



**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

ARCH A. MOORE, JR.
Governor

Members
James Paul Geary
Orton A. Jones
David L. White

Offices
240 Capitol Street
Suite 508
Charleston, WV 25301
Telephone 348-3361

BERNADINE BRUMFIELD

VS:

DOCKET NO: 20-86-126-1

KANAWHA COUNTY BOARD OF EDUCATION

DECISION

This grievance came before the West Virginia Education Employees Grievance Board on appeal from a level three hearing and decision and was thereafter assigned to this Hearing Examiner. The parties, by their respective representatives, waived, in writing, a level four hearing and requested this matter be decided upon the evidentiary record which included decisions rendered and transcripts of evidentiary hearings at levels two and three together with exhibits and proposed findings of fact and conclusions of law submitted by the parties.

The evidence reveals that the grievant, Bernadine Brumfield, was a substitute teacher employed by Kanawha County Schools, who had approximately 274 days of substituting experience. Further, grievant had acquired a B.S. degree in Education with a major in biology and a minor in general science; in addition, the grievant had earned an M.S. in biology and a minor in geology, plus an additional twenty-one graduate hours; had written and published two scientific articles and had been employed with the Corps of Engineers giving her practical experience in her field of scientific studies.

The grievant applied for a 7th grade teacher vacancy to teach Life Sciences at Roosevelt Jr. High School in the fall of 1985. She was interviewed, but not recommended or selected for employment. As a result of the selection process, Amy Lynch was employed.

Amy Lynch was a substitute teacher employed by the Kanawha County Schools and Garnet Career Center. Ms. Lynch had earned a Bachelor's Degree in Education with a teaching field in biology. She had four days experience in substitute teaching in Secondary School, plus approximately two months experience in teaching math and science in the Garnet Expectant Mothers Program.

The selection process was comprised of one interview per applicant conducted by the Principal of Roosevelt Jr. High School, Patricia Petty, who thereafter, recommended Amy Lynch to the Superintendent of the Kanawha County Board of Education, who in turn, nominated her for approval by the Kanawha County Board of Education.

The issue presented is whether Bernadine Brumfield should have been employed on the basis of her qualifications rather than Amy Lynch.

The testimony of Principal Patricia Petty reveals that Amy Lynch was in the process of substituting at Roosevelt Jr. High School when the interviews for the vacancy were conducted. Principal Petty admittedly placed little weight on the grievant's educational background, and considerable weight on the matters discussed at

the interview, such as, inter alia, apparent knowledge of the "Program of Studies" then being utilized by Roosevelt Jr. High School.¹

Further, Principal Petty relied on "evaluations" which amounted to only subjective comments made by other teachers and principals, which upon close examination, revealed that during the considerable substituting experiences of the grievant, there were only three instances where the grievant received any unsatisfactory comments.²

¹It is apparent that objective criteria, i.e., educational background/achievement, was under-valued on the part of the grievant and over-valued on the part of Amy Lynch in that Principal Petty determined that both were equal in that category. While subjective criteria are important in the selection of a classroom teacher, it is critical that when such criteria are to be applied, via the evaluation process, then the evaluations must conform to the policy established by the West Virginia Board of Education in Policy No. 5300(6)(a) and (b).

² In addition, the grievant testified that none of the substitute evaluation forms were in her file at the Board of Education office when she examined it in August or September prior to the interview and she only learned of the unsatisfactory ratings at the level two hearing. None of the evaluations apparently were discussed with the grievant at the time the forms were filled out and the only way the grievant could have discovered their contents was to examine her personnel file at the Kanawha County Board of Education's office.

The "evaluations" it appears are on forms provided by the Kanawha County Board of Education wherein the substitute teacher fills in a portion followed later by the regular teacher and the principal, also filling in portions. The forms permit the regular teacher and the principal an opportunity to mark "satisfactory" or "unsatisfactory" in such categories, inter alia, as "left room in good order;" "worked regular hours of assigned school;" "maintained satisfactory classroom control." They do not, however, allow an opportunity for an open evaluation with the person evaluated, so that due process is obtained as required by West Virginia Board of Education Policy No. 5300(6)(a) and (b).

³While qualities other than education and experience may and should be considered, those qualities requiring subjective analysis should be subject to greater scrutiny because their very nature makes them vulnerable to abuse, and, care should be taken to insure they are not over emphasized in the selection process.

Without corroborating testimony from the participating commentators, the remarks/ratings given on a form relating to the opinion of how a substitute teacher performed can be given little weight and certainly where the hearsay testimony given by a witness having no personal knowledge is contradicted, such ratings are of questionable value. Such was the case here where Principal Petty testified about conversations with another principal who didn't testify and whose alleged comments were contradicted in substance by grievant's testimony.

⁴West Virginia Board of Education Policy 5300(6)(a) and (b) provides:

(a)"Every employee is entitled to know how well he is performing his job, and should be offered the opportunity of open and honest evaluation of his performance on a regular basis. Any decision concerning promotion, demotion, transfer or termination of employment should be based upon such evaluation, and not upon factors extraneous thereto. Every employee is entitled to the opportunity of improving his job performance, prior to the terminating or transferring of his services, and can only do so with assistance of regular evaluation."

(b)"Every employee is entitled to 'due process' in matters affecting his employment, transfer, demotion, or promotion."

It is difficult to imagine how an absent regular teacher could accurately make such an evaluation or how a principal's evaluation could be given much weight when the substitute teacher is not made a part of such rating or given an opportunity to provide any input prior to its accomplishment. Undue emphasis as exemplified herein on such "evaluations" is clearly not warranted especially in light of WV Code §18A-4-8b(a) which provides, in part:

"A county board of education shall make decisions affecting promotion and filling of any classroom teacher's position occurring on the basis of qualifications." (Emphasis supplied).

Needless to say, where the persons involved in the selection process of a person to fill a classroom teacher vacancy place "little weight" on objective criteria such as education and achievements and place greater emphasis on unsubstantiated subjective criteria, then the legislative pronouncement in WV Code §18A-4-8b is undermined.

In the instant case the better qualified and more experienced teacher was passed over in favor of an applicant having less qualifications and less experience but who, because of recent contact with the employing school, had a greater knowledge of the current programs and practices utilized at the school.

It is, therefore, concluded that the vacant position was not filled on the basis of qualifications as required and therefore the grievance is sustained.

FINDINGS OF FACT

1. Grievant, Bernadine Brumfield, applied for and was not selected to fill a vacant classroom teacher's position requiring a teacher qualified to teach Life Sciences.

2. Grievant, Bernadine Brumfield, had earned a B.S. degree in Education with a major in biology and a minor in general studies; an M.S. degree in biology with a minor in geology and 21 additional graduate hours; had written two scientific articles for publication and had practical experience in her teaching fields by virtue of her employment with the Corps of Engineers.

3. Grievant had 274 days of substitute teaching experience in various Kanawha County Public Schools, plus one semester of college level teaching in Biology.

4. Amy Lynch had a Bachelors degree in Education with a teaching field in biology. She had four days substitute experience, all of which were at Roosevelt Jr. High School. Ms. Lynch also had two months experience teaching math and science at Garnet Career Center.

4. Principal Petty gave little weight to the educational background of the applicants and even less weight to grievant's superior educational background. 7

6. Principal Petty's opinion/rating regarding the subjective criteria applied to grievant's qualifications were not based on reliable or substantiated evaluations.

CONCLUSIONS OF LAW

1. WV Code §18A-4-8b(a) requires that decisions affecting the filling of a classroom teacher's position be made on the basis of qualifications.

2. The procedure used in evaluating the grievant on the forms provided by the Kanawha County Board of Education did not meet the standards set for an "evaluation" described in WV Board of Education Policy 5300(6)(a) and (b).


3. Over-reliance on unsubstantiated evaluations relating to subjective criteria combined with little weight given to proven superior credentials in educational achievement and experience amount to abuse of discretion which undermines the intent of WV Code §18A-4-8b(a).

4. Where the selection process breaks down due to reliance upon unsubstantiated opinions regarding a person's qualifications and ignores proven superior educational qualifications and experiences, the person aggrieved may be instated to the position together with back pay, seniority rights, etc., which would have accrued had that person been originally employed.

ORDER

The Kanawha County Board of Education is ordered to instate the grievant with back pay, as of the date the position was filled by Amy Lynch, together with all of the rights and privileges appertaining. Any income earned by the grievant during the relative period shall be an offset against the award of back pay.

The parties are hereby notified that 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 so in order that the record can be prepared and transmitted to the Court.



JOHN M. RICHARDSON
Hearing Examiner

DATED: September 10, 1986