

**MARIE CRAMER & BARBARA CASTLE,**

**Grievants,**

**v. DOCKET NO. 95-39-400**

**PRESTON COUNTY BOARD OF EDUCATION,**

**Respondent.**

### **DECISION**

Grievants, Marie Cramer and Barbara Castle, are employed as Secretary IIIs by the Preston County Board of Education (Respondent). Grievants allege:

The Respondent posted an extracurricular assignment for a "GED Proctor" and filled the assignment with an applicant who is less senior than the Grievants. The Grievants allege a violation of West Virginia Code §18A- 4-8b and §18A-4-16.

As relief, Grievants seek "instatement into this assignment and retroactive wages and benefits."

Grievants were denied relief at Level I. At Level II, these grievances were consolidated and a hearing was held on August 29, 1995. Assistant Superintendent David Temple denied the grievance by a decision dated August 31, 1995. Pursuant to W.Va. Code §18-29-4(c), Level III was waived and this matter appealed directly to Level IV. [\(See footnote 1\)](#) At Level IV, on November 16, 1995, the day of the hearing, the parties agreed to submit the case on the record developed at the lower levels of the grievance procedure, with the right to file briefs. On February 23, 1996, the case became mature upon receipt of Respondent's brief. [\(See footnote 2\)](#)

The following Findings of Fact were derived from the record developed at the lower levels of the grievance procedure and the Stipulations of Fact submitted by the parties.

### **FINDINGS OF FACT**

1. Grievants are regularly employed by Respondent as Secretary IIIs. Tr. 4 and 12.

2. On July 10, 1995, Respondent posted a GED Proctor position, and extracurricular assignment, on an as needed basis at a rate of \$10.00 per hour. [\(See footnote 3\)](#) Tr. 3 and Ex. 1.

3. Grievants, Geraldine Polce, Shirley A. Cartwright, and Brenda Smith, the successful applicant, applied for the GED Proctor position. Ex. 2.

4. Ms. Polce withdrew her application. Tr. 23.

5. All applicants had a high school diploma, or GED equivalent, which was the only qualification for the position. Tr. 22, 24, 27 and 29.

6. Ms. Cartwright is a secretary employed by Respondent. Her seniority date is September 10, 1965. Tr. 20.

7. Grievant Castles' seniority date is January 15, 1968. Tr. 12.

8. Grievant Cramer has been employed as a Secretary for twenty-four years. Tr. 4.

9. Ms. Smith is also employed by Respondent as a Secretary III. Her seniority date is July 28, 1981. Tr. 9.

10. Grievants and Ms. Smith "hold satisfactory or better evaluations of their work performance as regularly-employed secretaries." Stipulation of Fact No. 1.

11. Since all of the applicants met the minimum requirement of having a high school diploma or equivalent, Respondent devised seven questions related to the GED Proctor position and evaluated the written responses of each applicant to those questions. Tr. 24 and 27.

12. Respondent determined all of the applicants had zero seniority since none of the applicants had any experience as a GED Proctor. Tr. 22 and 27.

13. Ms. Smith was selected for the GED Proctor position because (1) she "had most recently maybe worked with [the GED program]" and (2) Principal Spangler wanted her selected for the GED position. Tr. 27.\_

### **DISCUSSION**

The parties agree that the GED Proctor position is an extracurricular position. W.Va. Code §18A-4-16(1) provides, in pertinent part:

extracurricular duties shall mean, but not be limited to, any activities that occur at times other than regularly scheduled working hours, which include the instructing, coaching, chaperoning, escorting, providing support services or caring for the needs of students, and which occur on a regularly scheduled basis.

Furthermore, W.Va. Code §18A-4-16(5) provides, in pertinent part:

The board of education shall fill extracurricular and supplemental school service personnel assignments and vacancies in accordance with section eight-b, article four of this chapter: Provided, That an alternative procedure for making extracurricular and supplemental school service personnel assignments within a particular classification category of employment may be utilized if the alternative procedure is approved both by the county board of education and by an affirmative vote of two thirds of the employees within that classification category of employment.

In this case, the record is silent as to any alternative procedure for making extracurricular assignments. Therefore, W.Va. Code §18A-4-8b applies. It states, in pertinent part:

A county board of education shall make decisions affecting promotion and filling of any service personnel positions of employment or jobs occurring throughout the school year that are to be performed by service personnel as provided in section eight, article four of this chapter, on the basis of seniority, qualifications and evaluations of past service.

Therefore, the hiring decision should be based on a combination of (1) seniority, (2) qualifications, and (3) evaluations of past service. ([See footnote 4](#)) In this case, Respondent erred when it determined all of the applicants had zero seniority since none of the applicants had any experience as a GED Proctor. W.Va. Code §18A-4-15(g) in defining seniority provides, in pertinent part:

Seniority acquired within different classification categories shall be calculated separately: Provided, That when a school service employee makes application for a position outside of the classification category currently held, if the vacancy is not filled by an applicant within the classification category of the vacancy, the applicant shall combine all regular employment seniority acquired for the purposes of bidding on the position.

W.Va. Code §18A-4-8b defines qualifications, the second factor which must be considered in filling a school service personnel position. It states, in pertinent part:

Qualifications shall mean that the applicant holds a classification title in his category of employment as provided in this section and must be given first opportunity for promotion and filling vacancies. Other employees then must be considered and shall qualify by meeting the definition of the job title as defined in section eight, article four of this chapter, that relates to the promotion or vacancy. If the employee so requests, the board must show valid cause why an employee with the most seniority is not promoted or employed in the position for which he applies. Applicants shall be considered in the following order:

- (1) Regularly employed service personnel;
- (2) Service personnel whose employment has been discontinued in accordance with this section;
- (3) Professional personnel who held temporary service personnel jobs or positions prior to the ninth

day of June, one thousand nine hundred eighty-two, and who apply only for such temporary jobs or positions;

(4) Substitute service personnel; and

(5) New service personnel.

In regard to qualifications the record is clear, all applicants had identical qualifications. All applicants were regular employees of Respondent applying for a position outside of their respective classification, and had high school diplomas or equivalent.

The final step of the analysis under W.Va. Code §18A-4-8b is the consideration of each applicant's past service evaluations. Because Ms. Smith is only equal to Grievants in past service evaluations and qualifications, she should not have been offered the position as Grievants have more seniority. The record is silent as to the past service evaluations of Ms. Cartwright. Therefore, selection for the GED Proctor position is between the Grievants. The more senior grievant, Grievant Castle, should have been offered the position since Grievants are equal in the other two categories.

In summary, after properly considering the three factors mandated by W.Va. Code §18A-4-8b, Grievants proved by a preponderance of the evidence that Respondent should have offered the GED Proctor position to Grievant Castle. Based on the evidence in the record, Grievant Castle is qualified for the GED Proctor position and had the most seniority of the applicants with satisfactory or better performance evaluations.

In addition to the foregoing findings of fact and narration, it is appropriate to make the following conclusions of law.

### **CONCLUSIONS OF LAW**

1. In a nondisciplinary action, Grievants have the burden of proving their case by a preponderance of the evidence. Gwilliam v. Preston County Bd. of Educ., Docket No. 95-39-255 (Dec. 22, 1995).

2. A county board of education must exercise its discretion in personnel matters in a manner which is not arbitrary or capricious. Lilly v. Summers County Bd. of Educ., Docket No. 90-45-040 (Oct. 17, 1990), citing State ex rel. Hawkins v. Tyler County Bd. of Educ. and Roy Truby, State Superintendent, 375 S.E.2d 911 (W.Va. 1981).

3. While W.Va. Code §18A-4-8b mandates that seniority is a factor to be considered, it alone is not the sole factor. Qualifications and past service evaluations of the service personnel applicant

must also be considered. See, Ohio County Bd. of Educ. v. Hopkins, 193 W.Va. 600, 457 S.E.2d 537 (1995); Harrison County Bd. of Educ. v. Coffman, 430 S.E.2d 331 (W.Va. 1993); Groves v. Randolph County Bd. of Educ., Docket No. 95-42-542 (Mar. 15, 1995).

4. Grievants proved by a preponderance of the evidence that Respondent should have offered Grievant Castle the GED Proctor position.

Accordingly, the grievance of Grievant Cramer must be DENIED, and the grievance as to Grievant Castle is GRANTED. Respondent is **ORDERED** to instate Grievant Castle into the position held by Ms. Smith, within (30) days of receipt of this decision. It is further **ORDERED** that Grievant Castle shall also be awarded all back pay and any other benefits to which she may be entitled, effective the same date as the hiring of Ms. Smith.

Any party may appeal this DECISION to the Circuit of Kanawha County or to the Circuit Court of Preston 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 LawJudges 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.

DATED :March 27. 1996                      JEFFREY N. WEATHERHOLT  
ADMINISTRATIVE LAW JUDGE

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[Footnote: 1](#)

*The record is unclear as to which party appealed to Level IV.*

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[Footnote: 2](#)

*The record in this case consists of the following: (1) the Level I and IV grievance forms; (2) the Level I decision as to Grievant Castle; (3) the Level II transcript; (4) the Level II decision; (5) four exhibits admitted at Level II; (6) Stipulations of Fact and (7) briefs filed by Grievants and Respondent. The Undersigned considered all matters of record.*

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[Footnote: 3](#)

*The record is unclear as to the duration of this position.*

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[Footnote: 4](#)

See, Ohio County Bd. of Educ. v. Hopkins, 193 W.Va. 600, 457 S.E.2d 537 (1995); Harrison County Bd. of Educ. v.

Coffman, 430 S.E.2d 331 (W.Va. 1993); Groves v. Randolph County Bd. of Educ., Docket No. 95-42-542 (Mar. 15, 1996).