



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. TONI G. PARSONS

v.

DOCKET NO 30-86-339-2

MONONGALIA COUNTY BOARD OF EDUCATION

DECISION

Grievant, Dr. Toni G. Parsons, is employed by the Monongalia County Board of Education as a school psychologist, a position which he has held since 1981. On September 2, 1986 Dr. Parsons filed a grievance in which he alleged a violation of W. Va. Code, 18A-4-8b as an employee with lesser qualifications than himself was employed as a Special Education Coordinator III.

The grievance was denied at level one and upon appeal to level two the grievant added a second violation of W.Va. Code, 18a-4-8b in that a job description was not included with the posting of the position vacancy.¹ Dr. Parsons requests that he be awarded the position with back pay and other benefits retroactive to the date of the violation. In his level two

¹Conflicting testimony was given at Level III as to whether a job description for this position was in existence during this time period. (T. Level III pp. 6, 14).

decision Superintendent Jack C. Dulaney found no error was committed in the position posting as job descriptions are made available to all employees at the posting locations, a procedure commended by the W. Va. State Department of Education Evaluation Team. (T. Level II p. 14). Superintendent Dulaney further found the grievant not to be the most qualified applicant for the position for reasons including his lack of certification in any area of special education and his lesser seniority earned within the system. The board of education affirmed the level two decision and Dr. Parsons timely filed an appeal to level four.

The record indicates that on August 14, 1986 several position vacancies were posted, including that of Special Education Coordinator III. The posting included the position title, term of employment, the effective date of employment and opening and closing dates for application. No job description or certification requirements were included with the posting.

All seven applicants were interviewed and ranked by a selection committee who recommended that the top ranked applicant be awarded the position.

The successful applicant possesses certification in the areas of elementary education and two areas of special education (mental retardation, K-12 and learning disabilities, K-12) as well as

having completed twenty-five hours of education administration courses. She has successfully taught and acted in a supervisory capacity in the Monongalia County school system for a period of nine years.

The grievant is certified in the areas of social studies (7-12) and school psychology and counseling (7-12). He has also earned a doctorate in education administration and participated in various professional activities on county and state levels.

Dr. Parsons does not allege that he was denied either an opportunity to submit an application or that he was not given fair consideration for the position. (T. Level II p. 5). He does argue that the position is administrative in nature and that he is more qualified to be Special Education Coordinator III than the successful applicant.

Findings of Fact

1. The grievant is employed by the Monongalia County Board of Education and currently holds the position of school psychologist.

2. The position vacancy of Special Education Coordinator III was advertised by a posting dated August 14, 1986. Information included in the notice was the position title, term of employment,

effective date of employment and the opening and closing dates for application. No certification requirements or job description was included.

3. The respondent states that while position descriptions are not posted with the vacancy announcement they are located in the area of the posting. This practice appears to have been approved by an evaluation team from the West Virginia Department of Education.

4. All seven applicants were interviewed and the selection committee recommended that the highest ranked applicant be offered the position.

5. The grievant is certified in the areas of social studies and school psychology in addition to having an earned doctorate in education administration. He is not certified in any area of special education.

6. The successful applicant is certified in two areas of special education and in elementary education. She has additionally completed twenty-five hours of course work in the area of education administration.

Conclusions of Law

1. The respondent's failure to include a job description with the notice of position openings is in violation of W.Va. Code, 18A-4-8b.

2. W. Va. Code, 18A-4-8b requires that decisions affecting promotion and filling of any classroom teacher's position be made on the basis of qualifications. Nathan Sharp v. Kanawha County Board of Education, Docket No. 20-85-001; and William W. Slade, Jr. v. McDowell County Board of Education, Docket No. 33-86-050.

3. The grievant has failed to prove that he was the more qualified applicant as a matter of law.

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Monongalia County and such appeal must be filed within thirty (30) days of receipt of this decision. (W. Va. 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.

DATED: March 9, 1987

Sue Keller

SUE KELLER
Hearing Examiner