GINGER K. GREEN, .

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Grievant, .

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v. .

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.

BOONE COUNTY BOARD OF EDUCATION, . Docket No. 94-03-060

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Employer, .

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and .

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CYNTHIA CHANDLER, .

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Intervenor. .

D E C I S I O N

Ginger Green (hereinafter Grievant) is employed as a substitute service employee by the Boone County Board of Education (hereinafter Board). She appealed to level four of the Grievance Procedure for Education Employees, West Virginia Code §18-29-1 et seq., on February 22, 1994, after having received adverse decisions at levels one and two. Grievant requested that this Decision be based upon the evidence developed at the lower levels. Both parties were offered the opportunity to submit briefs in support of their positions and the case became mature for decision afterreceipt of said briefs and the transcript from level two on or before June 13, 1994.

The following findings of fact are hereby deduced from the record:

Findings of Fact

1. Grievant worked as a secretary for the Board at Wharton Junior High School from approximately 1971 to June 10, 1990, when Wharton Middle School was closed.

2. After Wharton Middle School was closed, Grievant tendered a resignation letter dated April 5, 1990, to Superintendent of Schools Manuel Arvon. The Board accepted Grievant's resignation effective the end of the 1989-1990 school year.

3. Pursuant to letter dated October 24, 1991, Grievant requested that she be allowed to work for the Board as a substitute secretary in the Van - Wharton area. Grievant was employed as a substitute secretary on or about November 12, 1991.

4. In January 1992, a full-time secretarial position became vacant at Wharton Elementary School.

5. Grievant and Intervenor applied for this vacant position. Intervenor was chosen for the position because she has more substitute seniority than Grievant.

Discussion

Grievant raised two arguments with the filing of her initial grievance, the first of which can be disposed of quickly. Grievant contends that boards of education should be required to hire service personnel on the basis of the applicant with the highestqualifications and not solely based upon seniority. Therefore, she contends that she was the most qualified applicant for this position by virtue of her years serving as a full-time secretary. This argument has been rejected numerous times by this Grievance Board through its interpretation of W.Va. Code §18A-4-8b, and it is well-settled that service personnel positions are to be filled by county boards of education with the most senior, qualified applicant. Harrison County Bd. of Educ. v. Coffman, 430 S.E.2d 331 (W.Va. 1993); Dinger v. Mercer Co. Bd. of Educ., Docket No. 90-27-447 (Nov. 30, 1990). Further, "qualifications" is defined by Code §18A-4-8b as "the applicant holds the class title in his category of employment . . ." Upon a review of the record, there is no evidence to establish that the Board failed to follow the mandates of Code §18A-4-8b with regard to its decision to hire Intervenor for the position in question.

Grievant's second argument is also unpersuasive. She alleges that she should have been placed upon a preferred recall list at the end of the 1989-1990 school year; therefore, she should have been

given preference over Intervenor for the position at Wharton pursuant to Code §18A-4-8b. The language Grievant relies upon in support of this argument is as follows:

> A county board of education shall make decisions affecting promotion and filling of any service personnel positions of employment or job occurring throughout the school year that are to be performed by service personnel as provided in section [§ 18A-4-8], article four of this chapter, on the basis of seniority, qualifications and evaluation or past service.
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> Applicants shall be considered in the following order: (1) Regularly employed service personnel;
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> (2) Service Personnel whose employment has been discontinued in accordance with this section.
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> . . .

(Emphasis added). Option (2) above refers to service personnel who have lost employment due to a reduction in force.

Grievant contends that she should have been placed upon the preferred recall list at the end of the 1989-1990 school year when Wharton Junior High School was closed. She contends that she was forced to resign at that time because she was not physically or mentally capable of driving to another school to work as a secretary because she could not and cannot drive during the winter months. (See footnote 1) Neither the facts nor the law are supportive of Grievant's argument.

First, Grievant was not the subject of a reduction in force at the end of the 1989-1990 school year, therefore, she had no right to be placed upon any preferred recall list. Second, Grievant resigned her employment with the Board by letter dated April 5, 1990. At that point, she voluntarily terminated any employment relationship she may have maintained with the Board. Grievant was not "forced" to resign by the Board, but rather, she "forced"herself to resign due to her belief that she would not be able to transfer to another school to work. In conclusion, Grievant has failed to prove by a

preponderance of the evidence that the Board violated Code §18A-4-8b by not placing her upon a preferred recall list at the end of the 1989-1990 school year.

The foregoing discussion of the facts of the case and of the law applicable to those facts is hereby supplemented by the following appropriate conclusion of law.

Conclusion of Law

Grievant has failed to prove by a preponderance of the evidence that the Board violated W.Va. Code §18A-4-8b by hiring Intervenor for a vacant secretarial position at Wharton Elementary School during the 1992-1993 school year.

Accordingly, this grievance is hereby **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Boone 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 Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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ALBERT C. DUNN, JR.

Administrative Law Judge

July 11, 1994

Footnote: 1Much of the testimony offered at the level two hearing centered around Grievant's extreme fear of driving or riding as a passenger in a car over roads which have snow on them. Grievant provided no evidence to establish that she is physically unable to drive a motor vehicle nor did she provide any evidence to support a finding that she has been diagnosed as having any mental condition which would prohibit her from driving during the winter months. It is accepted that Grievant is simply afraid of driving over snowy or icy roads.