

EDUCATION EMPLOYEES GRIEVANCE BOARD

CHARLESTON DISTRICT

GRIEVANCE OF
NATHAN SHARP

APPEAL NO. 20-85-001

DECISION

Grievant, Nathan Sharp, applied for the position of principal at George Washington and South Charleston High Schools and was interviewed on June 22, 1985; he was the most senior applicant for both of the positions but both were filled with applicants with less seniority. The Superintendent of Schools of Kanawha County, David L. Acord, initially announced that if the most senior applicant was not selected that applicant would receive a statement of reasons with suggestions for improving that applicant's qualifications. However, grievant was later informed that a written statement of reasons with suggestions for improving grievant's qualifications would not be provided but that a conference would be held with the associate superintendent of curriculum and instruction and this information would be provided orally if grievant requested.

Thereafter, a level one grievance was filed and denied and on October 7 a level two hearing was conducted by the associate superintendent for curriculum and instruction at which a stipulation

was read into the record. At this hearing Mr. Acord testified, inter alia, that the selection of grievant to either of the principalships in question would have amounted to a promotion. On October 14, 1985, a decision was rendered denying the grievance on the basis that Code, 18A-4-8b was limited to situations where the most senior applicant for a classroom teacher position was not selected.¹

On November 1, 1985, grievant requested a level four hearing before a hearing examiner of the Education Employees Grievance Board pursuant to Code, 18-29-4, and on December 12, 1985, by agreement of counsel, a conference was held to define the issues and to submit the record to the hearing examiner for decision. Counsel for the grievant also urges the hearing examiner to award the position to grievant summarily and to award costs and attorney fees in accordance with Code, 18A-4-8b.²

Code, 18A-4-8b(a) is, in pertinent part, as follows:

¹ The decision was also predicated upon a May, 1983, interpretation by the State Superintendent of Schools that this provision was limited to the filling of a classroom teacher's position by promotion or otherwise. This interpretation was attached to the decision.

² This provision authorizes a mandamus proceeding to compel compliance with Article 4 and permits court costs and reasonable attorney fees. It further provides that persons wrongfully denied promotion or employment shall be awarded the job, pay and applicable benefits retroactively and that the board is also liable for court reporter costs. Counsel for grievant contends this is a punitive statute and is applicable herein.

"A county board of education shall make decisions affecting promotion and filling of any classroom teacher's position occurring on the basis of qualifications. If the applicant with the most seniority is not selected for the position a written statement of reasons shall be given to the applicant with the most seniority with suggestions for improving the applicant's qualifications."

Although considerable weight must be given to the administrative interpretation placed on this section by the state superintendent of schools, Dillon v. Bd. of Educ., 301 S.E.2d 588 (W. Va. 1983), the statutory provision is clear and unambiguous and should be applied, not interpreted. Lavender v. McDowell Co. Bd. of Educ., 327 S.E.2d 691 (W. Va. 1984). Moreover, it must be borne in mind that school personnel regulations and laws are to be strictly construed in favor of the school employee, Wren v. McDowell Co. Bd. of Educ., 327 S.E.2d 464 (W. Va. 1985).

FINDINGS OF FACT

1. Grievant was the most senior applicant for the principalships and was not selected; he requested but did not receive a written statement of reasons with suggestions for improving his qualifications.
2. Selection of grievant to either of the principalships would have amounted to a promotion for grievant.

CONCLUSIONS OF LAW

1. Code, 18A-4-8b(a) requires promotion and filling of any classroom teacher's position to be done on the basis of qualifications. If the most senior applicant is not selected a written statement of reasons must be given to such applicant with suggestions for improving his or her qualifications.

2. Court costs and a reasonable attorney fee, etc., are authorized in a mandamus proceeding instituted pursuant to Code, 18A-4-8b but a hearing examiner is limited in allocating costs to those expenses incurred relative to the grievance procedure at levels one through three by virtue of Code, 18-29-8.

Either party may appeal this decision to the Circuit Court of Kanawha County and such appeal must be filed within thirty days of receipt of this decision. (Code, 18-29-7). Please advise this office of your intent to do in order that the record can be prepared and transmitted to the Court.



LEO CATSONIS
Hearing Examiner

EDUCATION EMPLOYEES GRIEVANCE BOARD
Room 508
240 Capitol Street
Charleston, W. Va. 25301
Telephone Nos. 348-3361
348-3362