

**THE WEST VIRGINIA PUBLIC EMPLOYEES  
GRIEVANCE BOARD**

**TRACIE JANE WEST,  
Grievant,**

**v.**

**Docket No. 2017-1536-MarED**

**MARSHALL COUNTY BOARD OF EDUCATION,  
Respondent.**

**DECISION**

Grievant, Tracie Jane West, employed by the Marshall County Board of Education as a secretary/accountant, filed a Level One grievance form dated January 17, 2017, alleging the following:

I am filing this grievance for being denied the position of Secretary/Account, posted on January 4, 2017. I feel this is an attempt to circumvent my seniority rights, as specified in WV Code Section 8.

I was reclassified to the position of Secretary II/Accountant II in accordance with an arbitration decision dated March 13, 2013. The person who was awarded the position posted on January 10, 2017, in fact, was not even qualified to obtain the position of Secretary/Account until June 10, 2014 and never worked in this classification.

Seniority rights for school service personnel (18A-4-8b) specifically states: (b) Qualifications means the applicant holds a classification title in his or her category of employment as provided in this section and is given first opportunity for promotion and filling vacancies. (1) Regularly employed service personnel who hold a classification title within the classification category of the vacancy. (2) Service personnel who HAVE HELD a classification title within the classification category of the vacancy. (2e) for purposes of determining seniority under this section a service person's seniority begins on the date that he or she enters into the assigned duties. My assigned duties as Secretary/Accountant began on March 12, 2013 as awarded by an arbitration decision.

The position posted specifically identifies the opening as Secretary/Account

at John Marshall High School. After being awarded reclassification on March 12, 2013 and a lateral move from my position at Glen Dale Elementary School to Central Elementary School my seniority in this classification qualifies me for this position before the awarded applicant.

I was wrongfully denied the position posted, and in the matter of relief I request to be awarded this position and to made whole for any lost wages and benefits I might incur during the processing of my grievance.

During the processing of this grievance, and at all steps, I request that any mediator selected, shall not have had any history of employment with Marshall County Schools and is a mutually agreed upon mediator.

This grievance was denied at Level One by decision dated April 7, 2017. A mediation session was conducted on September 6, 2017. A Level Three hearing was conducted before the undersigned on December 18, 2017, at the Grievance Board's Westover office. Grievant appeared in person and by her representative, Joe E. Spradling, West Virginia School Service Personnel. Respondent appeared by Corey Murphy, Assistant Superintendent, and its counsel, Richard S. Boothby, Bowles Rice, LLP. This matter became mature for consideration upon receipt of the parties' fact/law proposals on February 12, 2018.

### **Synopsis**

Grievant and the successful applicant in this case applied for the contested John Marshall High School Secretary/Accountant position, and both were qualified for the position. The successful applicant had greater seniority in the secretary class title and greater overall county seniority than Grievant. Respondent awarded the multiclassified position by considering the applicant with the greatest seniority in the secretary class based upon its relevance to the needs of the position. Grievant did not meet her burden of proof

to demonstrate by a preponderance of the evidence that this action was arbitrary and capricious.

The following Findings of Fact are based upon the record of this case.

### **Findings of Fact**

1. Gievant currently works as a Secretary at Central Elementary School. Mindy Thomas held the Central Elementary School position immediately before Gievant.

2. Prior to working at Central Elementary School, Gievant worked as a Secretary at Glendale Elementary School and Washington Lands Elementary School.

3. A previous Level Three Decision examined Gievant's job duties as a Secretary at Washington Lands Elementary School and the smaller Glendale Elementary School and concluded that Ms. West "established by a preponderance of the evidence that a significant amount of her time is spent performing duties which more closely match those of the class title in W. VA. CODE § 18A-4-8(a)(5) of an Accountant II, rather than Secretary II." *West v. Marshall County Bd. of Educ.*, Docket No. 2013-1674-MarED (May 19, 2014).

4. As a result of the Grievance Board's decision, Gievant was reclassified as a Secretary/Accountant. Gievant's accountant seniority date is March 13, 2013. Gievant was working at Glen Dale Elementary at the time that decision was issued.

5. In the wake of this decision, while working at Central Elementary, Ms. Thomas was reclassified as a Secretary/Accountant at her request.

6. The Central Elementary School Secretary job was posted on March 28, 2016. This posting made no mention of the Accountant classification. Gievant bid on and was awarded the Central Elementary Secretary position on April 12, 2016.

7. After starting her Secretary position at Central Elementary School, Grievant did not challenge the posted classification of Secretary for this position.

8. Deadra Wills was working as a Secretary at John Marshall High School when the previous decision was issued. In light of this decision, Ms. Wills asked to be reclassified as a Secretary/Accountant. Ms. Wills was awarded the Accountant classification. Her accountant seniority date is June 10, 2014.

9. Ms. West held the position of Secretary at Central Elementary when the John Marshall High School Secretary/Accountant position was posted on or about January 3, 2017. Among others, Grievant and Deadra Wills, the successful applicant, applied for the contested John Marshall High School Secretary/Accountant position.

10. Ms. Wills has more overall county seniority than Grievant. Ms. Wills has more secretary seniority than Grievant. Grievant has more accountant seniority than Ms. Wills.

11. Cassie Porter, principal of John Marshall High School, indicated that the contested position had been a 215-day Secretary/Accountant position. It was held by Goldie Dunlap since 1996.

12. After the position was vacated by Ms. Dunlap, Principal Porter asked Superintendent Michael Hince to consider posting this position as a 260-day job. Superintendent Hince agreed to post this job as a 260-day position, as requested by Principal Porter.

13. Before the contested position was expanded to 260 days, there was no secretary in the high school during the summer months to greet visitors, carry out numerous secretarial functions, and assist the Principal.

14. On January 3, 2017, the Secretary/Accountant position at issue was posted.

15. On January 10, 2017, Deadra Wills was hired to fill the posted John Marshall High School Secretary/Accountant position.

16. The record provided no evidence demonstrating how Respondent had filled multiclassified secretary/accountant positions in the past with respect to seniority. In other words, whether Respondent focused on secretary seniority, accountant seniority, or overall county seniority when filling the multiclassified position.

### **Discussion**

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Board 156 C.S.R. 1 § 3 (2008); *Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19, 1988). "A preponderance of the evidence is evidence of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997). In other words, "[t]he preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

"County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. Nevertheless, this

discretion must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious.” Syl. Pt. 3, *Dillon v. Wyoming County Bd. of Educ.*, 177 W. Va. 145, 351 S.E.2d 58 (1986).

West Virginia school service personnel are considered for hire under W. VA. CODE § 18A-4-8(b)(1)-(7):

Qualified applicants shall be considered in the following order:

- (1) Regularly employed service personnel who hold a classification title within the classification category of the vacancy;
- (2) Service personnel who have held a classification title within the classification category of the vacancy whose employment has been discontinued in accordance with this section;
- (3) Regularly employed service personnel who do not hold a classification title within the classification category of vacancy;
- (4) Service personnel who have not held a classification title within the classification category of the vacancy and whose employment has been discontinued in accordance with this section;
- (5) Substitute service personnel who hold a classification title within the classification category of the vacancy;
- (6) Substitute service personnel who do not hold a classification title within the classification category of the vacancy; and
- (7) New service personnel.

It is undisputed that Grievant was classified as a secretary, not a secretary/accountant, at the time the position at issue was posted and filled. Ms. Wills held a secretary/accountant position at the time the contested position was filled, fitting the preference as a regularly employed service employee who held both classification titles within the classification categories of the vacancy. Respondent also points out that when a board of education hires a secretary/accountant, as between a secretary and a

secretary/accountant, the secretary/accountant should be given first consideration pursuant to W. VA. CODE § 18A-4-8(b)(1).

Respondent goes on to state that assuming, *arguendo*, Grievent was or should have been considered a secretary/accountant at Central Elementary at the relevant time, Respondent was still free to focus on secretary seniority or overall seniority when filling this job; both factors favored the successful candidate. The Grievance Board has long held that “[M]ulticlassification seniority can be measured by looking to the greatest seniority in one of the relevant classification categories of the position in question as long as the county board’s selection of the relevant classification was not arbitrary and capricious.” *Riffle v. Webster County Bd. of Educ.*, Docket No. 04-51-122 (July 30, 2004); *Miller v. Preston County Bd. of Educ.*, Docket No. 2011-0107-PreED (Aug. 9, 2011); *Bowyer v. Fayette County Bd. of Educ.*, Docket No. 2012-1352-FayED (Aug. 22, 2013).

The record established that Respondent added 45 working days to this position for the purpose of having a secretary in the high school during the summer months. As Respondent aptly points out for that reason alone, it would have been reasonable for Respondent to focus on secretary seniority when filling the position. Grievant failed to provide sufficient proof to establish by a preponderance of the evidence that Respondent acted in a way that was arbitrary and capricious in filling this position.

The following Conclusions of Law support the decision reached.

### **Conclusions of Law**

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules

of the W. Va. Public Employees Grievance Board 156 C.S.R. 1 § 3 (2008); *Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19, 1988).

2. Applicants for school service personnel decisions must be processed in the order found in W. VA. CODE § 18A-4-8b;

(b) Qualifications means the applicant holds a classification title in his or her category of employment as provided in this section and is given first opportunity for promotion and filling vacancies. Other employees then shall be considered and shall qualify by meeting the definition of the job title that relates to the promotion or vacancy, as defined in section eight of this article. If requested by the employee, the county board shall show valid cause why a service person with the most seniority is not promoted or employed in the position for which he or she applies. Qualified applicants shall be considered in the following order:

(1) Regularly employed service personnel who hold a classification title within the classification category of the vacancy;

(2) Service personnel who have held a classification title within the classification category of the vacancy whose employment has been discontinued in accordance with this section;

(3) Regularly employed service personnel who do not hold a classification title within the classification category of vacancy;

(4) Service personnel who have not held a classification title within the classification category of the vacancy and whose employment has been discontinued in accordance with this section;

(5) Substitute service personnel who hold a classification title within the classification category of the vacancy;

(6) Substitute service personnel who do not hold a classification title within the classification category of the vacancy; and

(7) New service personnel.

3. “County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. Nevertheless, this



discretion must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious.” Syl. Pt. 3, *Dillon v. Wyoming County Bd. of Educ.*, 177 W. Va. 145, 351 S.E.2d 58 (1986).

4. The Grievance Board has long held that “[M]ulticlassification seniority can be measured by looking to the greatest seniority in one of the relevant classification categories of the position in question as long as the county board’s selection of the relevant classification was not arbitrary and capricious.” *Riffle v. Webster County Bd. of Educ.*, Docket No. 04-51-122 (July 30, 2004); *Miller v. Preston County Bd. of Educ.*, Docket No. 2011-0107-PreED (Aug. 9, 2011); *Bowyer v. Fayette County Bd. of Educ.*, Docket No. 2012-1352-FayED (Aug. 22, 2013).

5. Grievant failed to prove by a preponderance of the evidence that Respondent acted in an arbitrary and capricious manner in filling the contested position.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. See W. VA. CODE § 6C-2-5. Neither the West Virginia Public Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. However, the appealing party is required by W. VA. CODE § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The Civil Action number should be included so that the certified record can be properly filed with the circuit court. See *also* 156 C.S.R. 1 § 6.20 (2008).

**Date: March 9, 2018**

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**Ronald L. Reece**  
**Administrative Law Judge**