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

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CAROLYN WILLIAMS

v.

Docket No. 89-30-527

MONONGALIA COUNTY BOARD OF EDUCATION

DECISION

Carolyn Williams is employed by the respondent Monongalia County Board of Education (MCBE) as a Secretary III currently assigned to Summers and Cool Springs Elementary Schools. She and former co-grievant Barbara Hilling filed a level four grievance on September 6, 1989, alleging violation of W.Va. Code §18A-4-8b(b) when a less senior secretary was awarded a position in MCBE's Central Office Annex.<sup>1</sup> A level four hearing was conducted November 29, 1989,<sup>2</sup> and the parties agreed to complete briefing, including rebuttals, by January 9, 1990. Grievant

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<sup>1</sup>By letter to her counsel dated November 28, 1989, Barbara Hilling withdrew from the grievance.

<sup>2</sup>According to the record, the grievance was denied at levels one through three July 5, 1989, August 4, 1989, and September 5, 1989, respectively.

filed her fact/law proposals January 12, 1990, but MCBE did not submit any post-hearing materials.<sup>3</sup>

The parties essentially are in agreement about the underlying facts in this matter. In June 1989, MCBE posted a Secretary III position for Annex I with the qualifier, "Individual must meet requirements of adopted job description." MCBE's description for Secretary III includes the following Qualifications:

High school diploma or equivalent.

Good communication skills, above average vocabulary, grammar, spelling, and mathematical skills, and be able to proficiently follow written and oral instructions.

Understanding of appropriate budgetary and bookkeeping principles; ability to establish and maintain bookkeeping records of average complexity experience as a mechanic and/or

Ability to use computer for accounting/hot lunch/word processing.

Ability to compile and type complex materials and reports.

Awareness of and respect for confidential nature of school work.

Ability to compose correspondence requiring exercise of judgment and originality.

Three years work experience as a secretary, or have completed twelve years as a school secretary.

W.Va. Code §18A-4-8 defines Secretary III as:

personnel assigned to the county board of education office administrators in charge of various instructional, maintenance, transportation, food services, operations and health departments, federal programs or departments with particular responsibilities of

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<sup>3</sup> MCBE's position at level four remained unchanged from that at level two; therefore, the level two decision will be cited and referenced herein.

purchasing and financial control or any personnel who have served in a position which meets the definition of 'secretary II' or 'secretary III' herein for twelve years.

Grievant applied for the position. She has approximately twenty-three years seniority with MCBE, and all her evaluations of past service as a Secretary III have been good. Grievant's elementary school assignment involved working with a computer for word processing, bookkeeping and the school lunch program. In addition she has completed relevant skills courses in business law, accounting, income tax, word processing, keypunch and data processing. Recently, she had enrolled in a shorthand course.

MCBE did not dispute that the grievant was the most senior candidate for the contested position. However, she was not selected for the Secretary III vacancy and a sixteen-year employee, Marie Hart, also a Secretary III, was instead hired. Both grievant and Ms. Hart had attained the Secretary III classification through longevity. According to the level two decision, Jenifer Snider, the Administrator who supervises the Secretary III position in question, recommended Ms. Hart after interviewing the candidates and considering and comparing their relative skills and experiences. Essentially, Ms. Snider chose Ms. Hart because she felt the demands of her office required a superior candidate and she had first-hand knowledge of Ms. Hart's abilities. On the other hand, two Central Office administrators purportedly revealed to her that grievant had at times submitted inaccurate reports to MCBE's Central Office. Ms. Snider relied on those two "references" and concluded that

grievant's reporting duties "generally are not reviewed by the immediate supervisor" and gave them weight as examples of deficient performance on grievant's part.

Grievant learned from a newspaper account that Ms. Hart was employed for the Annex position. She dispatched a memo on or about July 6, 1989, inquiring of Ms. Snider why she had not been selected for the vacancy. Ms. Snider responded on July 14 and on a separate sheet listed several reasons for the non-selection, i.e., that grievant's computer skills were limited, that she had not kept up her typing skills and that her reports filed at the central office "have at times been incorrect." At level four grievant presented a July 24, 1989, letter written by C. Edmund Collins, Principal at her former elementary school position. Mr. Collins basically repudiated Ms. Snider's assessment of grievant's skills and reporting duties and stated that she "does all work quickly and accurately" and that all reports submitted to the central office were a principal's responsibility.<sup>4</sup>

Grievant contends she was entitled to the position in question because she was the most senior candidate, held the Secretary III classification and possessed good evaluations of past service as a Secretary III. In addition she argues that "boards of education may not require qualifications greater than

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<sup>4</sup>Mr. Collins reported that grievant had been his secretary from 1983 through 1989. He concluded that she "has always been efficient and a valuable employee."

those contained in the [statutory] definition" and cites Hyre v. Upshur Co. Bd. of Educ., Civil Action No. 88-AA-303 (Kanawha Co., W.Va., Oct. 2, 1989).<sup>5</sup> Grievant requests instatement to the position with back wages due to the longer employment term.

MCBE agrees that holding a classification title may qualify an applicant. It however argues that the requirements for a position may be expanded and cites Nelson v. Lincoln Co. Bd. of Educ., Docket No. 22-86-116 (Feb. 25, 1987) in support of the proposition.<sup>6</sup> MCBE's level two Conclusion of Law No. 9 states: "If applicants meet minimal qualifications, the most qualified must be selected. In deciding who is best qualified, 'consideration of the requirements of the specific position can correctly be utilized.'" The level two decision states Ms. Hart was selected because she "possessed superior qualifications when compared to any of the candidates, in relation to the posted job description." MCBE also determined, Findings of Fact No. 2,

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<sup>5</sup>Grievant submitted a copy of the case in her fact/law proposals. The Hyre decision rendered by the Kanawha County Circuit Court reversed the holding in Hyre v. Upshur Co. Bd. of Educ., Docket No. 49-88-127 (Nov. 7, 1988), that grievant Hyre was not qualified for a service position, Supervisor of Transportation, and ordered Hyre's instatement thereto. Due to determinations hereinafter made, no further comment is necessary about matters contained in the Hyre cases.

<sup>6</sup>MCBE is incorrect in its interpretation of Nelson. In that case a service position was posted, then abolished, and the issue of whether a board of education could expand qualifications beyond those set forth in the statutory definitions of service positions was not reached. Moreover, the case is distinguished because grievant Nelson did not hold the classification title for the position nor did he demonstrate competency to meet the classification's definition.

that "grievant[] failed to show that [she was] more qualified than the successful applicant."

Neither grievant's nor MCBE's arguments about "expanding the requirements" for a service position need be reached. For one, it is not clear whether grievant challenged the actual qualifications listed in the posting or MCBE's contention that qualifications can be expanded. In any event this contention is not relevant because MCBE did not base its non-selection of grievant on her not meeting the qualifications of the position. Moreover, the grievant's burden of proof in this matter is not whether she was the most qualified candidate for the Secretary III position at the Annex.

It is true as MCBE argues that a board of education does not have to hire the most senior applicant, service or otherwise, if he or she is not qualified for the position. However, MCBE did not contend that grievant was not qualified for the position, it asserted she was not the most qualified. Further, grievant was classified Secretary III, and there is no evidence of record that the duties required of the Annex Secretary III required skills other than those she possessed. MCBE clearly misapprehends W.Va. Code §18A-4-8b(b) and relevant law in this matter.

Code §18A-4-8b(b) requires that positions be filled on the basis of seniority, qualifications and evaluation of past service: "Qualifications shall mean that the applicant holds a classification title in [her] category of employment . . . and must be given first opportunity for promotion and filling

vacancies." Additionally, it is well-settled that a "most qualified" standard to fill a service position is contrary to law, Moon v. Wayne Co. Bd. of Educ., Docket No. 50-88-245 (April 20, 1989), and cases cited therein.

In additions to the foregoing determinations, the following specific findings of fact and conclusions of law are made.

#### FINDINGS OF FACT

1. Grievant, a Secretary III with twenty-three years' seniority in MCBE's employ, applied for a Central Office/Annex Secretary III position posted June 1989.

2. Ms. Marie Hart and grievant were two of three candidates interviewed for the position by Jenifer Snider, the administrator who would supervise the Annex secretary.

3. MCBE acknowledged that grievant was the most senior qualified applicant. Grievant's evaluations of past service were good or exceptional, Gr. Ex. 1.

4. Ms. Hart was recommended for the secretarial position at issue because she was considered more qualified than grievant. MCBE subsequently employed Ms. Hart on the basis that she was the most qualified applicant.

### CONCLUSIONS OF LAW

1. In filling a service personnel post, a county board of education in West Virginia must consider seniority, qualifications and evaluations of past service. W.Va. Code §18A-4-8b(b). Moon v. Wayne Co. Bd. of Educ., Docket No. 50-88-245 (April 20, 1989).

2. "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.

3. "Qualifications shall mean that the applicant holds a classification title in [her] category of employment . . . and must be given first opportunity for promotion and filling vacancies." Code §18A-4-8b(b).

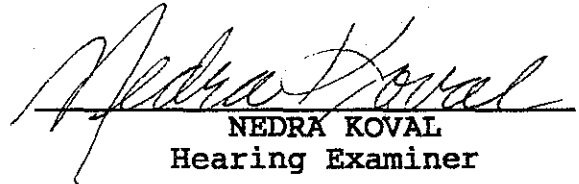
4. Grievant held the Secretary III classification and MCBE did not contend or argue she was not qualified for the Annex vacancy.

Accordingly, the grievance is **GRANTED**. Monongalia County Board of Education is **ORDERED** to immediately instate grievant in the secretarial position at issue in this case and to award appropriate back wages and benefits thereto.



Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Monongalia 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: March 15, 1990

  
NEDRA KOVAL  
Hearing Examiner