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JOAN BYRD

v.

DOCKET NO. 27-86-288-4

MERCER COUNTY BOARD OF EDUCATION

DECISION

This grievance comes before the West Virginia Education Employees Grievance Board on appeal from a waiver of consideration at level three. The grievance was, by notice duly issued, set for hearing, and thereafter, continued upon agreement by the parties. Subsequently, by agreement of the parties, the grievance was submitted for decision upon the accumulated record including briefs filed by each of the parties.

The grievant, Joan Byrd, complains that she applied for the position of Placement-Management Coordinator and was not hired. Ms. Byrd alleges that she was the most qualified and most senior applicant for the position.

The record in this grievance is extensive and is comprised of approximately five hundred pages of transcript, three hundred pages of exhibits and seven cassette tapes of the interviews of the

applicants which occurred after each posting. All of the record was reviewed and considered in arriving at this decision.¹

An examination of the record reveals that the grievant, Joan Byrd, is employed by the respondent board as a teacher at the Mercer County Vocational Technical Center. Ms. Byrd has approximately twenty-seven years teaching experience in the Mercer County School System and was the most senior applicant. Pursuant to a job posting on or about July 19, 1985, Ms. Byrd applied for the position of Coordinator, Placement/Management Information Systems. On July 30, 1985, Ms. Byrd was interviewed by a panel consisting of Albert Atkins, Principal, Vocational Technical Center; R. J. Bailey, Director of Vocational Technical and Adult Education; Ms. Lyndall Wiley, Supervisor of Business Education; and, Earl Muse, Assistant Director of Vocational Technical and Adult Education. There were approximately six or seven other applicants who were also interviewed for the position. Ms. Byrd was not selected and the successful applicant was Brenda Lohr, who was also a teacher at the Vocational Technical Center.

After the posting of the position on July 19, 1985, but prior to the interviews conducted on July 30, 1985, it was determined that a vocational administrative certificate was not a requirement for the position as reported in the job posting. At the time (July 30)

¹Level two hearings were held on June 12, 1986 June 30, 1986 and August 7, 1986.

that the interviews were conducted, Ms. Byrd was the only applicant who met this qualification requirement.²

As a result of this determination, the position was not filled and was re-posted on October 16, 1985. The October posting did not contain the requirement of a vocational administrative certificate but did include a qualification that the applicant have a working knowledge of computers which was not included in the previous posting.³ At least four of the applicants, including the grievant, were interviewed by the same panel, and again, Brenda Lohr was the applicant who received the panels recommendation for employment.

In reviewing the tapes of the interviews conducted on each of the applicants on July 30 and in October 1985, it is apparent that each of the applicants was asked the same or similar questions ostensibly for the purpose of determining their knowledge of the position. It is noted that this position, while being deemed a new position, was indeed, a position which had existed under a different title but the duties had been altered in order to more accurately reflect the job description.

² A great deal of testimony was devoted to whether or not the change in qualifications was an attempt to manipulate the selection process in favor of the successful candidate, Brenda Lohr. Much ado was made about the motives of Robert Bailey, Director of Vocational Technical and Adult Education, causing the qualifications to be changed, including the charge of reprisal arising out of a sexual harassment matter which allegedly occurred in the past. While this may or may not have had some bearing on that matter, determination of that issue is not necessary in order to resolve this grievance.

³ There was some conflicting testimony about the training of the grievant in this regard but according to the testimony of Mr. Atkins, the grievant was one of at least three of the applicants who possessed the minimum qualifications.

The procedure utilized in selecting the successful applicant shows that following the interview each of the panel members, without discussion, went to a separate area (corner) and rated the applicants by numerical order of 1, 2, 3 or 4, with the rating of 1 being the highest. The questions which were asked each of the applicants had been previously prepared by Mr. Atkins and Mr. Bailey. Noticeably absent from the panels' questions and considerations were the applicants' evaluations and, that admittedly, the selection of the successful applicant was based upon the results of the oral interviews.

While it is evident that the panel members knew each of the applicants, it is also apparent from their testimony that they were not intimately familiar with each candidate's credentials, and indeed, were in disagreement as to whether or not the position to be filled was administrative or supervisory. In addition, the testimony reveals that Ms. Lohr and possibly one other applicant had reason to believe that a certain manual or handbook relating to the job would be a source of beneficial information during the interviews and that the other applicants, including Ms. Byrd, were not privy to this information.

While each of the panel members disclaimed any prejudice towards Ms. Byrd, it is apparent that at least two of them, Mr. Atkins and Mr. Bailey, were aware of previous difficulties Ms. Byrd had had with Mr. Bailey.⁴

⁴Mr. Robert Bailey, a member of the panel, was also the person whom Ms. Byrd had accused of sexual harassment and whom Ms. Byrd believed was blocking any moves for promotion because she had brought those allegations to the attention of the administration.

In examining the process employed by the respondent in selecting the successful applicant, it is clear that two factors were ignored in arriving at their decision, namely, the past evaluations of the applicants and their seniority.

In the recent case of Dillon v. Board of Education of the County of Wyoming, 351 S.E.2d 58 (W.Va. 1986), the Court stated that: "Public education is a fundamental constitutional right in this State and a prime function of the state government is to develop a high quality education system. . . ." The Court further reasoned that WV Code §18A-4-8b(a), requiring a school board to consider the seniority of an applicant, does not offend the principle that the qualifications of the applicant were paramount. In this regard, the Court stated: "Seniority implies more than just a reward for length of service. The performance of the classroom teacher is evaluated regularly, with an eye toward constant improvement of his or her professional skills. Consistently positive evaluations reflect not only professional accomplishments, but indicate invaluable practical knowledge that can be brought to a new position. In this context, seniority itself connotes some element of qualification." In conclusion, the Court determined that the Legislature intended that seniority be a determinative factor when the applicants for the position were otherwise so similarly qualified that a rational choice among them was impossible.

It was admitted that both Ms. Lohr and grievant possessed the requisite qualifications as contained in the job posting.

Thus, it would seem that in order to make a selection that both evaluations and seniority would necessarily have to be considered. Such was not the case in the procedure used by the respondent.

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

A county board of education shall make decisions affecting promotions 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.

In order to more objectively determine the best candidate for promotion, etc., West Virginia State Board of Education Policy 5300(6)(a), in pertinent part, provides:

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.

While, as aforesaid, the level two record reveals that a great deal of testimony was directed towards the bias and prejudice of members of the interviewing committee, it is unquestioned that the process utilized did not take into account, beyond the minimal examination of education credentials, the fundamental requirements of WV Code §18A-4-8b(a) and Policy 5300(6)(a).

While it is clear that county boards of education have substantial discretion in matters involving promotions such discretion must be exercised reasonably within the bounds of statutes and policies governing that procedure. Dillon v. Board of Education of the County of Wyoming, supra.

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

FINDINGS OF FACT

1. The grievant, Joan Byrd, is a teacher employed by the Mercer County Board of Education and assigned to the Vocational Technical Center.
2. Ms. Byrd has twenty-seven years teaching experience in the Mercer County School System and was the most senior applicant applying for the position of Coordinator, Placement/Management Information Systems.
3. The first posting for the position of Coordinator, Placement/Management, Information Systems occurred on or about July 19, 1985 and as one of the qualifications, included the requirement that the applicant hold a vocational administrative certificate.
4. Prior to the applicants being interviewed on July 30, 1985, the requirement that an applicant hold a vocational administrative certificate was deleted.
5. A panel consisting of four interviewers was established to interview the applicants. This panel interviewed the applicants following the posting which occurred on July 19, 1985 and the

posting which occurred in October 1985. The panel members were Albert Atkins, Principal, Vocational Technical Center; R. J. Bailey, Director of Vocational Technical and Adult Education; Ms. Lyndall Wiley, Supervisor of Business Education; and, Earl Muse, Assistant Director of Vocational/Technical and Adult Education.

6. Brenda Lohr was a teacher at the Vocational Technical Center and the successful applicant for the position of Coordinator, Placement/Management Information Systems. She had less seniority than Ms. Byrd and did not hold a vocational administrative certificate at the time(s) of the job posting.

7. As a result of determining that a vocational administrative certificate was not a requirement for the position, the job vacancy was not filled following the posting of July 19, 1985. The position was re-posted on October 16, 1985.

8. The questions propounded to the applicants on July 19, 1985 were prepared by Albert Atkins and R. J. Bailey. The same questions were propounded during the interviews held in October 1985.

9. The members of the panel based their decision on the selection of the successful applicant primarily on the basis of the oral interview.

10. The members of the panel did not take into consideration the seniority of the applicants or their previous evaluations.

11. The grievant complained that the selection process was changed arbitrarily and did not encompass proper policy or procedure.

12. The grievant and Brenda Lohr each possessed the minimum qualifications for the position.

13. The position of Coordinator, Placement/Management Information Systems was a new position and neither Brenda Lohr nor the grievant had any experience in fulfilling the duties of that position.

14. The selection of the grievant for the position of Coordinator, Placement/Management Information Systems would have amounted to a promotion for the grievant.

15. No evidence was offered relating to the evaluations of the other applicants.

16. The proof offered by the grievant was inconclusive concerning whether or not she was the most qualified among all of the other applicants.

CONCLUSIONS OF LAW

1. 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 qualifications criteria are insufficient to form the basis for an informed and rational decision. Dillon v. Board of Education of the County of Wyoming, 351 S.E.2d 58 (W. Va. 1986)

2. Pursuant to State Board of Education Policy 5300(6) (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."

3. 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. Board of Education of the County of Wyoming, supra.

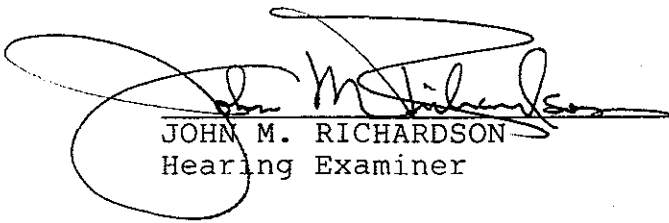
4. WV Code §18A-4-8b is applicable in that it applies to promotions of professional personnel and the filling of any classroom teachers' position. Sharp v. Kanawha County Board of Education, Docket No. 20-85-001; Yearego v. Jackson County Board of Education, Docket No. 18-87-031-1; and, Slade v. McDowell County Board of Education, Docket No. 33-86-050.

5. The grievant has failed to prove by a preponderance of the evidence that she is entitled to reinstatement to the position of Coordinator, Placement/Management Information Systems.

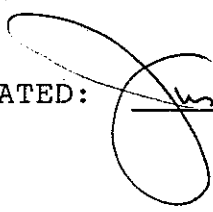
6. The filling of the position of Coordinator, Placement/Management Information Systems by the Mercer County Board of Education is null and void.

Accordingly, this grievance is GRANTED in part and the Mercer County Board of Education is directed to re-post and fill the vacancy in accordance with WV Code §18A-4-8b(a) and State Board of Education Policy 5300(6)(a).

Either party may appeal this decision to the Circuit Court of Mercer 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 inform 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:  June 25, 1987