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JOE E. SMITH

v

Docket No. 54-86-131-1

WOOD COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Joe E. Smith, Jr., is employed by the Wood County Board of Education and was assigned to Parkersburg South High School as a classroom teacher during the 1984-85 school term.<sup>1</sup> He applied for a position as guidance counselor at Parkersburg High School for 1985-86 and filed a grievance when he was not selected. The matter was previously filed and adjudicated at level four after submission for decision based on the existing record. By decision rendered August 29, 1986 it was found that the record was incomplete in terms of the grievance issues and the matter was remanded to the Wood County Board of Education for disposition at the lower levels.<sup>2</sup>

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<sup>1</sup> According to a level two decision (rendered 12/30/86 after remand of the grievance), grievant was subsequently employed as a Vocational Evaluator with the system.

<sup>2</sup> The previous decision contained a historical accounting of the matter in dispute and is hereby incorporated by reference into the decision herein.

On remand, a level two hearing was conducted by the school superintendent and a decision denying the grievance was rendered December 30, 1986. On January 14, 1987 the board of education waived its right to decide on the grievance. The grievance was refiled to level four on January 31, 1987. A hearing was set for early March 1987 but the parties subsequently agreed to submit the matter for decision upon the record and formal written argument by counsel for the respective parties.<sup>3</sup>

The crux of this dispute involves an application of W.Va. Code, 18A-4-8b(a) which governs the hiring of professional personnel. The statute requires that a school board fill a classroom teacher's position on the basis of qualifications and that if the most senior person is not selected a written statement of reasons shall be given to the applicant with suggestions for improvement. While this grievance matter was pending, the West Virginia Supreme Court decided Dillon v. Board of Education of Wyoming County, 351 S.E.2d 58 (W.Va. 1986) which addresses the legislative intent of W.Va. Code, 18A-4-8b(a), as amended in 1983, in regard to teacher hiring. The Dillon Court concluded that a board of education must select the most senior applicant for a teaching position should the contenders possess equal qualifications, the presumption being that the most senior applicant possesses superior classroom experience thus enhancing his or her qualifications for the classroom position sought.

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<sup>3</sup> The December 17, 1986 level two proceedings shall be cited as (T.\_\_\_\_).

Grievant relies on the late-breaking Dillon decision. He contends that his qualifications were equal to those of David Hill and he possessed more overall seniority. Grievant asserts that he was not chosen because the principal at Parkersburg High School had predetermined that David Hill should be reemployed as counselor at that post. Grievant argues that the board had no rational basis other than seniority for its selection of a guidance counselor and, in fairness, he should have been employed for the position. He requests that he be instated as guidance counselor at Parkersburg High School.

The school board asserts that grievant has failed to prove his grievance by a preponderance of the evidence, as the grievance laws require, in that grievant has not established that his qualifications were equal or superior to those of the applicant selected. The board argues that the applicant selected, David Hill, possessed more evaluative, academic and experiential qualifications than the grievant for the position in issue and therefore grievant's overall seniority for years employed would not prevail in the selection process.

In addition to the foregoing narration, the following specific findings of fact and conclusions of law are appropriate.

### FINDINGS OF FACT

1. Grievant herein was first employed by the Wood County Board of Education for the 1975-76 school year. He was one of three candidates for a guidance counseling position for the 1985-86 school year.

2. One applicant, Dianne Boggess, was initially employed by the board for the 1972-73 school year thus grievant was not the most senior applicant who originally vied for the position.

3. The successful applicant, David Hill, was initially employed 1977-78 and although he was credited with one year's experience teaching in Maryland, he had the least overall seniority of all applicants.

4. In 1979-80 grievant was first employed as a guidance counselor at Franklin Junior High School and remained there through 1980-81. He transferred as guidance counselor to Parkersburg South High School school year 1981-82 and continued that assignment through 1982-83. (Stipulated exhibit No. 11, 12/27/86.)

5. In 1979-80 David Hill was employed as a guidance counselor at Parkersburg High School and remained in that position 1980-81, 1981-82 and 1982-83.

6. For school year 1983-84 both grievant and David Hill were subject to transfer due to a reduction in force of high school guidance counselors. Grievant chose to remain at the high school level as a classroom teacher, while Hill exercised an option to bump a less senior counselor and remain a guidance counselor at the junior high level. He remained at the junior high post 1983-84 and 1984-85, and applied for the vacancy at Parkersburg High School for school year 1985-86.

7. At the time the grievance was originally filed, grievant had four years counseling experience, two at the junior high level and two at the senior high level and had been away from counseling for two years. David Hill had six years counseling experience, four at the high school level and two at the junior high level with no lapse in his services as a guidance counselor.

8. David Hill was originally recommended and selected for the position but the board of education determined the hiring improper and flawed since grievant had not been interviewed for the position by the principal at Parkersburg High School as per board policy. The employment of David Hill as counselor at Parkersburg High School was rescinded.

9. Subsequently, grievant was interviewed for the position at issue by the principal of Parkersburg High School for at least forty-five minutes on February 12, 1986. (T.9.)

10. The principal concluded that David Hill's former counseling experience at Parkersburg High School rendered him a more qualified applicant for the present guidance counselor position than grievant. He also based his recommendation on the fact that Hill's previous tenure at Parkersburg High School had been excellent, that he had gained the rapport of students and the respect of staff and that should another candidate have been selected, he (the principal) would have lost staff support. (T.27).

11. The principal again recommended David Hill for employment, the superintendent so nominated him and the board employed David Hill once again on February 25, 1986.

12. Grievant filed a grievance on his non-selection, but the grievance at level four was remanded to the board of education as a determination of the grievance issue could not be made on the record presented. See decision, Joe E. Smith v. Wood County Board of Education, Docket No. 54-86-131-1 decided August 29, 1986.

13. At a December 17, 1986 level two hearing, conducted after the remand, grievant presented no compelling evidence to vitiate school officials' determination that David Hill was the most qualified person to fill a guidance counselor's position at Parkersburg High School. Cited as rationale for Hill's selection

were academic credentials, in which Hill had attained a master's plus 30 hours while grievant held a master's plus fifteen hours, as well as Hill's superior seniority in guidance counseling. Because Hill opted to work on the junior high level to remain in counseling after a RIF of high school counselors, a job that grievant could have had, Hill thereby acquired more experience and evaluative data in the field and grievant, moreover, had been two years absent from counseling.

#### CONCLUSIONS OF LAW

1. Under W.Va. Code, 18A-4-8b(a), decisions of a county board of education affecting 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 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); Jackie Kilmer v. Wayne County Board of Education, Docket No. 50-86-324.

2. 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. Wyoming County Board of Education, supra.

3. The discretionary exercise of a board of education to employ and assign professional personnel for a specialized position in a designated school should not be disturbed when the action was taken in good faith for the benefit of a school system and was not arbitrary. Hawkins v. Tyler County Board of Education, 275 S.E.2d 908 (W.Va. 1980); Garry R. Tenney v. Barbour County Board of Education, Docket No. 01-87-166-2.

4. The board made an accurate and rational determination that grievant had less experience in the field of counseling and was thus less qualified than the grievant herein for a counseling position.

5. Under W.Va. Code, 18A-4-8b(a), where one candidate for a teaching position is clearly more qualified, the seniority of another applicant will not be sufficient to justify denying the position to the more qualified applicant. Dillon v. Wyoming County Board of Education, supra; Julie J. Kilmer v. Wayne County Board of Education, supra.

6. The grievant has failed to prove by a preponderance of the evidence that the school board acted arbitrarily or capriciously or that he is entitled to reinstatement to the position of guidance counselor at Parkersburg High School.



Accordingly, this grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Wood 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:

November 30, 1987

Nedra Koval

NEDRA KOVAL  
Hearing Examiner