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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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KITTY FRANCIS and JOHN GRIFFIN

v. DOCKET NO. 55-86-304-4

WYOMING COUNTY BOARD OF EDUCATION

DECISION

This grievance comes before the West Virginia Education Employees Grievance Board on appeal from an informal hearing at level two and a waiver by the respondent board at level three.¹ The grievance was assigned to John M. Richardson, Hearing Examiner, and a level four hearing was held on December 9, 1986. Thereafter, the parties submitted proposed findings of fact and conclusions of law, which were received on December 23, 1986 and incorporated in the

¹ While the record is not complete, it appears that the parties held an unrecorded hearing/conference with the Interim Superintendent, John Nolley. The Interim Superintendent then filed a written response indicating he could not resolve the grievance at level two. Apparently, board member/president, Robert E. Lookabill, was present at that conference and agreed to present the grievants' request to waive the level three hearing. This was apparently accomplished at the respondent board's meeting on October 6, 1986, at which time the grievance was waived to level four. Due to the publicity and implications surrounding the change in job requirements which were alleged to have occurred in favor of board member McGraw's "in-law" and it being the desire of both parties, this Hearing Examiner decided to hear and resolve the matter at level four rather than remanding the
(footnote cont.)

record for consideration in arriving at this decision.

Grievants, Kitty Francis and John Griffin, are both special education teachers employed by the respondent, the Wyoming County Board of Education. Grievant Francis holds a Masters degree in Special Education; has taught for six years, four years of which were in Special Education; and has two endorsements of exceptionality.

Grievant, John Griffin, holds a Masters degree in Special Education plus thirty hours (salary classification); has taught for four years, all of which were in the area of Special Education; and has two endorsements of exceptionality.

Due to the resignation on August 1, 1986 of Barbara Boyd, a vacancy in the position of Special Education Diagnostic Specialist occurred. On August 4, 1986, the respondent board met and upon motion by board member Warren McGraw, which passed unanimously, the job requirements of the Special Education Diagnostic Specialist were changed so as to require only two exceptionality endorsements rather than the previous three endorsements.² The respondent received seven

(footnote cont.)

grievance to level two for an evidentiary hearing, pursuant to WV Code §18-29-4(b).

Notwithstanding, this Hearing Examiner recognizes that this procedure is not the preferred manner in which most grievances should be handled.

² The record was unclear as to the minimum requirements of the West Virginia Board of Education, but it was uncontested that Wyoming County Board of Education's requirements as established during its' August 4, 1986 meeting exceeded the minimum requirements. It is noted that Grievant's Exhibits #1 and #3 (job vacancy notice and job description) show that the recent job vacancy (Gr. Ex. #1) required a valid West Virginia teaching certificate with any two endorsements while the previous job description (Gr. Ex. #3) required a valid West Virginia teaching certificate with three specific endorsements of MR (Mental Retardation), LD (Learning Disabilities) and BD (Behavioral Disorders).

applications in response to the job vacancy notice and the successful applicant was Rita Isom, who is commonly referred to as an "in-law" of board member Warren McGraw. Ms. Isom held a Masters degree plus fifteen hours (salary classification) and had eight years seniority with two endorsements. She was the applicant with the most seniority.

The facts out of which this grievance arises are the same as those in the grievance styled Mills v. Wyoming County Board of Education, Docket No. 55-86-292-4. While the grievants here, as did the grievant in the Mills grievance, supra, allege favoritism and manipulation of the selection process, it is apparent from the record that all seven applicants were considered by the Interim Superintendent, John Nolley, before he made his recommendation of Rita Isom to the Board.

It is significant to note that while the job requirements were changed by the respondent board on August 4, 1986, the net result was that the potential number of qualified applicants was increased to at least seven. It is also significant to note that the requirements of the job as posted by the respondent on August 5, 1986 still exceeded those standards applied by the State Board of Education.³

As previously stated in the Mills grievance, supra, the West Virginia Supreme Court of Appeals has spoken to the issue(s) here in the case of Dillon v. Wyoming County Board of Education, 351 S.E.2d 58 (W.Va. 1986). In that case, the Court held in syllabus

³The record and the exhibits reveal that none of the seven applicants were qualified under the former job requirements even though it is apparent that the grievants had applied for the necessary credentials and eventually received those some time after these positions were posted.

points 1 and 3 that:

1. Under W.Va. Code, 18A-4-8b(a) (1983), 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 difference in qualification criteria are insufficient to form the basis for an informed and rational decision.

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.

By easing the job requirements so that otherwise qualified personnel could apply, the respondent board has shown that its actions were responsible and in the best interests of the school system. In this regard, it is significant that this relaxation of the job requirements was not so drastic as to cause the requirements to fall below the standards established by the West Virginia State Board of Education.

The grievants concede that if the change in job requirements or qualifications for the job was legitimate, then Rita Isom was qualified and the most senior.⁴

⁴The grievants state on page 4 of their findings of fact and conclusions of law that: "Respondents gave much testimony to the qualifications, or lack thereof, of the Grievants and other applicants for the vacant position, but the Grievants contend that this only muddies the water. If the change in qualifications was legitimate, then Rita Isom was qualified and most senior and should have been awarded the job. The issue before the Hearing Examiner is whether or not the action of the Board was, in fact, legitimate."

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

FINDINGS OF FACT

1. Grievant, Kitty Francis, is a Special Education teacher employed by the Wyoming County Board of Education.
2. Kitty Francis has a Masters degree in Special Education; has six years of teaching experience, four years of which were in the area of Special Education; and has endorsements in three areas of exceptionality.
3. Grievant, John Griffin, is a Special Education teacher employed by the Wyoming County Board of Education.
4. John Griffin has a Masters degree plus thirty hours (salary classification); has four years of teaching experience all in the area of Special Education; and has endorsements in three areas of exceptionality.
5. The successful applicant, Rita Isom, had a Masters degree plus fifteen hours and two endorsements; and she also had eight years of teaching experience, five years of which were in Special Education.
6. None of the applicants were interviewed but the grievants were considered equally among all the applicants.
7. Rita Isom was believed to be the sister-in-law of board member Warren McGraw. There was no direct evidence that this family relationship was a factor in her selection for the vacant position.

8. The respondent changed the job qualifications for the position of Special Education Diagnostic Specialist at its August 4, 1986 meeting.

9. The change in qualifications was posted in the position announcement on August 5, 1986, which increased the number of persons in the county school system who were potentially qualified.

10. The change in requirements approved by the respondent board reduced the number of exceptionality endorsements from three to two.

11. The respondent board's job qualifications exceeded those of the West Virginia Board of Education.

CONCLUSIONS OF LAW

1. Under WV Code §18A-4-8b(a) (1983), 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 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 58 (W.Va. 1986).

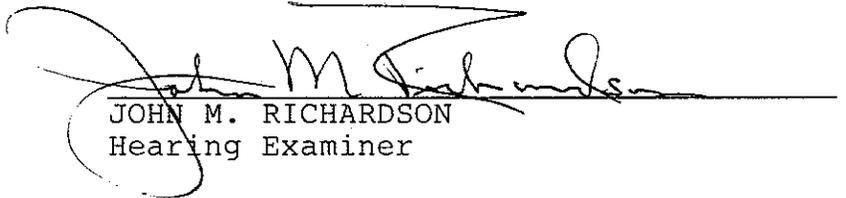
2. County boards of education have substantial direction in matters relating to the hiring, assignment, transfer, and promotion of school personnel. Nevertheless, this discretion must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious.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

County Board of Education, 351 S.E.2d 58 (W.Va. 1986).

3. The respondent board did not act arbitrarily or capriciously in selecting Rita Isom over all of the other applicants seeking to fill the position of Special Education Diagnostic Specialist.

For all of the foregoing reasons, the grievance is denied.

Either party may appeal this decision to the Circuit Court of Wyoming 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 can be prepared and transmitted to the Court.


JOHN M. RICHARDSON
Hearing Examiner

DATED: Feb. 18, 1987