THOMAS BOWMAN and RUSSELL LEE STACY

v. Docket Nos. 95-24-003, 007

MARION COUNTY BOARD OF EDUCATION

DECISION

Grievants, Thomas Bowman and Russell Lee Stacy, employed by the Marion County Board of Education (Board or Respondent) as bus operators, filed individual grievances on November 15, 1994, after another applicant was appointed Supervisor of Maintenance, Building, and Grounds. Their immediate supervisor lacked authority to resolve the matters at level one, the grievances were denied at level two, and the Board waived consideration at level three. Appeals were made to level four on January 20 and February 6, 1995, respectively. The grievances were consolidated for hearing on June 12, 1995, and became mature for decision with the submission of proposed findings of fact and conclusions of law on or before July 24, 1995.

The facts of this matter are as follows.

1. In September 1994, the Board posted for competitive bid the position of Supervisor of Maintenance, Building, andGrounds.

2. The posting listed the following qualifications for the position of Supervisor:

A. High school diploma and two years (twenty-four hours) of related college classes or equivalent technical training (three hundred sixty contact hours of vocational and/or approved trades school).

B. Demonstrated aptitude and competency for assigned responsibilities.

C. Capable of reading and interpreting blueprints.

D. Knowledge of school plant systems.

E. Be familiar with goals, and the educational process of the school system and the role of the maintenance department to accomplish them.

F. Have a minimum of five years' experience in the building or construction trade as a skilled tradesman.

G. Possess the ability to work cooperatively and effectively with maintenance staff, custodians, administration, and the general public.

H. Valid West Virginia driver's license.

I. Good health with average agility and dexterity.

3. Six individuals submitted applications for the position; however, only Grievants, employed by the Board as bus operators, and the third applicant, D. Bradley Straight, employed by the Board as a carpenter, successfully completed the competency test for Supervisor of Maintenance, Buildings, and Grounds.

4. Grievant Bowman was the most senior applicant for the position. Grievant Stacy was the second most senior applicantfor the position.

5. Mr. Straight was appointed to the position on or about November 14, 1994.

Grievants jointly argue that W.Va. Code §18A-4-8b requires that school service personnel positions be filled on the basis of seniority, evaluations of past service and qualifications. Because Grievants and the successful applicant were all regularly employed school service personnel, and there is no dispute that they all have received satisfactory evaluations, they assert that the position must be filled with the most senior applicant who is qualified.

Grievant Bowman argues that passage of the competency test renders an applicant fully qualified to fill a school service personnel vacancy. He asserts that additional qualifications which may be imposed by the Board are limited to certification or licensure required by the duties of a position i.e., electrician, bus operator, truck driver, etc. Because the position of supervisor does not require any specific certification and/or licensure, Grievant Bowman claims entitlement to the position by virtue of his successful completion of the competency test and his seniority.

Grievant Stacy accepts that a board of education may require additional qualifications in addition to passage of the competency test and that the requirements listed for the supervisory position are reasonable. Grievant Stacy argues that he has met the additional requirements, and is qualified. Because he has more seniority than the successful applicant, Grievant Stacy asserts that he is entitled to the position.

It is the Board's position that neither of the Grievants meet the minimum qualifications listed on the position posting. Specifically, Grievant Bowman possesses no post-secondary education or training and does not have five years' experience in the building or construction trades as a skilled

tradesman. Grievant Stacy was deemed unqualified because he also lacked the five years' experience as a skilled tradesman. The Board argues that the inclusion of requirements beyond the competency test was within its discretion and that it is not required to fill a service personnel position with an individual who does not possess the minimum qualifications to perform the duties of the position in question.

Discussion:

W.Va. Code §18A-4-8b provides:

A county board of education shall make decisions affecting promotion and filling of any service personnel positions . . . on the basis of seniority, qualifications and evaluation of past service. 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.

Because it is undisputed that Grievants have greaterseniority than the successful applicant, and that all three have satisfactory evaluations, the only criteria at issue is that of qualifications. None of the three applicants held the classification title of supervisor, and were required to "qualify by meeting the definition of the job title."

An employee may "meet" the definition of the job title, and thus become qualified, by passing a competency test. (See footnote 1) W.Va. Code §18A-4-8e directs the state board of education to develop and make available competency tests for all of the classification titles defined in section 18A-4-8. The stated purpose of these tests is to provide county boards of education a "uniform means of determining whether school service personnel employees who do not hold a classification title in a particular category of employment can meet the definition of the classification title in another category of employment . . . ." Code §18A-4-8e also provides that "[a]chieving a passing score shall [emphasis added] conclusively demonstrate the qualification of an applicant for a classification title."

The Grievance Board has previously held that a board of education may expand the qualifications found in the Code so long as the expansion is consistent with the statutorydefinition. Brewer v. Mercer County Bd. of Educ., Docket No. 91-27-002 (Mar. 30, 1992). This approach was reasonable in light of the Code §18A-4-8b definition of qualifications to be that the applicant "holds the classification title" or "by meeting the definition of the job title . . . ." With no further statutory guidance

as to how an applicant was to meet the definition of the job title, allowing individual boards of education to establish the qualifications desired for the position was not improper. (See footnote 2)

However, competency tests, developed by the State Board of Education for use by all county boards of education, now provide a uniform means by which an applicant may be deemed qualified. (See footnote 3) Code §18A-4-8e, enacted in 1990, explicitly states that the "subject matter of each competency test shall be commensurate with the requirements of the definitions of the classification titles as provided in [Code §18A-4-8]." Further, county boards of education are prohibited from using any competency test other than that promulgated by the State Board of Education. The statute continues to unconditionallystate that a passing score "shall conclusively demonstrate the qualification of an applicant for a classification title."

Through this provision the legislature has comprehensively defined and provided for the determination of qualifications. Therefore, it is no longer proper for county boards of education to develop or expand the qualifications for any service personnel position. Because Grievant Bowman successfully passed the competency test, had received satisfactory evaluations, and was the most senior applicant, he is entitled to the position of Supervisor of Maintenance, Buildings, and Grounds.

In addition to the foregoing facts and discussion it is appropriate to make the following conclusions of law.

CONCLUSIONS OF LAW

1. Boards of education in West Virginia must fill school service personnel positions on the basis of seniority, qualifications, and evaluations of past service. Qualification is defined as holding the classification title of the vacancy or being able to meet that definition as contained in W.Va. Code §18A-4-8.

2. Achieving a passing score on a competency test shall conclusively demonstrate the qualification of an applicant for a classification title. W.Va. Code §18A-4-8e.

3. With the implementation of statutory definitions and guidelines for establishing qualifications, county boards ofeducation may no longer develop or expand qualifications for service personnel positions where a competency test has been developed by the State Board of Education.

4. The position of Supervisor of Maintenance, Buildings, and Grounds must be awarded to the most senior applicant who passed the competency test.

Accordingly, the grievance filed by Thomas Bowman is **GRANTED**. The Marion County Board of Education is Ordered to instate Grievant Bowman to the position of Supervisor with all backpay and benefits to which he is entitled. The grievance filed by Russell Stacy is **DENIED**.

DATED: 10/10/95 SUE KELLER, SENIOR ADMN. LAW JUDGE

Footnote: 1State Board of Education guidelines provide that applicants for positions in certain classifications, such as electrician, which require a license or certification from an accepted institution or agency, will be considered qualified and will not be required to take a competency test.

Footnote: 2Recently, the West Virginia Supreme Court of Appeals upheld a county board of education's decision to hire the most qualified applicant for the position of Supervisor of Transportation. Because the Court did not address W.Va. Code §18A-4-8e in that matter, it is determined that the decision rendered in Ohio County Bd. of Educ. v. Hopkins, 457 S.E.2d 537 (W.Va. 1995), is not controlling herein.

Footnote: 3In Brewer, the ALJ determined at footnote 4 that Code §18A-4-8e was not in effect when the position in issue was filled by the board of education and, thus, neither Grievant nor the successful applicant had taken and passed the state competency test.