



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

DR. GILES M. JONES

v.

DOCKET NO. 31-86-308-4

MONROE 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 and a hearing and decision at level two. By notice duly issued, this matter was set for hearing on November 25, 1986 and continued by mutual request of the parties to December 15, 1986. Thereafter, the parties agreed to waive, in writing, their right to an evidentiary hearing. Subsequently, this Hearing Examiner agreed to permit the parties to submit the grievance on the record following oral argument and entry of additional documentary evidence.

For his grievance the grievant, Dr. Giles M. Jones, Principal of Union High School, alleges that contrary to the respondent board's policy, a professional staff position was created and filled without first being approved by the board. By way of relief, the grievant desires to have the position vacated/abolished and seeks

enforcement of the respondent's policy #GCA.¹

In response, the respondent asserts that no new position was created and only through oversight was the job description not approved years ago when the previous and recently retired occupant filled the position. Additionally, the respondent asserts that the grievant was not qualified for the job posted, and therefore has no basis for his grievance.

The evidence reveals that James Frazier was employed as a General Supervisor/Attendance Director for the 1985-86 school year.² At the end of the 1985-86 school year, Mr. Frazier retired. He had been employed only one half time since the 1981-82 school year.

¹Monroe County Board of Education Policy #GCA provides: "All professional staff positions are created only with the approval of the Board. It is the Board's intent to activate a sufficient number of positions to accomplish the school district's goals and objectives. Before any new position is established, the superintendent will present for the Board's approval a job description for the position which specifies the job holder's qualification, the job's performance responsibilities, and the method by which the performance of these responsibilities will be evaluated. The Board also instructs the superintendent to maintain a comprehensive and up-to-date set of job descriptions of all positions in the school system."

²During the 1984-85 school year, Mr. Frazier was employed as General Supervisor/Attendance Director; for the 1983-84 school year, Mr. Frazier was employed as General Supervisor/Curriculum Coordinator and Attendance Director; for the 1982-83 school year, Mr. Frazier was employed as General Supervisor/Curriculum Coordinator.

At the end of the 1985-86 school year, Mr. Bobby E. Via, Monroe County Superintendent of Schools, caused a Notice of Vacancy to be posted for a position entitled Director of Curriculum and Instruction. This position was a full time (240 day) position requiring a General Supervisor's certificate for elementary and secondary education (K-12). The job description contained in the Notice had never been adopted by the board.³

The grievant inquired about the position but due to the certification requirements, was unable to qualify.⁴ Robert B. Humphreys, who was appropriately certified/qualified, was hired in August 1986.

An examination of the job description contained in the Notice of Vacancy revealed that it compared favorably with the definition of a "supervisor of instruction".⁵ While there is some conflicting testimony, it is sufficiently clear that Mr. Frazier performed duties comparable to a supervisor of instruction. Noticeably absent from the job description and in the definition of

³ Superintendent Via testified that while the job was entitled Director of Curriculum and Instruction, it contained the duties of General Supervisor, which was a job performed by James Frazier for sixteen years.

⁴ The grievant had certification for secondary education (7-12) and a superintendent's certificate. The grievant was not qualified for certification in elementary education (K-6).

⁵ The definition of Supervisor of Instruction was contained in Superintendents Exhibit #1 admitted at the level two hearing.

"supervisor of instruction" were the additional duties of the Attendance Director and Food Services Coordinator which were also duties performed by Mr. Frazier. While Superintendent Via contends that the position of Director of Curriculum and Instruction was not a new position, it was uncontested that the position was full time and the position James Frazier vacated was only half time. In addition, the old job description of General Supervisor/Attendance Director (plus duties as the Food Service Coordinator) and the new job description of Director of Curriculum and Instruction had not been officially approved by the county board. It is the grievant's position that had the matter been presented to the county board for approval, he would have had an opportunity to have input into the job description and consequent qualifications.⁶

While it may be true that the grievant would have had an opportunity to persuade the board to change the job description or qualifications, it is also true that the board was not required by policy #BFC or #GCA, footnote 2, supra, to allow such input.⁷

⁶The grievant relies upon Monroe County Board of Education Policy #BFC (Grievants Exhibit #1), which in essence provides that where policy changes (either adoption or repeal) are contemplated, then interested groups or individuals will be given an opportunity to provide input. This policy makes no mention of input concerning new positions or job descriptions.

⁷It is noted that the new job description was ultimately approved by the respondent board in November 1986. This was approximately three months after the job was filled and two months after the level two hearing was had in this grievance.

Based upon the policies and the evidence presented, it is apparent that a new position was created; however, it is just as apparent that the grievant was not denied any right in the process.

Since it is uncontested that the grievant lacked the proper certification/qualifications (K-12) for the new job as posted, it is unnecessary to reach the application of WV Code §18A-4-8b(a) and its attendant seniority question(s).⁸

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

FINDINGS OF FACT

1. The grievant, Dr. Giles M. Jones, is employed by the Monroe County Board of Education and assigned as Principal of Union High School.

2. The grievant applied for a new position designated as Director of Curriculum and Instruction requiring a General Supervisor's certificate (K-12).

3. The grievant held certification as a Superintendent and Secondary Education (7-12).

4. The grievant was not qualified for the position of Director of Curriculum and Instruction and was so informed by letter dated July 18, 1986 from Superintendent Via.

⁸ It is amply clear that grievant received a letter explaining that he was not properly qualified and that work so recommended by an appropriate evaluation team would be necessary before he could be certified as a general supervisor K-12.

5. The job description of James Frazier was never approved by the respondent board.

6. The job description of Director of Curriculum and Instruction was not approved by the respondent board until November 3, 1986.

CONCLUSIONS OF LAW

1. Monroe County Board of Education Policies #BFC and #GCA do not provide a method or procedure whereby employees or interested individuals are permitted any input in the creation of new positions or their attendant job descriptions or qualifications.

2. Every grievant is required to prove by a preponderance of the evidence all of the elements upon which relief may be granted. Stanton v. Jefferson County Board of Education, Docket No. 19-86-071; Whelley v. Jefferson County Board of Education, Docket No. 19-86-272-2; and Miller v. Mason County Board of Education, Docket No. 26-86-183-1.

3. Monroe County Superintendent of Schools, Bobby Via, violated board Policy #GCA by posting a new position without prior approval by the board of the job description and qualifications. This violation was corrected by the board when it adopted the description and qualifications of the new position on November 3, 1986.

4. The violation of Monroe County Board of Education Policy #GCA and its subsequent correction did not provide any basis upon which this grievant was entitled to any relief.

5. Monroe County Board of Education Policy #BFC does not provide any basis upon which this grievant may be granted any relief.

6. County boards of education are bound by procedures they properly establish to conduct their affairs. Dillon v. Board of Education of the County of Wyoming, 351 S.E.2d 58 (W.Va. 1986).

7. The Monroe County Board of Education did not act arbitrarily or capriciously.

8. 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, 351 S.E.2d 58 (W.Va. 1986).

Accordingly, this grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Monroe 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: March 25, 1987