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

Offices
240 Capitol Street
Suite 515
Charleston, WV 25301
Telephone 348-3361

CHARLES HUGHES

v.

Docket No. 89-50-573

**WAYNE COUNTY
BOARD OF EDUCATION**

D E C I S I O N

Grievant Charles Hughes, employed by Respondent Wayne County Board of Education as a custodian, filed a grievance on July 7, 1989, alleging that "at the board meeting June 13, 1989, I was hired for 20 days employment for summer work. Contract was awarded [but] not upheld." Consideration of the grievance was waived at Level I due to the evaluator's lack of authority and the Level II evaluator denied the claim. After waiver at Level III, Grievant appealed to Level IV on September 26, 1989, requesting that this decision be based on the record compiled below. Neither party submitted proposed findings of fact and conclusions of law.¹

¹Grievant, by Counsel, specifically waived submission. Since the deadline for such submission has passed and no submission has been received from Respondent, it is accepted that it too waived.

The record supports, and Respondent concedes, that Respondent decided to award Grievant a 20-day contract for custodial work during the summer, beginning June 26, and that he was given such a contract, dated June 19, 1989. Michael Ferguson, Superintendent of Wayne County Schools, testified that two days after the board decision Olivia Maze contacted him, asserting that she was more senior than Grievant and was therefore entitled to the position. Upon examination of the records, Mr. Ferguson came to the conclusion that Ms. Maze did indeed have greater seniority than Grievant overall but because they had equal "summer seniority," the random selection procedure of W.Va. Code §18A-4-8b should be utilized. He therefore met with Grievant and Ms. Maze on June 22, advising them that a mistake had been made and that the random selection process would be followed. Although Grievant refused to participate, a proxy was used and his name was entered in the drawing. However, Ms. Maze won the drawing and was given the job.

Since Grievant's testimony was consistent with Mr. Ferguson's, Mr. Ferguson's statement on what occurred is accepted as accurate. Grievant also does not contend that he was actually entitled to the position under the statute.²

²In fact, apparently the random selection process should not have been used, for the record indicates that Ms. Maze was entitled to the job based on her seniority and
(Footnote Continued)

Grievant's argument is solely one of reliance, for his statement of grievance at Level IV adds to his pleadings, "I turned down other summer employment due to receiving this contract. . . . I lost both jobs due to this action. . . ."

Grievant's testimony was vague on when he turned down another job.³ He first simply stated, "I turned down this other work over this situation." Tr. 13. His only elaboration was

And then I was offered it this year[;] the man came to me and asked me if I wanted it. And I said, "Well, I might." And I told him that I was waiting to see the outcome of this. And then I went back to him and told him, no, to get somebody else, that I wasn't going to take it, you know, that I was going to work out here.

(Footnote Continued)

Grievant had no right to it under the law. In Skeens v. Lincoln Co. Bd. of Educ., Docket No. 89-22-496 (Oct. 24, 1989), it was held that consideration of "summer seniority" is inconsistent with W.Va. Code §18A-4-8b(b), i.e., that, regarding summer service positions, "as with all service positions . . . the applicant with the most years in service in the classification with Respondent is entitled to the position as long as he is qualified and has had satisfactory evaluations." There was no testimony on what was the seniority of Grievant and Ms. Maze other than Grievant's statement that he thought she had two more years than he did, Tr. 9, and Mr. Ferguson's testimony that Ms. Maze had more "regular seniority," Tr. 18. Nevertheless, it is noted that the Level II evaluator found that Grievant "has eight (8) years of seniority as a custodian" and Ms. Maze "has ten (10) years of seniority as a custodian" and that those findings are probably accurate since they are consistent with the record, although not based on it.

³It is accepted that Grievant turned down another job. What job it was is unclear from the record, however, since Grievant simply stated that he was to have been a supervisor over a group of children whose parents had a certain income and that he had done the job previously. He also thought his Counsel's suggestion that the job was with the Governor's Summer Youth Program was probably correct.

Tr. 14. This testimony does not establish that Grievant was relying in good faith on Respondent's initial decision to award him the contract or on the contract itself and does not even support that Grievant turned down the other job before being informed that the contract would not be honored. Rather, Grievant's vague reference to "the outcome of this" may indicate that only after being informed by Mr. Ferguson that there was a problem with the contract did he turn down the other job.⁴ Grievant has failed to establish that he relied on the Board's initial decision to award him the position or the resulting contract in turning down the other job he was offered.⁵

In addition to the foregoing discussion, the following are appropriate:

Conclusions of Law

1. It is incumbent upon a grievant to prove the allegations of his or her complaint by a preponderance of

⁴If there was reliance on Grievant's part, it may well have been on being found entitled to the position in this grievance proceeding rather than reliance on Respondent's actions, as alleged. It may be that Grievant thought that, once he was issued the contract, even if mistakenly, he was entitled to the job.

⁵Since reliance, as alleged, has not been shown, it is not necessary to address whether such reliance would have entitled Grievant to a remedy under the law of contracts.

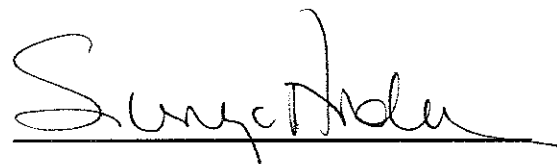
the evidence. Hanshaw v. McDowell Co. Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988); Andrews v. Putnam Co. Bd. of Educ., Docket No. 40-87-330-1 (June 7, 1988).

2. The evidence does not establish that Grievant relied in good faith on Respondent's initial decision to award him a summer position as custodian or the resulting contract in turning down another job offer.

3. Grievant did not establish that Respondent violated any statute or policy in denying him the position.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Wayne 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 dark ink, appearing to read "Sunya Anderson", is written over a horizontal line.

**SUNYA ANDERSON
HEARING EXAMINER**

Dated: December 26, 1989