



REPLY TO:
101 Harper Park Drive
Suite D
Beckley, WV 25801
Telephone: 255-6155

Members
James Paul Geary
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

DONALD BALLARD

v.

DOCKET NO. 03-86-357-4

BOONE COUNTY BOARD OF EDUCATION

DECISION

This grievance comes before the West Virginia Education Employees Grievance Board on appeal from a level three decision pursuant to WV Code §18-29-3(a) and a level two decision denying the grievance.¹

Thereafter, a hearing was scheduled at level four and continued by the parties until March 23, 1987.² At that time a hearing was held before John M. Richardson, Hearing Examiner, at Beckley, West Virginia.

In his grievance the grievant, Donald Ballard, complains that he applied for the position of Health and Physical Education teacher (7-12) at Sherman High School and was not hired in violation

¹The parties attempted to settle this grievance at level three but were unable to do so and a level three hearing was never conducted as the grievant had requested via appeal to that level.

²The grievant executed a written waiver wherein the provisions requiring a decision within thirty (30) days were waived at level four.

of WV Code §18A-4-8b(a).

The pertinent part of WV Code §18A-4-8b(a) provides:

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.

The evidence in the present grievance reveals that in September 1986, the respondent board caused to be posted a vacancy for the position of "Health and Physical Education (7-12), Sherman Senior High School". There were two applicants for the position, namely, Ballard Slone and Donald Ballard. After only a cursory examination of the credentials of the applicants and based primarily upon the recommendation of the Principal at Sherman Senior High School, the county superintendent recommended Ballard Slone, the senior high school basketball coach, for the vacant position.³

State Board of Education Policy 5300 (6) (a) provides:

. . Any decision concerning promotion, demotion, transfer or termination of employment should be based upon such evaluation, and not upon factors extraneous thereto.

³It is evident from the testimony of the county superintendent that he did not carefully examine the credentials of each of the applicants as it was shown by his own admission, that the grievant had eighteen graduate hours while Mr. Slone had none. This was not discovered until after the selection was made and the grievant had filed his grievance. Additionally, it is evident that even though the county superintendent testified that Slone had much better evaluations and was a better teacher, those evaluations of Slone and
(footnote cont.).

The exhibits and the credible testimony further reveals that while the grievant was not selected because of previous evaluations, the most current and most favorable evaluation of the grievant was not even considered.⁴ It is also uncontested that the grievant had eighteen years of teaching experience while the successful applicant had only eight years of experience.⁵

The respondent raised for the first time at level four the position that since Ballard Slone was already assigned to Sherman Senior High School, that the position need not have been posted as it could have been filled by an internal transfer.

(footnote cont.)

grievant which were made exhibits clearly show that any differences between them were slight and obviously attributable to the differences in technique of the evaluators. Both were evaluated in all categories as MPS (Meets Performance Standards) and were recommended for re-hiring. The county superintendent readily admitted that he "depended upon greatly" the verbal reports of his supervisors in determining the abilities of the grievant. It is further noted that the grievant was certified in Physical Education and Biology (7-12), while Slone was not certified in Biology.

⁴The June 1986 evaluation was not even seen according to the testimony of the county superintendent, until after the selection of Slone in September 1986.

⁵The grievant did receive a letter explaining how he could improve as per WV Code §18A-4-8b(a).

This hearing examiner finds that assertion to be moot and inconsistent inasmuch as the position was in effect declared to be "available" and was in fact posted pursuant to WV Code §18A-4-8b(a).⁶

In addition to the foregoing, the following findings of fact and conclusions of law are incorporated herein.

FINDINGS OF FACT

1. The grievant, Donald Ballard, is a full time teacher employed by the Boone County Board of Education and assigned to teach Biology at Scott High School.

2. The grievant has eighteen years of teaching experience in the Boone County School system.

3. The grievant has a Bachelors degree plus eighteen graduate hours in Physical Education. He is certified to teach Biology and Physical Education (7-12).

4. The grievant applied for the position of Physical Education teacher at Sherman Senior High School for the upcoming 1987-88 school year and was not selected.

5. There were two applicants for the position of Physical Education teacher at Sherman Senior High School, namely, Donald Ballard and Ballard Slone.

⁶See also re: vacancies/transfers, Fletcher, et al v. Berkeley County Board of Education, Docket No. 02-87-017-02; Peters v. Mercer County Board of Education, Docket No. 27-86-144-1. With regard to inconsistent positions see, Dillon v. Wyoming County Board of Education, 301 S.E.2d 588 (W.Va. 1982).

6. Ballard Slone is the head basketball coach at Sherman Senior High School and was selected to fill the position.

7. Ballard Slone has a Bachelors degree. His certification is unknown but it is not as broad as the grievants.

8. Ballard Slone has eight years experience as a teacher and has no graduate hours.

9. The county superintendent, in making his recommendation, relied greatly upon verbal reports of his supervisors.

10. The county superintendent did not see or consider the grievant's most recent evaluation.

11. The county superintendent did not carefully consider the credentials of the applicants.

12. The county superintendent did rely upon reports that were extraneous to the grievant's evaluations in direct contradiction to State Board of Education Policy 5300(6) (a).

13. The evaluations of both candidates were similar in that they both met performance standards and were recommended for rehiring the following year.

CONCLUSIONS OF LAW

1. Pursuant to WV Code §18A-4-8b(a), 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.

2. Pursuant to State Board of Education Policy 5300(6)(a) any decision concerning promotion, demotion, transfer or termination of employment should be based upon such evaluation, and not upon factors extraneous thereto.

3. Under WV Code §18A-4-8b(a), decisions of a county board of education affecting teacher promotions and the filling of vacant teaching positions must be based primarily upon the applicants' qualifications for the job, with seniority having a bearing on the selection process when the applicants have otherwise equivalent qualifications or where the differences 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 58 (W.Va. 1986); Mills v. Wyoming County Board of Education, Docket No. 55-86-292-4; Brumfield v. Kanawha County Board of Education, Docket No. 20-86-126-1.

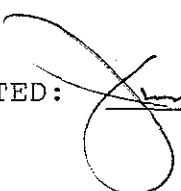
4. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer and promotion of school personnel. Nevertheless, this discretion must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious. Dillon v. Wyoming County Board of Education, supra; Mills v. Wyoming County Board of Education, supra; Brumfield v. Kanawha County Board of Education, supra.

5. The grievant has proven by a preponderance of the evidence that he should have been selected to fill the position of Physical Education teacher at Sherman Senior High School for the upcoming school year 1987-88.

In accordance with the foregoing, the grievance is GRANTED and the Boone County Board of Education is ORDERED to instate the grievant to the position of Physical Education teacher at Sherman Senior High School beginning with the 1987-88 school year.

Either party may appeal this decision to the Circuit Court of Boone County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. (WV Code §18-29-7) Please advise this office of your intent to do so in order that the record may be prepared and transmitted to the Court.


JOHN M. RICHARDSON
Hearing Examiner

DATED:  17, 1987