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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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LARRY BURLEY

v.

Docket No. 50-86-188-1

WAYNE COUNTY BOARD OF EDUCATION

DECISION

Grievant, Larry Burley, had been employed by the Wayne County Board of Education on October 1, 1985 and classified as a substitute maintenance employee. However, he had worked as a heating and air conditioning mechanic and in December, 1985 had applied for a vacant position of heating and air conditioning mechanic II. He had not been selected and filed a grievance which was the subject of a level four hearing; a decision was rendered in April, 1986.¹

¹ The grievance was remanded to the board of education to reconsider the application of grievant as though he had been properly classified as a heating and air conditioning mechanic substitute as of October 1, 1985 and to then make the selection to the vacancy by using the formula set out in Code, 18A-4-8b. It was noted also that if grievant was not selected and so requested the board should show cause why he was not selected. Burley v. Wayne County Board of Education, Docket No. 50-86-118-1, decided April 3, 1986.

On remand the board of education reclassified grievant from substitute general maintenance employee to substitute heating and air conditioning mechanic I, effective October 1, 1985. The board also executed a probationary contract of employment with grievant on April 15, 1986 as a substitute heating and air conditioning mechanic I, retroactive to October 1, 1985.

On April 18, 1986 the grievance was reconvened at level two and a hearing was conducted; on April 25, 1986 a written decision was rendered by the grievance evaluator denying the grievance on the basis that although grievant was the applicant with the most seniority as a heating and air conditioning mechanic I, an apprentice position, he was not the most qualified applicant for the position of heating and air conditioning mechanic II, a journeyman position. (Joint Exhibit No. 4).

Thereafter, on April 29, 1986 grievant requested a written statement of the reasons he was not selected for the position and by letter dated May 1, 1986 Michael E. Ferguson, superintendent of schools, provided grievant with a statement of those reasons. Grievant then appealed the level two decision to the board of education and the board affirmed the decision on May 5, 1986. Grievant appealed to level four and an evidentiary hearing was conducted on July 3, 1986.

The level four hearing was essentially a repetition of the evidence taken at the level two hearing and as here pertinent the reasons given grievant for his non-selection were as follows:

- "1. Training: The applicant I recommended completed a "hands-on" 1,080-hour vocational school program in heating and air conditioning at the Wayne County Northern Vocational-Technical Center.

To verify your training you presented a certificate from the Advance School of Chicago, Illinois, indicating you had completed a correspondence course in refrigeration and air conditioning. You offered no proof that you had attended this school in person.

2. Knowledge of Heating and Air Conditioning Equipment:

I am not satisfied that you are familiar with all types of the heating and air conditioning equipment. You indicate that you have knowledge of some types of units (boilers, etc.) and that you have installed and repaired home heating and cooling units. I note that these are far simpler than the complex units found in our school buildings. Again, I find that the applicant who I recommended for employment was more knowledgeable of the various types of heating and cooling systems.

3. Able to work independently:

I find that during the time you worked as a substitute, you primarily served as a helper; that all work orders were completed by the regular employee with whom you worked; and when you did work independently, it was only to attend to minor repairs which could be completed by any general maintenance employee. In contrast, I find that the person I recommended for employment is well able to work independently, that he has operated his own business, and that he has been awarded contracts to install heating and cooling units in school buildings. Further, that this contracted work for the school system has been highly satisfactory.

4. Proficiency Test: On a proficiency test prepared by the heating and air conditioning instructor at the Wayne County Northern Vocational-Technical Center, you scored 59% correct while the applicant I recommended scored 83% correct. At the Level II hearing, you pointed out some of your answers were common terms as used in the field and not textbook answers, and therefore should be counted correct. This may or may not be true. However, this indicates to me

that the applicant I recommended for employment is more knowledgeable of the fundamentals of heating and air-conditioning, and that his knowledge is more current and up-to-date." (Joint Exhibit 6).²

In addition to the foregoing factual recitation the following specific findings of fact are appropriate.

FINDINGS OF FACT

1. Grievant was employed by the board of education on October 1, 1985 and erroneously classified as a substitute maintenance employee. He had applied for and was denied a position as heating and air conditioning mechanic II.

2. As the result of a grievance decision in April, 1986 grievant was reclassified as a substitute heating and air conditioning mechanic I, effective October 1, 1985.

3. The board of education reconvened a level two hearing on April 18, 1986 and concluded that although grievant was the applicant with the greatest seniority as a heating and air conditioning mechanic I, an apprentice position, he was

² Superintendent Ferguson had testified to these matters at the level two hearing and the above letter of May 1, 1986 to grievant summarized that evidence.

not the most qualified applicant for the position of heating and air conditioning mechanic II, a journeyman position.

4. Upon request of grievant, the superintendent of schools provided grievant with the written reasons grievant was not selected, concluding that grievant was not the most qualified for the position.

5. Grievant alleges that the board of education erred in selecting a new employee in preference to grievant and accordingly violated Code, 18A-4-8b(b).

CONCLUSIONS OF LAW

1. Code, 18A-4-8b(b) requires that in filling a service personnel position a county board of education must consider seniority, qualifications and past evaluations.

2. Code, 18A-4-8b(b) provides that applicants who are currently employed as substitute service personnel must be considered before new service personnel when filling a vacant position.

3. Current employees of a board of education must be given first opportunity for promotion or filling of vacancies but a board is not required by Code, 18A-4-8b(b) to fill a position by an applicant who does not possess skills required for the position.³

4. Grievant did not demonstrate that the selection by the board of education was arbitrary or capricious or based upon considerations other than the qualifications of the successful applicant.

For the foregoing reasons the grievance is denied.

³In Janice Jones v. Ohio County Board of Education, Docket No. 35-86-051, decided May 30, 1986, it was held that, while service employees who hold the appropriate classification title and/or have earned more seniority are in a more advantageous position for promotion or filling a vacancy, there was no requirement that an applicant be given the position based solely on that criteria; that Code, 18A-4-8b(b) provided that such an employee must be given first opportunity.

Either party may appeal this decision to the Circuit Court of Kanawha County or Wayne 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.



LEO CATSONIS

Chief Hearing Examiner

Dated: August 15, 1986