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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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ROBERT PHARES

v.

Docket No. 42-86-232-2

RANDOLPH COUNTY BOARD OF EDUCATION

DECISION

Grievant, Robert Phares, is employed by the Randolph County Board of Education and currently holds the position of bus operator. In June, 1986, Mr. Phares began grievance proceedings alleging that the position of Transportation Director had been filled in violation of W. Va. Code, 18A-4-8b. The grievance was denied at levels one and two and the Randolph County Board of Education waived consideration of the matter to level four. By agreement of all parties, the grievance has been submitted to level four for a decision to be based on the record supplemented with briefs.

At the level two hearing it was established that a notice of vacancy for the position of Transportation Director was posted in May, 1986.¹ At the close of the applications period an

¹The position had been previously posted in April, 1986, but was re-advertised due to deficiencies in the first notice.

interview committee consisting of Assistant Superintendent Gordon White, Clifford Wilmoth, Director of Vocational Education, and Donald Rice, Director of Curriculum and Instruction, reviewed the applications and selected either ten or eleven of the candidates for an interview. The interviews were semi-structured in that the committee utilized a set of questions prepared by Assistant Superintendent White, and based upon the job description for the position. The committee was not restricted to the prepared questions but used them as guidelines. After the interviews were completed the committee members assessed each applicant on the basis of qualifications, work experience, seniority, etc.. The assessments were then combined and the names of the three applicants with the highest ranking were presented to Superintendent Dunn.² The candidate with the highest ranking withdrew his name from consideration and the position was accepted by the second ranked applicant, Jack Pingley. The grievant was the third ranked candidate.

The grievant argues that he is entitled to the position based on his years of successful employment with the board of education, including his work as Assistant Transportation Director.

²Mr. Wilmoth abstained from assessing one of the candidates, Mr. Pingley, as they are related by marriage.

The respondent states that supervisory and management skills were considered to be of paramount importance when filling the position and that Mr. Pingley was determined to be the most qualified candidate by virtue his experience earned in the operation of his own dairy franchise business. Other factors which were considered favorable to Mr. Pingley were his submission of goals for the Transportation Department and that he had been an elected representative within the county personnel association for two years. (T. pp. 22 and 26).

The respondent argues that W. Va. Code, 18A-4-8b does not grant seniority rights in regard to hiring nor does it require that the criteria be weighed equally.

In addition to the foregoing it is appropriate to made the following specific findings of fact.

Findings of Fact

1. The grievant began employment with the Randolph County Board of Education in 1972. He was employed as a substitute bus operator until 1976 when he was assigned a regular, full-time position. From 1976 through 1981 the grievant worked at the county office assisting the transportation director with bus scheduling in addition to his duties as bus operator. The grievant was promoted to Transportation Supervisor/Bus Operator in July, 1981 and remained in that position until he was again promoted in June, 1984, to Assistant Transportation Director.

Due to budgetary considerations, the grievant was returned to the position of bus operator effective the 1985-86 school year. In December, 1985, the grievant was again assigned to assist the Transportation Director for the remainder of the School term.

2. Jack Pingley was first employed by the board of education as a substitute bus operator during the 1983-84 term and as a regular, full-time bus operator and mechanic (summer employment) since 1984.

3. Both the grievant and Mr. Pingley have received favorable evaluations of their past service with the board of education.

4. Upon the resignation of Robert Shiflett, the position vacancy for Transportation Director was advertised in April, 1986 and, due to deficiencies in the announcement, again in May, 1986.

5. A three member committee consisting of Assistant Superintendent White, Clifford Wilmoth and Donald Rice reviewed the applications for the position and selected a number of candidates to be interviewed. Subsequent to the interviews the committee members individually assessed the candidates, combined their findings and determined the three highest-ranked applicants.

6. Mr. Wilmoth did not participate in the evaluation of Mr. Pingley due to the fact that they are related by marriage. While it cannot be ascertained whether Mr. Wilmoth's presence

in any way affected the decision of the other committee members, the possibility of such an occurrence casts a cloud over the selection process.

7. The board of education has provided no information as to the method used in ranking the candidates, including any adjustments made as a result of one candidate not being ranked by one committee member.

8. The applicant with the highest ranking withdrew his name from consideration. Mr. Pingley had been ranked second and the grievant, third.

9. Mr. Pingley was determined to be the most qualified candidate based on his prior experience as the owner of a dairy franchise business, his presentation of goals for the transportation department at his interview and his role as an elected representative to the service personnel association.

10. The grievant has also earned experience outside the board of education, including owning and operating a service station and store. In his level four brief, counsel for the respondent notes there is no evidence in the record establishing that this information was available to the board or the committee at the time selection was made.

11. The interview questions developed by Assistant Superintendent White based on the job description of the position and used as a guideline for the interview committee does not include a question regarding prior work experience.

12. The record does not indicate whether the committee ascertained the prior experience of any of the other candidates interviewed.

13. If a board of education is going to consider outside experience when filling service personnel positions then it must consider it uniformly for all applicants or provide a reason why it does not, otherwise the selection may portray arbitrariness.

14. Mr. Pingley presented the interview committee with a list of goals which he hoped to accomplish if selected transportation director. (See Exhibit 5a). At the level two hearing Assistant Superintendent White indicated that the grievant had also submitted some "backup", however he did not testify as to the content of the document and it was not made a part of the record. (T.p. 23).

15. As Assistant Transportation Director, the grievant was involved in all aspects of the transportation system. (T.p.9).

16. By memorandum dated May 12, 1986, and directed to Superintendent Dunn and Assistant Superintendent White, Transportation Director Robert Shiflett indicated that the grievant was exceptionally well trained and knowledgeable in all phases of transportation including bus scheduling, the preparation of state and county reports, new bus purchasing procedures and he maintained a good working relationship with the state department and other county directors.

17. W. Va. Code, 18A-4-8 does not include a classification title for Transportation Director, however, in an interpretation dated June 3, 1986, the State Superintendent of Schools determined that "[t]he Transportation Director of a county board of education is classified by W. Va. Code, 18A-4-8 as Supervisor of Transportation."

18. The qualifications listed on the job description for Transportation Director are: (1) high school diploma or equivalent; (2) experience in vehicle purchasing and maintenance; (3) familiarity with county roads; (4) possess business and clerical experience relevant to transportation and reporting and (5) such alternatives to the above as may be acceptable to the board.

Conclusions of Law

1. W. Va. Code, 18A-4-8b (b) requires a board of education to make decisions affecting the promotion and filling of service personnel positions on the basis of seniority, qualifications and evaluation of past service.

2. A customary rule of statutory construction requires that some effect be given to each word of a statute in order to determine its meaning. State ex rel. Cohen v. Manchin, 336 S.E. 2d 197 (W. Va. 1984); State ex rel. Johnson v. Robinson, 162 W. Va. 579, 582, 251 S.E. 2d 505, 508 (1979); Woodell v. Dailey, 160 W. Va. 65, 68, 230 S.E. 2d 466, 469 (1979); Dillon v. Board of Education of the County of Wyoming, Etc. 351 S.E. 2d 58 (W. Va. 1986).

3. Randolph County Board of Education Policy File: EBA, Recruitment/Hiring of Personnel, provides that the filling of service personnel positions shall be on the basis of seniority, qualifications and evaluation of past service with consideration given to: (1) educational background; (2) available evaluations and recommendations as provided by former employers and others and (3) attitude, cooperativeness, personality, knowledge of work assignment and ability to work around or with children as evidenced in appropriate interviews or working as a substitute employee.

4. County boards of education are bound by procedures they properly establish to conduct their affairs. State ex rel. Hawkins v. Tyler County Board of Education, 275 S.E. 2d 908,912 (W. Va. 1980); State ex rel. Wilson v. Truby, 281 S.E. 2d 231 (W. Va. 1981); Trimboli v. Board of Education, 163 W. Va. 1, 254 S.E. 2d 561 (1979); Dillon v. Board of Education of the County Wyoming, Etc. supra.

5. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel, however, this discretion must be exercised reasonably and not in a matter which is arbitrary and capricious. State ex rel. Hawkins v. Tyler County board of Education, supra; Beverlin v. Board of Education, 158 W. Va. 1067, 216 S.E. 2d 554 (1975).

6. The respondent's failure to investigate and evaluate the qualifications of all applicants on a uniform basis results

in violation of W. Va. Code, 18A-4-8b (b). Rose L. Meadows v. Mercer County Board of Education, Docket No. 27-86-117; Mary Adkins v. Logan County Board of Education, Docket No. 23-86-024; Joann Hammond v. Logan County Board of Education, Docket No. 23-86-023. (See also Dillon v. Board of Education of the County of Wyoming, Etc. supra.)

7. The Randolph County Board of Education has acted in an arbitrary and capricious manner and in violation of its own promulgated procedures in hiring Mr. Pingley to fill the position of Transportation Director without first investigating and evaluating the applicants on a uniform basis.

8. The grievant has earned seniority in the position classifications of Supervisor of Transportation and bus operator as he has performed the duties required of both. When two positions are held simultaneously, seniority in each classification is to be pro-rated based on the time allocated to each position.

9. The grievant has met his burden of proof by establishing that his experience outside the school system is similar to that of the successful candidate, that his experience in performing the duties of the position in question exceed that of the successful candidate and that he has accrued greater seniority as both a bus operator and Supervisor of Transportation. The board of education has failed to rebut the evidence presented by the grievant or to provide any corroborative evidence whatsoever in support of its position.

Accordingly, the grievance is GRANTED and the position is awarded to the grievant, Robert Phares.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Randolph 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: January 29, 1987

Sue Keller

SUE KELLER

Hearing Examiner