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CHARLESTON

William W. Slade, Jr.

v.

McDowell County Board
of Education

Grievance No. 33-86-050

OPINION

The grievant, William W. Slade, Jr., has been employed with the McDowell County Board of Education for fourteen (14) years and is presently serving as Assistant Principal at Iaeger High School.¹ He holds a Master's degree plus thirty post master hours with a specialty in secondary education administration; he also holds a permanent professional

¹ He commenced employment in 1971 as a classroom teacher at Kimball Junior High School for three and one-half years, was Assistant Principal of Kimball Junior High School for seven years and lost that position when the school closed at the end of the 1984-85 school year. He was then assigned to a classroom teaching position at Welch Junior High School until he was transferred to his present position as a result of a decision by State Superintendent Tom McNeel in July, 1985, in the grievance of Stanley v. McDowell County Board of Education. (transcript, p.53). He did not request the transfer to his present position.

teaching certificate and a permanent professional administrative certificate endorsed for the secondary principalship.

Sometime in July, 1985, he heard a rumor that Kathleen Blair, Assistant Principal at Mount View High School, was going to resign before the opening of the 85-86 school term and on August 1st, he wrote to Bennett E. Church, Superintendent of McDowell County Schools, requesting that he be granted "first consideration for said position." At a Board of Education meeting on August 13th, the Blair resignation was accepted and on August 16th, grievant talked with Superintendent Church, who advised grievant that the choice would be based on qualifications, experience and the recommendation of Bob Neal Jack, the principal at Mount View High School.

Thereafter, grievant talked with Mr. Jack, whom grievant says was very encouraging. On August 26th, the Assistant Principal position was posted and grievant made application therefor. He again talked with Mr. Jack on August 28th and on September 9th had a formal interview with him; on September 10th, Mr. Bruce Childers was appointed to fill the Blair vacancy. Grievant filed a grievance and a level two hearing was conducted by Superintendent Church on October 22, 1985².

At that hearing, Principal Jack testified that the names of the applicants had been given to him by the Superintendent with instructions that he interview them and make a recommendation;

² A copy of this grievance was not among the documents forwarded to this office but was predicated on the applicability of Code, 18A-4-8b and Code, 18-29-2, definitions "O" and "P", i.e. "Favoritism" and "Reprisal" (Transcript, pp. 3,4). This is also the basis of grievant's appeal filed with this Board on January 6, 1986.

that he was not contacted by anyone from the superintendent's office as to whom he should recommend. Mr. Jack testified that he selected Mr. Childers for the post on the basis that he was the most qualified and the person with whom he wanted to work; that there was no prejudice involved in the recommendation. He was not instructed that the position had to be filled on the basis of seniority and it was his understanding that all of the applicants whose names were given to him were fully certified and qualified for the position. However, grievant contends that at the time of the selection, Mr. Childers did not hold a current professional administrative certificate and this was not received by the Coordinator of Personnel until October 15, 1985.

The grievant testified that he felt he did not receive this transfer because the choice had already been made on the basis of favoritism and that he was the subject of a reprisal by the county superintendent and/or school board because he had appealed an earlier grievance to the State Superintendent of Schools.³ He felt he was the most qualified applicant and was suffering a financial loss and added travel expense as a result of this non-selection.

The Board took the position that Code, 18A-4-8b was inapplicable in that seniority did not apply to the filling of an administrative position such as Assistant Principal unless there was a reduction

³ He stated that it was his belief that the intent of the superintendent and/or school board was to move him away from any administrative possibilities altogether but he did not know the reason. (Transcript, pp. 42, 43). Grievant was of the opinion that selection of any of the applicants with less seniority and qualifications would have amounted to "favoritism", not just the selection of Mr. Childers. (Transcript, pp. 40, 41).

in force; that a lateral transfer was involved in grievant's case, not a reduction in force. It denied that there was any "favoritism" or "reprisal" involved in this case. (Transcript, pp. 66-67).

By letter dated October 28, 1985, Superintendent Church issued a decision wherein it was held that Code 18A-4-8b was not applicable in that qualifications and seniority were considered in filling classroom teachers' positions rather than administrators' positions at schools and at the central office and that grievant had not provided sufficient evidence to substantiate the allegations of "favoritism" and "reprisal".⁴ It was also noted that the vacancy at Mount View High School did not involve a reduction in force and the conclusion was that the administration and the Board of Education acted within their legal parameters in their filling of the Assistant Principal's position at Mount View High School.

On January 6, 1986, the grievant's representative forwarded the transcript of evidence of the level two hearing and related documents to the undersigned hearing examiner requesting submission to level four; by letter dated January 8, 1986, the grievant's representative and the Superintendent of McDowell County Public Schools advised that an evidentiary hearing would not be necessary

⁴ The decision does not contain findings of fact and conclusions of law as required by Code, 18-29-6, and it may be that an additional hearing will be required by the Board of Education as a result of this decision. The grievance evaluators are urged to include these findings and conclusions in their decisions to avoid the necessity of remanding the appeal for compliance with Code, 18-29-6. See, e.g., Burks v. McNeel, 264 S.E. 2d 651 (W.Va. 1980). Cf. Golden v Board of Education of County of Harrison, 285 S.E.2d 665, 668 (W.Va. 1981).

and submitted the case on the record.

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

"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 or reasons shall be given to the applicant with the most seniority with suggestions for improving the applicant's qualifications."

We recently held in Nathan Sharp v. Kanawha County Board of Education, appeal No. 20-85-001, that this provision was not limited to situations where the most senior applicant for a classroom teacher position was not selected but also applied to the selection of the applicants for the position of principal where that selection would have amounted to a promotion.⁵

Accordingly, if the grievant is the most qualified applicant for the position and the transfer from his present position to Mount View High School would amount to a promotion, he is entitled to the position. Similarly, if grievant is not the most qualified applicant but is the most senior applicant and the transfer would amount to a promotion, he is entitled to a statement of reasons for his non-selection with suggestions for improving his qualifications.

On the basis of the evidence presented, the conclusion of Superintendent Church that the allegations of "favoritism" and

⁵ In the Sharp case the grievant had applied for one of two principalships and was the most senior applicant for both. It was stipulated that the selection of grievant would have amounted to a promotion and it was held that he was therefore entitled to a written statement or reasons why he was not selected and suggestions for improving his qualifications. A copy of the decision is enclosed herewith.

"reprisal" were not substantiated by the grievant is affirmed. It appears clear that Mr. Jack was given the names of the seven applicants and instructed to interview them and make his recommendation to the Superintendent. There was no attempt by the school officials to influence the decision of Mr. Jack and he testified that he selected Mr. Childers on the basis that he believed him to be the most qualified and the applicant with whom he preferred to work. Moreover, grievant felt that "favoritism" would have been involved by the selection of any of the applicants with less seniority and/or qualifications than grievant. (Transcript, pp 40, 41).

As to the "reprisal" allegation, it is clear that the grievant was placed in his present position as a result of a ruling by the State Superintendent of Schools in the case of Stanley v. McDowell County Board of Education, decided in July, 1985, prior to the decision in grievant's case. In fact, Superintendent Church encouraged grievant to utilize the grievance procedure in an effort to clarify the question of seniority in administrative positions. (Transcript, p. 53). Accordingly, the findings made by Superintendent Church as to the allegations of "favoritism" and "reprisal" are not clearly wrong and are binding. West Virginia Dept. of Health v. Mathison, 301 S.E. 2d 783 (W.Va. 1983).

FINDINGS OF FACT

1. The grievant, William W. Slade, Jr., has been employed by the McDowell County Board of Education for over fourteen years and is presently Assistant Principal at Iaeger High School.
2. Subsequent to the closing of Kimball Junior High School at the end of the 1984-85 school year, grievant was assigned to a classroom teaching position at Welch Junior High School. He filed a grievance on the basis of that assignment.
3. As a result of a decision by State Superintendent of Schools Tom McNeel in the case of Stanley v. McDowell County Board of Education in July, 1985, grievant was transferred to Iaeger High School as Assistant Principal; grievant thereafter received a favorable decision on his grievance.
4. In August, 1985, grievant was one of seven applicants for the position of Assistant Principal at Mount View High School and the position was to be filled on the basis of qualifications, experience and the recommendation of the principal of Mount View High School.
5. Grievant was not selected, the Board of Education concluding that Code, 18A-4-8b did not apply to the filling of an administrative position, such as Assistant Principal.
6. Grievant did not satisfy the burden of Proof that the failure of the Board of Education to appoint grievant to the position

6. cont.

was a result of "favoritism" or "reprisal" and there is no evidence other than that the Superintendent and/or Board of Education acted in good faith.

7. The Superintendent made no findings of fact or conclusions of law as contemplated by Code, 18-29-6, and the record does not include the qualifications and seniority of the applicants for the position. Consequently, no findings or conclusions can be made thereon in this appeal.

CONCLUSIONS OF LAW

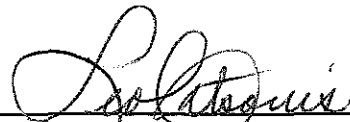
1. Code, 18-A-4-8b requires that a promotion be made on the basis of qualifications and this requirement is not restricted to a classroom teacher's position but also contemplates promotion to an administrative position.
2. If the grievant is the most qualified applicant for the position and the transfer from his present position to Mount View High School would amount to a promotion, grievant is entitled to the position.
3. If the grievant is not the most qualified applicant for the position but is the most senior applicant and the transfer would amount to a promotion, grievant is entitled to a statement of reasons for his non-selection with suggestions for improving his qualifications.
4. There is no probative evidence that the non-selection of grievant was motivated by "favoritism" or "reprisal" or

4. cont.

other prejudice against the grievant by the school officials in McDowell County. The findings of the Superintendent are binding unless clearly wrong.

Wherefore, the McDowell County Board of Education is directed to determine if grievant is the most qualified applicant for the position he sought and if the transfer would amount to a promotion and, if so, to award the position to grievant. If the grievant is not the most qualified applicant but is the most senior and if the transfer would amount to a promotion, the Board is directed to furnish grievant a statement of reasons for his non-selection with suggestions for improving his qualifications.

Either party may appeal this decision to the Circuit Court of Kanawha County or the Circuit Court of McDowell County and the 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 Circuit Clerk.

A handwritten signature in cursive script, appearing to read "Leo Catsonis", is written over a horizontal line.

LEO CATSONIS
Hearing Examiner