



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

**GASTON CAPERTON**  
Governor

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**KAREN J. KIMBLE**

**v.**

**Docket No. 89-28-632**

**MINERAL COUNTY BOARD OF EDUCATION**

**D E C I S I O N**

Karen J. Kimble, a classroom teacher employed by Respondent Mineral County Board of Education, filed the following grievance on September 7, 1989:

I have applied for and not received at least five (teaching) positions. Grievance forms were not available at my work site.

A subsequent appeal form filed by Grievant's representative clarified Grievant's contentions as follows:

Karen Kimble applied for but did not receive at least five (5) elementary teaching positions available in Mineral County. After being denied the kindergarten teaching position at Keyser Primary/Middle School, Ms. Kimble filed her grievance. She alleges she is equally qualified<sup>1</sup> and has the greatest seniority for the position.

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<sup>1</sup> At the Level II hearing, Grievant withdrew that portion of her grievance pertaining to the unavailability of grievance forms upon being informed by Respondent's Superintendent that he had distributed the forms to all Mineral County schools.

After denials at Levels I and II<sup>2</sup> and W.Va. Code §18-29-4(c) waiver at Level III, Grievant advanced her claim to Level IV on October 30, 1989. The parties agreed that the matter was appropriate for disposition on the record; however, the undersigned was informed on November 7, 1989, that the Level II testimony of Assistant Superintendent Robert P. Mason had not been recorded. Therefore, a Level IV hearing was held on February 5, 1990, in the Elkins, West Virginia, office of this Board for the purpose of supplementing the Level II testimony. A date of February 26, 1990, was set for receipt of proposed findings of fact and conclusions of law and, with receipt of the same from Grievant's representative, this matter is mature.<sup>3</sup>

Grievant currently teaches Chapter I reading and mathematics, grades five through eight at Keyser Primary/Middle School (KPMS), having worked for Respondent as a professional educator for eleven years; On August 9, 1989, Respondent posted a notice of vacancy for a kindergarten teacher at KPMS. This position required certification in early childhood/elementary education. The notice went on to say that all vacancies would be filled on the basis of

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<sup>2</sup> The Level II transcript and exhibits are a part of the record herein.

<sup>3</sup> Respondent's counsel advised the undersigned at the February 5, 1990, hearing that he would forego submission of proposed findings of fact and conclusions of law.

qualifications and outlined six areas of qualifications that would be considered.<sup>4</sup>

There were fourteen applicants for the job and eight, including Grievant and the successful candidate, were chosen for an interview with Mr. David Albani, KPMS principal. At the conclusion of the selection process, Ms. Sharon Squires was chosen as the most qualified applicant and Respondent accepted its Superintendent's recommendation that she be offered the job.

Grievant, the most senior candidate, subsequently requested reasons for her non-selection pursuant to the provisions of W.Va. Code §18A-4-8b(a). By letter dated September 6, 1989, she was advised by Mr. Mason that Ms. Squires was selected because she had six years of actual kindergarten teaching experience compared to none for Grievant and because she had a masters degree compared to Grievant's bachelors-plus-fifteen. It was suggested that Grievant could improve her qualifications by obtaining a masters degree with concentration in the area in which she most wanted to work, gaining work experience at early childhood grade levels and attempting to attain evaluation ratings of "exceeds standards". This grievance followed.

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<sup>4</sup> The categories of qualifications were certification/endorsement, training, experience/background, evaluations, other qualifications and interview.

Grievant's basic contention is that she has qualifications equal to those of Ms. Squires and additionally has greater seniority. She also suggested that she had not been hired for this and at least five other positions because of Respondent's difficulty in finding qualified Chapter I teachers.<sup>5</sup> Respondent argued that Ms. Squires was clearly more qualified than Grievant for the position in question and, therefore, seniority played no role in its decision.

Grievant has had eleven years' experience as a classroom teacher in Respondent's employ. During this time, she has taught language arts in grades seven and eight and a self-contained fourth grade, as well as Chapter I reading and mathematics. She has had no experience teaching kindergarten. Grievant obtained a bachelors degree from Frostburg State College in elementary education. She has also obtained fifteen hours of graduate credit at West Virginia University. During the time in question, she held valid West Virginia certification in Early Childhood, K-2, and Elementary Education, 1-8. Her professional evaluations consistently rated her as "meets standards".

The successful applicant has had four years' experience as a kindergarten teacher for Respondent. In addition, she

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<sup>5</sup> Grievant's testimony concerning her non-selection for the other jobs mentioned in her initial grievance filing was offered to support this allegation. The only relief requested in this grievance is instatement into the KPMS kindergarten position.

taught kindergarten for two years in Allegany County, Maryland. While no evidence was adduced regarding Ms. Squires' undergraduate degree, the evidence indicated that she does hold a masters degree in early childhood education.<sup>6</sup> She holds a valid West Virginia certification in Early Childhood, K-3. Like Grievant, her evaluations consistently rated her as "meets standards".

Mr. Albani testified at Level II and at Level IV that he regarded Grievant and Ms. Squires as being equally qualified with the exception of education and experience. In his professional opinion, Ms. Squires' masters degree and six years of actual kindergarten experience made her more qualified for the position than Grievant. Mr. Mason concurred with this opinion, noting that the kindergarten curriculum is very different from the Chapter I reading and math curriculum. Finally, Mr. Albani testified at Level II that his actions in recommending Ms. Squires for the kindergarten position were not motivated by a desire to keep Grievant in the Chapter I program. He stated that he had encountered no difficulty in filling such vacancies with certified teachers during his fourteen year tenure at KPMS.

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<sup>6</sup> Mr. Albani testified at Level II that, while he could not recall with precision the area of Ms. Squires' masters degree, he did know that information at the time of the interviews and selection process. It was his belief at Level II that the masters degree was in early childhood education. This testimony was uncontradicted.

Grievant argues that this case is factually identical to Dillon v. Board of Education of the County of Wyoming, 351 S.E. 2d 58 (W.Va. 1986), where the Court stated, at 63:

We have recently held that "while the possession of a masters degree is one factor to be considered in determining teacher competence, it is not the only factor." Higgins v. Board of Education, 168 W.Va. 448, 453, 286 S.E.2d 682, 685 (1981). Clearly the appellees erred in premising their evaluation of Ms. McKinney's qualifications solely on the fact that she had a more advanced degree than the appellant.

There are, however, significant differences. In Dillon, the masters degree in question was in an area totally different from the vacant teaching position. Moreover, in Dillon, the possession of a masters degree alone was the decisive factor in selecting the most qualified applicant. In the instant case, however, the successful applicant's masters degree was in an area directly related to the teaching vacancy. Additionally, the successful applicant had six years of actual kindergarten teaching experience. Based upon these facts, it cannot be found that Respondent abused its discretion or otherwise acted in an arbitrary and capricious fashion in determining that Grievant was less qualified for the kindergarten teaching post than the successful applicant.

In addition to the findings of fact and conclusions of law contained in the foregoing discussion and analysis, the following findings of fact and conclusions of law are made.

### Findings of Fact

1. Grievant is employed by the Mineral County Board of Education as a classroom teacher currently assigned to Keyser Primary/Middle School (KPMS).

2. In August, 1989, eight individuals, including Grievant, were interviewed for the position of kindergarten teacher at KPMS.

3. Mr. David Albani, KPMS principal, and Mr. Robert P. Mason, Respondent's Assistant Superintendent, determined that Ms. Sharon Squires was more qualified for the position in question than Grievant. This was based upon the fact that Ms. Squires had a masters degree as compared to Grievant's bachelors plus fifteen, and upon the fact that Ms. Squires had six years' experience teaching kindergarten as opposed to none for Grievant.

4. Ms. Sharon Squires was recommended for and accepted the position in question.

5. By letter dated September 6, 1989, Grievant was advised that she could improve her qualifications by obtaining a masters degree with concentration in the area in which she most wanted to work, gaining work experience at early childhood grade levels and attempting to attain evaluation ratings of "exceeds standards".

6. Grievant holds a bachelors degree in elementary education plus fifteen hours of graduate credit. She holds valid West Virginia certification in Elementary Education,

1-8 and Early Childhood, K-2. She has been employed as a classroom teacher by Respondent for eleven years and her evaluations have consistently rated her as "meets standards".

7. The successful applicant holds a masters degree in early childhood and has taught kindergarten for six years, four of them for Respondent. She holds valid West Virginia certification in Early Childhood, K-3, and her evaluations have always been classified as "meets standards".

#### Conclusions of Law

1. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer and promotion of school personnel so long as it is exercised reasonably and not in an arbitrary and capricious manner. Dillon v. Board of Education of the County of Wyoming, 351 S.E.2d 58 (W.Va. 1986); Skinner v. Harrison County Board of Education, Docket No. 17-88-114 (September 30, 1988).

2. Decisions of a county board of education affecting filling of vacant teaching positions must be based primarily upon the qualifications of the applicants with seniority having a bearing on the selection process when the differences in qualification criteria are insufficient to form a basis for an informed and rational decision. Dillon.

3. Under W.Va. Code §18A-4-8b(a), where one candidate for a position is clearly more qualified, the seniority of

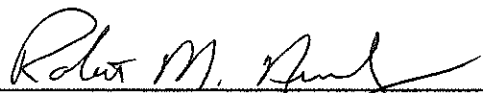


another applicant will not be sufficient to justify denying the position to the more qualified applicant. Myles v. Ohio County Board of Education, Docket No. 35-88-081 (August 1, 1988); Haines v. Mineral County Board of Education, Docket No. 27-87-275 (May 26, 1988); Kilmer v. Wayne County Board of Education, Docket No. 50-86-324 (April 14, 1987).

4. Respondent made an informed and rational decision that the successful applicant was more qualified for the position in question than was Grievant.

Accordingly, the grievance is **DENIED**.

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



ROBERT M. NUNLEY  
HEARING EXAMINER

**Date:** March 30, 1990