



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

**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**
ARCH A. MOORE, JR.
Governor

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

ALFRED JAMES PARKER

v.

DOCKET NO. 03-87-128-1

BOONE COUNTY BOARD OF EDUCATION

DECISION

Grievant, Alfred James Parker, is employed by the Boone County Board of Education as a special education teacher and filed a grievance when he was not selected for a position of educational diagnostician/I.E.P. specialist. A level two evidentiary hearing was conducted on March 26, 1987 and the decision appealed to the Education Employees Grievance Board on May 5, 1987. A level four evidentiary hearing was scheduled for September 16 and continued, without objection of grievant, by the school board until October 5, 1987.¹

On November 21, 1986 a notice was posted soliciting applications for a position of educational diagnostician/IEP specialist with

¹ At the level four hearing the level two transcript of evidence was admitted as Joint Exhibit 1; references thereto will be designated as (T.____).

Proposed findings of fact were received from the grievant on October 23 and from counsel for the school board on October 28, 1987.

Boone County Schools. The qualifications listed thereon was as follows:

Masters Degree in Special Education with a valid West Virginia Teaching Certificate; experience in working with handicapped students and Placement Advisory Committees; experience in the evaluation processes, especially with the Woodcock-Johnson Psycho-Educational Battery; ability to complete and manage large amounts of paperwork with efficiency and neatness; and ability to work with testing information to ensure confidentiality. (Grievant's Exhibit 1).

Two applicants applied for this position, grievant and Ms. Debra Wilson. Both applicants were interviewed by a committee composed of Delores Jean Davis, director of curriculum and personnel director of Boone County Schools, Cecil Dolin, assistant superintendent, and Barbara Helmick, then director of special education. During the course of the interview process the committee reviewed the educational background and employment record of the two candidates and ultimately recommended to superintendent Mabe that Ms. Wilson be selected for the position. The evidence in this grievance reveals the following pertinent qualifications of the two applicants:

Mr. Parker. Grievant has 126 college hours in an undergraduate degree in Social Studies, a Masters degree from the College of Graduate Studies (COGS) in Mental Retardation with 39 graduate hours and 15 additional post graduate hours in BD and LD course work for a total of 180 hours of college course work.

He has certification in elementary teaching and secondary social studies teaching with endorsements in two areas of special education, i.e., MI and BD. Six of the additional post graduate hours are in the LD field.

Ms. Wilson. Graduated with a BS in Social Work in 1976 with 128 hours and obtained a second degree in Elementary Education (1 through 6 and MR), graduating summa cum laude, with an additional 70 hours.

She completed work and was awarded a Masters degree from COGS in August 1986 in Special Education in LD and BD with an additional 39 hours, for a total of 237 college hours. She has endorsements in all three areas of special education, i.e., BD, MI and LD.

The committee had evaluated the strengths and weaknesses of each candidate and had concluded that:

- a. Ms. Wilson was very highly motivated, and,
- b. well qualified, and,
- c. had done an exceptional amount of college and actual work in the field and was extremely industrious, and,
- d. if she had a weakness it was an overly amount of concern and/or empathy with her students.

As to grievant, the committee found that:

- a. he was well organized, and
- b. his work had been satisfactory, and,
- c. he was well qualified, and,
- d. generally a good employee with no formal disciplinary action, but,
- e. the special education director was concerned about grievant's accountability for his time, and,
- f. there was concern that grievant did not respect the confidentiality of students' test results and had shown a lack of professionalism on previous occasions by discussing test results with non-professionals.²

² These negative factors had not been brought out at the level two hearing and grievant was thus not apprised thereof until it was testified to by Mrs. Delores Davis, director of personnel. She stated that this was sensitive information and although the committee had weighted these factors the committee ostensibly resolved the decision on the basis of seniority, not qualifications. (However, see pages 13 through 15 of the transcript).

In the final analysis Mrs. Davis testified that the committee felt Ms. Wilson was more qualified because she had three certifications and had performed well in her positions without problems and had worked with the three different types of students involved in the new position.

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

FINDINGS OF FACT

1. Grievant is employed by the Boone County Board of Education and applied for the position of educational diagnostician/IEP specialist; another employee, Ms. Debra Wilson, also applied for the position. One of the listed qualifications for the position was the ability to work with testing information to ensure confidentiality.

2. A committee was appointed to review the applications of the applicants and to conduct interviews and after extensive interview and screening by the committee, Ms. Wilson was recommended for the position. The relative qualifications of each of the candidates are set out elsewhere in this decision and will not be reiterated in these findings. It is noted that award of the position would have amounted to a promotion.

3. Grievant is the most senior applicant but was not given a statement of reasons for his non-selection and suggestions for improving his qualifications as required by W.Va. Code, 18A-4-8(a).

CONCLUSIONS OF LAW

1. Under W.Va. Code, 18A-4-8b(a) decisions of a county board of education affecting teacher promotions must be based primarily upon qualifications for the job, with seniority having a bearing on the selection process when the applicants have otherwise equivalent qualifications or where the difference in qualification criteria are insufficient to form the basis for an informed and rational decision. Dillon v. Wyoming County Board of Education, 351 S.E.2d 59 (W.Va. 1986); Brookie Murray v. Logan County Board of Education, Docket No. 23-86-269. Informed subjective judgment is a relevant criterion for consideration in absence of an arbitrary exercise thereof. Higgins v. Randolph County Board of Education, 286 S.E.2d 682 (W.Va. 1981).

2. In the grievance proceeding it is incumbent upon the grievant to prove the elements of the grievance by a preponderance of the evidence. In the instant grievance grievant has failed to prove that the selection process did not result in the most qualified applicant being selected or that the selection process was arbitrary as a matter of law. Brookie Murray v. Logan County Board of Education, supra.

Accordingly, the grievance is Denied; however if grievant requests, a list of reasons should be given to grievant for his non-selection along with suggestions for improving his qualifications as provided in W.Va. Code, 18A-4-8b(a).

3. No inducements, promises or other assurances were given to grievant that anything other than an effort would be made to obtain the credit by anyone in authority at Cabell County Schools and, in fact, at that time, if a Policy existed in Cabell County concerning such credit it was that the credit would not be granted.

4. Mr. Watkins continued to pursue the credit on grievant's behalf and in May 1985 successfully obtained the approval of the school board to award grievant the prior work experience credit. Grievant failed to prove that other employees performing similar duties had received either prior work experience credit pay or back pay for such credit.

CONCLUSIONS OF LAW

1. In the grievance proceeding it is incumbent upon the grievant to prove the essential elements of the grievance by a preponderance of the evidence. William Blankenship v. Kanawha County Board of Education, Docket No. 20-87-202-1; Garry Tenny v. Barbour County Board of Education, Docket Nos. 01-87-172/173-2.

2. Grievant failed to prove the essential elements of the grievance as a matter of law.

Accordingly, the grievance is Denied.