GRACE THOMPSON,

Grievant,

v. **Docket No. 97-BOD-117**

BOARD OF DIRECTORS/WEST

VIRGINIA STATE COLLEGE,

Respondent.

D E C I S I O N

Grievant, Grace (Sandi) Thompson, grieves the failure of West Virginia State College ("WVSC") to select her for a Program Assistant I ("PA I") position in the Music and Art Departments. She requests as relief that she be placed in the position and receive all benefits to make her whole. This grievance was denied at all lower levels. A Level IV hearing was held on May 7, 1997. This case became mature for decision on August 15, 1997, the deadline for the parties' proposed findings of fact and conclusions of law. (See footnote 1)

The procedural history of this case before reaching Level IV is confusing and raises multiple questions about the treatment afforded Grievant before she retained counsel. These actions will be noted in the Findings of Fact.

The undersigned Administrative Law Judge makes the following Findings of Fact based on the record as a whole.

Findings of Fact

1. Grievant has been a full-time employee of WVSC since January 16, 1991. For most of this time she was the secretary for the Modern Language Department ("MLD"). She is currently classified as an Administrative Secretary and works as a secretary for the Criminal Justice Department ("CJD") in addition to her work with the MLD.

2. In September 1995, the secretary in the Art and Music Departments ("Department") left, and in October 1995, Ms. Glenda Simon was selected to fill this temporarily vacant position from the pool

of applicants maintained by WVSC. At the time she was hired, the Department did not know if she could perform, or had previously performed, many of the assigned duties.

3. Ms. Simon was a competent worker and after some training in specifics, such as grant writing, the Department was very pleased with her performance.

4. In June 1996, the Chairpersons for the Department, Dr. Charlotte Giles (Music) and Dr. Reidun Ovrebo (Art) requested Ms. Simon be placed in the position permanently.

5. As the position could not be filled without posting, the position was posted internally on July 5, 1996. However, the position was not posted as a Secretary's position, but as a PA I; a higher pay grade than a Secretary.

6. Grievant wished to apply for the position, but asked Barbara Rowell, the Director of Human Resources, if this was a “real” vacancy, or if the applicant had already been chosen. Ms. Rowell replied the position was open to all applicants.

7. Grievant and another regular, classified employee applied for the position.

8. Grievant's application was dated July 16, 1996. 9. In August 1996, The Board of Directors of the State College System adopted “Title 131, Procedural Rule, State College System of West Virginia," Series 31. This Policy became effective September 5, 1996. The key paragraph reads as follows:

> Pursuant to W. Va. Code Section 18B-7-1(d), non-exempt classified employees who apply for and meet the minimum qualifications as determined by the institutional human resources director or some other designee of the president for a posted non-exempt position within an institution and are currently employed at the institution shall be hired into the posted position prior to hiring someone from outside the institution.

10. Drs. Giles and Ovrebo reviewed the applications of Grievant and the other internal applicant and decided they were not minimally qualified for the position. These internal applicants were not initially given an interview, and they were judged only on their applications for the position. Although Grievant had submitted a resume with her application, it appears that this document was not considered in the review conducted by Drs. Giles and Ovrebo. Drs. Giles and Ovrebo again recommended that Ms. Simon be hired to fill the position.

11. An outside applicant, such as Ms. Simon, cannot be considered for the position until the internal applicants have been reviewed and found not minimally qualified for the position.

12. On August 13, 1996, after she had applied for the PA I position, Grievant was required by

Dr. Barbara Oden, Vice-President for Academic Affairs, to work for two separate departments on different ends of the campus. This is Grievant's current assignment as reflected in Finding of Fact 1. Grievant began this new assignment on August 14, 1996. 13. Although Grievant had not done some of the tasks she would be required to perform in the new position with CJD, Dr. Oden assumed she could learn to perform them. (See footnote 2)

14. Because WVSC usually grants interviews to internal candidates, Ms. Rowell requested Drs. Giles and Ovrebo interview the internal candidates.

15. WVSC's President, Dr. Hazo Carter has never designated anyone to determine whether applicants are minimally qualified, thus, that duty falls to Ms. Rowell pursuant to Series 31 § 5.1, as stated in Finding of Fact 9. (See footnote 3)

16. Ms. Rowell, using the minimum qualifications identified in the PA I job description, determined that both Grievant and the other applicant were minimally qualified for the position and informed Drs. Giles and Ovrebo of this finding.

17. The job description for a PA I states the characteristic duties as:

* Maintains logs, researches and analyzes data for reports.

* Performs financial, statistical, and special assignments related to the specific program.

* Maintains current information on policies and programs and processes routine matters within established policies.

* Receives and responds to correspondence.

* Provides information and advice to appropriate individuals relative to program or activity.

* May coordinate logistical arrangements for conferences or programs.

* Coordinates scheduling of appointments and meetings.

* May coordinate press releases pertaining to a program or activity.

* Prepares memoranda, reports, and other documents of a sensitive or confidential nature from a rough draft to a final form.

18. The Knowledge/Skills/Abilities required for the PA I position are: “knowledge of office rules, procedures and operations”; “ability to type with speed and accuracy”; “ability to operate office equipment and machines”; “knowledge of vocabulary, grammar, punctuation and spelling”; and “ability to organize and coordinate activities”. The posting also explained that “the knowledge, skills,

and abilities listed above are typically acquired through the following levels of education and experience. However, any equivalent combination of education and/or experience is acceptable which provides an applicant the listed knowledge, skills, and abilities and the capability to perform the essential functions of the job."

19. The educational requirement for a PA I position is an associate degree in business or a related field. As stated in Finding of Fact 18, it is typical to substitute similar experience for the educational requirement.

20. The posting in this case paralleled the above stated job description and noted "[t]his position provides office assistance and clerical skills necessary to ensure the efficient operation and support of these areas." Additionally, under knowledge, skills, and abilities, the posting noted the "[s]uccessful candidate must possess computer knowledge and the ability to operate various programs, ie. Word Perfect, Quicken."

21. Although Grievant did not possess an associate degree, she met the educational and experience requirements identified in the job posting, through substitution of experience. 22. Grievant had the prerequisite Knowledge/Skills/Abilities to perform the PA I position, and this data was discernible from her application.

23. Drs. Giles and Ovrebo then interviewed Grievant in November 1996, only because they felt they were required to do so by Human Resources. (See footnote 4) Drs. Giles and Ovrebo testified they did not know why they were required to interview Grievant, because they had already decided who they wanted to fill the position. This interview, on November 13, 1996, lasted approximately ten minutes. During this brief period, Grievant was asked a few questions, and Drs. Giles and Ovrebo explained the duties of the position. Drs. Giles and Ovrebo found Grievant was not minimally qualified for the position.

24. After the interview with Drs. Giles and Ovrebo, Ms. Rowell repeatedly asked Drs. Giles and Ovrebo for feedback and a report on their decision.

25. On November 18, 1996, Grievant received a phone call, and on November 19, 1996, a letter from Ms. Rowell that congratulated her on her promotion to a PA I with the Department. Her transfer was to be effective on December 16, 1996.

26. Ms. Rowell wrote this letter at the direction of Mr. Nick Wounaris, the Assistant Vice President for Administrative Affairs and the Director of Support Services for WVSC. The authority to

make the final decision on hiring must come from President Carter, and he had not been contacted before Grievant received the promotion notice.

27. On or about November 20, 1996, after Ms. Rowell sent the promotion letter, she received a memo from Drs. Giles and Ovrebo stating in detail why Grievant was notminimally qualified for the position. Multiple discussion followed among the various administrators at WVSC. Grievant was not included in any of these discussions.

28. The memo referred to in Finding of Fact 26 indicates Drs. Giles and Ovrebo believed Grievant could not perform most of the duties identified in the above job description and stated:

> Although we are sure Ms. Thompson has many excellent secretarial skills, we found her unsuited to accommodate the unique needs inherent to our departments. Her personality does not appear to be compatible with the demands of artistic, high energy people, and during her interview on Wednesday, November 13, it was revealed that she was inexperienced in areas essential to the job as program assistant for the departments of Music, Art and Culture activities. (See footnote 5)
>
> **Analysis of Data:** Listed in the job description, it is expected that our program assistant is capable of analyzing provided data and independently producing narrative reports. Several of our faculty members consistently deliver their material to be typed in this raw form, and several of these reports are extensive and elaborate. Ms. Thompson stated that she has no experience with such work procedures, and on direct inquire (sic) about her potential capability, she skirted the issue.
>
> **Grant Writing and Contracts:** The writing of grants and West Virginia contracts constitutes a significant aspect of Cultural Activities work. Ms. Thompson stated that she had no experience with these procedures.
>
> **Dead Lines (sic) and Work Pressure:** Working in the artworld (sic) implies unusual schedules, and our departments do not and can not (sic) operate on a 9 to 5 basis. Our often very short deadlines can not (sic) be fulfilled on a “take care of as it comes in”basis (sic), as implied by Ms. Thompson. Expressing no commitment or enthusiasm to accommodate the high energy activities inherent to our departments, we can not (sic) envision how she could possibly fulfill our deadlines and other department functions, as the willingness and ability to work irregular hours is essential to the job.
>
> **Computer Programs:** Our substantial budgets-totally exceeding $100,000- are managed on a computer program with which Ms. Thompson has no experience.
>
> While we consider Ms. Thompson's inexperience with our particular computer program a minor problem, her inexperience with data analysis, grant and contract writing, along with her apparent unwillingness or inability to guarantee the fulfillment of high pressure demands must be considered deficiencies in consideration for this particular

position.

29. At hearing, Drs. Giles and Ovrebo explained they were especially concerned that Grievant could not change raw data into a written report (such as preparing an Annual Report), had no knowledge of Quicken, could not maintain the necessary information about various grant monies, budgets, and cash flow, was unable to prioritize her work duties, and would not be available to work different hours when needed.

30. Although Drs. Giles and Ovrebo interviewed Grievant together, they gave conflicting answers about what information they had with them at the time of the interview. Dr. Ovrebo stated she had Grievant's PIQ (Position Identification Questionnaire), and Dr. Giles indicated she did not have this document and should not have this document. Neither was clear about whether they had Grievant's resume or whether they reviewed it. Both agreed they had her application. It was unclear if they had actually read this document.

31. Grievant's work with the MLD and CJD consisted of extensive computer work, especially transforming hand written notes into proper form. She also took dictation, ordered supplies, sent mass mailings, filed materials, served as the key operator for the Lanier Copier, and designed department brochures and newsletters. The information about her work with MFL and various committees and Faculty Senate was on Grievant's resume. (See footnote 6) Because she was in two different places during the day, detailed organizationwas required, and her Supervisors gave her free rein to set guidelines to maintain and organize her work. As an example of this organization and prioritizing, Grievant had already begun both departments' Annual Reports and had started on the course syllabi for the next semester. She stated with the amount of work she had to do, this type of pre- planning was necessary to maintain the flow.

32. Drs. Giles and Ovrebo decided Grievant could not prioritize her work because she told them she “takes the work as it comes in.” They did not clarify this statement because they felt it was very clear that it demonstrated Grievant's inflexibility and inability to handle an emergency situation.

33. Although Grievant had not utilized the Quicken program, she had worked as a bookkeeper for many years, and had done all the activities required in this process. Additionally, Grievant had worked for H & R Block and had prepared computerized tax forms. This data was available on Grievant's application and discussed in more detail in her resume.

34. The undersigned Administrative Law Judge takes administrative notice that Quicken is a user friendly computer program to assist individuals with all levels of math and bookkeeping abilities to track monies.

35. On November 27, 1996, Mr. Wounaris wrote to payroll stating Ms. Simon was to be hired for the PA I position, and the effective date of this hiring was November 16, 1996. 36. On December 2, 1996, Grievant was called to the Human Resources Office and told she did not get the position because Drs. Giles and Ovrebo had decided she was not minimally qualified.

37. On or about December 4, 1996, Grievant met with Mr. Wounaris to discuss the position and directions for filing a grievance. Mr. Wounaris and Ms. Rowell told Grievant to file her Level I grievance with Dr. Giles as she was the individual who did not recommend her hiring.

38. On December 5, 1996, Grievant completed her grievance and left a copy with Mr. Wounaris. This grievance outlined the events leading up to the filing of the grievance and Grievant's failure to receive the position.

39. Grievant attempted to contact Dr. Giles multiple times without success. Finally, on December 10, 1996, Dr. Giles did return Grievant's calls, and Grievant explained she needed to discuss her grievance with her and Dr. Ovrebo. Dr. Giles indicated she had to go out of the country and could not discuss the grievance until she returned.

40. On or about December 12, 1996, Grievant contacted Dr. Ovrebo. Grievant explained she needed to discuss her grievance with her and Dr. Giles. Dr. Ovrebo stated there was nothing for them to talk about. She did not render a Level I decision; however, she sent Dr. Oden a copy of the December 12, 1996 letter from Grievant in which she thanked Dr. Ovrebo for returning her (Grievant's) call about the grievance.

41. After Dr. Giles returned from semester break, on or about January 10, 1997, she still did not call Grievant, even though Grievant continued to leave messages. Grievant had kept Ms. Rowell updated and asked her what else she should do. Ms. Rowell directedher to write a letter, which Grievant did. This letter dated January 14, 1997, stated: “I am writing this morning at the request of Ms. Barbara Rowell, Director of Human Resources, to request an appointment to discuss the above grievance. My number is 3254/morning and 3066/afternoon.” Attached to this letter was a copy of the grievance form. (See footnote 7)

42. Grievant received no response to this letter and again contacted Human Resources to seek

guidance.

43. On January 23, 1997, Grievant received a certified memo from Ms. Rowell stating that pursuant to W. Va. Code § 18-29-3 she had won her grievance by default and would be placed in the position effective February 1, 1997.

44. Unbeknownst to Grievant, multiple conferences followed this memo. On January 27, 1997, Grievant was called to the Human Resources Office. (See footnote 8) Grievant was required to sign a letter stating she would meet with Dr. David Wohl, Dean of Arts and Humanities to discuss her grievance at Level I. (See footnote 9) She was told she must restart her grievance. Grievant did not file a new grievance.

45. Before Grievant could call Dr. Wohl as directed, he called Grievant on January 27, 1997, and arranged a meeting for January 28, 1997. 46. Dr. Wohl informed Grievant she had filed her grievance with the wrong person, and she should have known to file it with him as she was required to request a conference with the ”immediate supervisor “ and an “immediate supervisor” was the person with administrative authority to resolve the grievance, and that he was the individual with whom she was required to file her grievance. (See footnote 10)

47. Dr. Wohl also indicated Drs. Giles and Ovrebo did not know a grievance had been filed against them, and that is why they did not answer. (See footnote 11) Dr. Wohl incorrectly informed Grievant that if the grievance was not resolved at this level, the next step would require Grievant to meet with President Carter. Grievant saw this remark as threatening.

48. Drs. Giles and Ovrebo knew or should have known, in December 1996, that Grievant had filed a grievance over her non-selection and was trying to contact them to discuss this issue.

49. Failure of Respondent to respond properly to this grievance was wrongly blamed on Grievant because she did not file the grievance with the “proper” administrator.

50. By memo dated January 28, 1997, Dr. Wohl denied the grievance stating Grievant was not minimally qualified for the position. Dr. Wohl stated Grievant had “weak . . . intermediate computer skills (database, management, graphics and spreadsheet) and [weak] conflict management [skills] (handling job stress and the difficulty inherent withserving two supervisors).” He also indicated Grievant had “no to little experience in dealing with several aspects of the job required in the Cultural Activities area including working directly with vendors and preparing contracts and grants.”

51. Grievant then wrote to Dr. Carter to go to the next level of the grievance procedure. A

Level II Hearing was conducted by Dr. Charles T. Ledbetter (See footnote 12) on February 5, 10,11, and 14, 1997.

52. On February 19, 1997, Dr. Ledbetter sent his Decision to President Carter recommending the denial of the grievance. On February 21, 1997, President Carter affirmed this Decision. This Decision concluded WVSC "[d]id not default in responding to Ms. Thompson's grievance within the time frame allowed by code (sic)" because she did not file her grievance with any "of the appropriate parties who could begin action to address the grievance . . . ."

Issues

There are several key issues raised by this grievance. One is whether the Level II Grievance Evaluator's Decision that WVSC responded within the timelines, and thus, there was no default at Level I, is correct. (See footnote 13) Other key issues to address in this grievance arewhether Grievant is minimally qualified for the position in question, and whether she is then entitled to the position pursuant to W. Va. Code § 18B-7-1(d). Grievant argues she is minimally qualified, and this fact was verified by Ms. Rowell, the individual who is designated by statute to make these decisions.

Respondent argues there was no default, Grievant is not minimally qualified, and the determination of whether an applicant is minimally qualified is to be made by the supervisor in the department where an employee will work. (See footnote 14)

Discussion

In a grievance of this nature, the grievant has the burden of proving each of the allegations in her complaint by a preponderance of the evidence. W. Va. Educ. & State Employees Grievance Bd. Procedural Rule 4.19, 156 C.S.R. 1 (1996); Carter v. Bd. of Directors, Docket No. 95-BOD-148 (Aug. 29, 1995).

Given that Grievant's difficulty began at the start of the grievance, the alleged default could be seen as happening at either the informal conference level or at Level I. The informal conference must take place within ten days of the request, and a response to the grievance must be made within ten days of the conference. After a grievance is filed at Level I, the supervisor must render a decision within ten days. W. Va Code 18-29-4(a).

W. Va. Code §18-29-3 (a) states:

> If a grievance evaluator required to respond to a grievance at any level fails to make a required response in the time limits required in this article, unless prevented from doing so directly as a result of sickness or illness, the Grievant shall prevail by default.

It is clear WVSC failed to meet the timelines stated in the grievance procedure no matter whether the potential default is seen as occurring at the informal conference level or as occurring at the Level I grievance level. Given the facts of the case, and that this Grievant had completed a grievance form, it is more likely that the default occurred at Level I. Additionally, the undersigned Administrative Law Judge finds this pro se Grievant did not knowingly waive her right to this default, as it is clear she thought she had no choice in the matter, and indeed she was given no choice by WVSC. However, since default judgements are not favored by the law, the merits of this case will also be discussed.

Grievant argues that if she meets the minimum qualifications for the position of PA I, she is entitled to the appointment prior to a new employee being hired, as provided by W. Va. Code §18B-7-1(d), which states:

> [a] nonexempt classified employee . . . who meets the minimum qualifications for a job opening at the institution where the employee is currently employed, whether the job be a lateral transfer or a promotion, and applies for same shall be transferred or promoted before a new person is hired unless such hiring is affected by mandates in affirmative action plans or the requirements of Public Law 101-336, the Americans with Disabilities Act. If more than one qualified, nonexempt classified employee applies, the best-qualified nonexempt classified employee shall be awarded the position. In instances where such classified employees are equally qualified, the nonexempt classified employee with the greatest amount of continuous seniority at that state institution of higher education shall be awarded the position. A nonexempt classified employee is one to whom the provisions of the federal Fair Labor Standards Act, as amended, apply.

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W. Va. Code § 18B-7-1(d) was enacted by the West Virginia Legislature in 1993, providing rights to classified nonexempt employees that supersede earlier institutional policies governing transfer rights. See generally Morgan v. Pizzino, 163 W. Va. 454, 256 S.E.2d 592 (1979). Further, use of the word "shall" in regard to transfers or promotions in § 18B-7-1(d) connotes mandatory action rather than discretionary action. See Marion County Bd. of Educ. v. Bonfantino, 179 W. Va. 202, 204, 366 S.E.2d 650, 652 (1988); Terry v. Sencindiver, 153 W. Va. 651, 171 S.E.2d 480 (1969). Therefore, if Grievant is minimally qualified, she must be awarded the position.

Grievant also argues that her legal position is supported by Board of Directors Policy 128 C.S.R. 31 § 5.1 which provides in pertinent part:

> 5.1 Pursuant to W.Va. Code §18B-7-1(d), non-exempt classified employees who apply for and meet the minimum qualifications as determined by the institutional human resources director or other designee of the president for a posted non-exempt position within an institution and are currently employed at the institution shall be hired into the posted position prior to hiring someone from outside the institution.

Again, it is clear from the above-stated rule that Grievant, as an internal candidate, must be given the position if she meets the minimum qualifications. It is also clear from 128 C.S.R. 31 § 5.1 that the Director of Human Resources, in this case Ms. Rowell, is the individual to make that determination if the President has not specifically directed someone else to perform these duties. President Carter has not made such a designation; thus, these duties fall to Ms. Rowell. Ms. Rowell found Grievant to be minimally qualified. "An agency's decision by 'appropriate personnel as to which candidate is the most qualified for a position vacancy will be upheld unless shown to be arbitrary or capricious or clearly wrong.' Sloane v. West Virginia Univ., Docket No. BOR-88-108 (Sept. 30, 1988), as citedin Bourgeois v. BOT/Marshall Univ., Docket No. 93-BOT-268A (Mar. 29, 1994)." Rumer v. Bd. of Trustees/Marshall Univ., Docket No. 95-BOT-064 (May 31, 1995). WVSC's argument that Ms. Rowell is not the correct person to judge who is minimally qualified must fail. (See footnote 15) Additionally, as the above-discussion demonstrates, Grievant is a minimally qualified, internal candidate, and as such, pursuant to W. Va. Code § 18-7-1(d), she must be placed in the position before an external candidate.

The above discussion will be supplemented by the following Conclusions of Law.

Conclusions of Law

1. In a grievance of this nature, the grievant has the burden of proving each of the allegations in her complaint by a preponderance of the evidence. W. Va. Educ. & State Employees Grievance Bd. Procedural Rule 4.19, 156 C.S.R. 1 (1996); Carter v. Bd. of Directors, Docket No. 95-BOD-148 (Aug. 29, 1995).

2. A default occurs when a grievance evaluator at any level fails to respond in the timelines specified by W. Va. Code § 18-29-3(a).

3. Grievant has proven that WVSC did not respond to the grievance within these stated timelines, and that a default occurred. 4. Under the facts of this case, W. Va. Code §18B-7-1(d) requires WVSC to hire a minimally qualified, internal candidate to fill the posted position of PA I over

an external candidate. .

5. "An agency's decision by 'appropriate personnel as to which candidate is the most qualified for a position vacancy will be upheld unless shown to be arbitrary or capricious or clearly wrong.' Sloane v. West Virginia Univ., Docket No. BOR-88-108 (Sept. 30, 1988), as cited in Bourgeois v. BOT/Marshall Univ., Docket No. 93-BOT-268A (Mar. 29, 1994)." Rumer v. Bd. of Trustees/Marshall Univ., Docket No. 95-BOT-064 (May 31, 1995).

6. Pursuant to 128 C.R.S. 31 § 5, the appropriate decision-maker to decide whether Grievant was minimally qualified for the position was WVSC's Director of Human Resources, Barbara Rowell.

7. Because Grievant was found to be minimally qualified by the appropriate decision-maker, WVSC acted in an arbitrary and capricious manner in refusing to place Grievant in the PA I position.

Accordingly, this grievance is **GRANTED**. Respondent is directed to place Grievant in the PA I position with a starting date of November 18, 1996. Grievant is to made whole in every way including, but not limited to, seniority in the position, back pay, and interest. Respondent is directed to treat Grievant in a respectful manner, and to train Grievant to perform the duties with which she is not familiar.

Any party may appeal this decision to the Circuit Court of Kanawha 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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JANIS I. REYNOLDS

Administrative Law Judge

Dated: April 30, 1998

Footnote: 1

Grievant was represented by Mr. H. H. Roberts and Respondent by Mr. Sam Spatafore.

Footnote: 2

This testimony was discerned from Dr. Oden's statements made in the Level II transcript. Discernment was required because Dr. Oden's answers were non-responsive to the questions asked by Grievant, but appeared to reflect, that indeed, Dr. Oden had made these assumptions, because she felt an Administrative Secretary who was qualified for the position could learn to perform any duties required by the position.

Footnote: 3

Dr. Oden indicated she was sure President Carter would assign this duty to her, but she has never received any written notice that she is to assume these duties instead of Ms. Rowell.

Footnote: 4

At some point in time the other candidate removed her name from consideration and applied for and received another position at WVSC.

Footnote: 5

Dr. Giles is also responsible for planning various cultural events for WVSC.

Footnote: 6

Because Grievant did not work with the CJD when she applied for the PA I position, this information was not on her application; however, Grievant had been in this positionapproximately three months at the time of the interview.

Footnote: 7

Dr. Giles testified this was the first time she knew there was a grievance filed "against her."

Footnote: 8

Either at this time, or at the time Grievant was told she did not have the position, because Drs. Giles and Ovrebo did not find her minimally qualified, Ms. Rowell indicated that it was just as well Grievant was not in the position as she would be out in six months after the probationary period was over.

Footnote: 9

As this letter was not submitted into evidence, it is unclear exactly what it said. Apparently, Grievant was not informed she did not have to sign this document and what effect the signing of this document would have on a default judgement.

Footnote: 10

It is unclear why Grievant was required to meet with Dr. Wohl as he testified he did not have the power to hire anyone any more than Drs. Giles and Ovrebo did. All they could do was recommend to the President.

Footnote: 11

Throughout the lower levels of the grievance procedures, Respondent repeated that a grievance was filed against individuals, not the employer. This fallacy was corrected at Level IV.

Footnote: 12

During these proceedings, Dr. Ledbetter engaged in extensive questioning of the witnesses. At times, he became argumentative with the witnesses, apparently when they disagreed with his interpretation of a certain point. Additionally, Dr. Ledbetter indicated Grievant, who was pro se, could not testify in her own behalf unless she had someone to ask her questions. This point is brought up to clarify that a pro se Grievant may testify on her own behalf without the assistance of any other person. Luckily, Grievant was able to find an individual to question her and was not harmed by this ruling.

Footnote: 13

Although typically this Grievance Board does not rule on default judgements once a grievance has been appealed to Level IV, this case did not follow the normal course of events. Additionally, Level II Grievance Evaluators do not usually make findings on the default issue.

Footnote: 14

At Level IV, Respondent continued to argue that W. Va. Code § 18B-7-1(d) only applied when a college was in a state of fiscal exigency. This argument is without merit as the meaning of the statute is plain on its face. Permanent employees are to be given preferential treatment in hiring if they are minimally qualified. See Maikotter v. Bd. of Trustees/W. Va. Univ., Docket No. 96-BOT-321 (May 30, 1997); Payne v. Bd. of Directors/W. Va. State College, Docket No. 94_MBOD-372 (Jan. 8, 1997).

Footnote: 15

Ms. Rowell based her decision on the requirements listed in the job description. She assessed Grievant's education and experience in an unbiased manner based on these clearly stated requirements. As frequently stated in various Mercer decisions recently issued by this Grievance Board, the minimal qualifications specify "the minimum entry-level experience required for a new person to attain minimum competency after a reasonable training period." Payne v. Bd. of Directors/W. Va State College, Docket No. 94-MBOD-372 (Jan. 8, 1997). This training is to occur on-the-job, and frequently employees learn many of the required skills during the first six or so months in the position, just as Ms. Simon did. Id. at 8. Thus, a minimally qualified applicant is not expected to know how to accomplish every task that will be asked of her the first day in the position, but she is expected to be able to learn how to perform these duties during the probationary period.