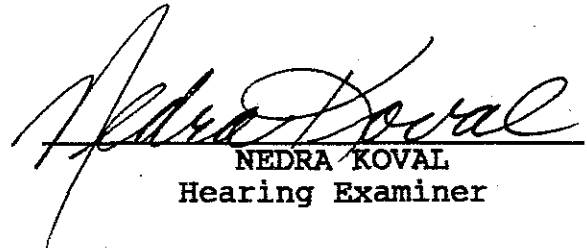
4. Respondent did not evaluate Grievant's qualifications in a fair or complete fashion. See State ex rel Oser v. Haskins, 374 S.E.2d 184 (W.Va. 1988).

5. The evidence preponderates that grievant was more qualified than Ms. Grysko and should have been awarded the CES position.

Accordingly, the grievance is **GRANTED**. Respondent Hancock County Board of Education is Ordered to pay grievant the appropriate 200-day regular teacher's salary for second semester 1988-89 less set-off for wages earned as a substitute.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of 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:      October 31, 1989

  
NEDRA KOVAL  
Hearing Examiner