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**WEST VIRGINIA EDUCATION  
EMPLOYEES GRIEVANCE BOARD**

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JACK YEAREGO

v.

Docket No. 18-87-031-1

JACKSON COUNTY BOARD OF EDUCATION

**DECISION**

Grievant, Jack Yearego, is employed by the Jackson County Board of Education as a teacher at Ripley Middle School. On December 12, 1986, he filed a grievance alleging that he had been denied the position of assistant principal of Ripley High School in violation of W.Va. Code, 18A-4-8b and Jackson County Board of Education Policy GBC/GBD. A level two evidentiary hearing was conducted on January 9, 1987, and the decision was affirmed by the board of education on February 5, 1987. On February 17, 1987, grievant appealed to the Education Employees Grievance Board and the parties waived an evidentiary hearing at level four.<sup>1</sup>

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<sup>1</sup> The grievance was submitted to the hearing examiner on the record made at the level two hearing (T.\_\_) and legal memoranda was filed by the parties on March 23, April 15 and April 29, 1987. Missing Exhibits A-J were submitted as per the request of the hearing examiner on May 19, 1987.

Grievant has been employed as a teacher in Jackson County for nineteen years, nine years of which has been served at Ripley Middle School.<sup>2</sup> He has a Masters degree in elementary administration and junior high and thirty nine to forty two post-Masters hours (T. 5,6); he also holds a principal's certification for grades K-8 (T. 3,29).

Grievant has received good evaluations from the principal of Ripley Middle School, Charles Cottrill, and the 1985 and 1986 evaluations made specific reference to administrative experience grievant had at Ripley Middle School in the form of assisting with supervision (Exhibits 7 and 8).<sup>3</sup>

On September 16, 1986, the position of assistant principal at Ripley Middle School became vacant and the position was posted; the qualifications listed on the notice were as follows:

1. Minimum of a Masters degree.
2. Certification as a middle school principal.
3. Minimum of three years successful teaching experience.

(Exhibit 6)

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<sup>2</sup> Ripley Middle School was opened nine years ago and accommodates the 6th, 7th and 8th grades. Grievant's teaching experience has been in grades 3-8, with the majority of experience being in the 7th and 8th grades (T.6).

<sup>3</sup> At level two grievant testified that he had gained supervisory experience by performing administrative duties for Mr. Cottrill (T. 6,7). More specifically, he stated that he handled discipline, attendance and helped with the hot lunch program. This testimony was objected to as hearsay and the level two grievance evaluator admitted the documentary (Exhibits 7 and 8) and testimonial evidence solely as a teacher's evaluation and not as substantiating grievant's allegations of administrative experience (T.9). Clearly, it was error to declare this evidence hearsay and limit its applicability as was done by the level two grievance evaluator.

Grievant was one of five applicants for the position and was initially interviewed by Mr. Cottrill and thereafter by Rob Roy Walters, director of middle/adolescent education for Jackson County Schools. Mr. Cottrill recommended grievant to Superintendent Lannan on the basis of grievant's certification and teaching experience at that level (Grievant's Exhibit 4; Board Exhibit D). By memorandum dated September 30, 1986, Mr. Walters advised Superintendent Lannan that all five candidates could be certified and had sufficient experience to justify their consideration as assistant principal; the conclusion, however, was that

I would suggest that your choice lies between James Frashier, coach and teacher at Ripley High School and Jack Yearego, teacher at Ripley Middle School. Yearego is the better student and has the advantage of knowing the children involved. Frashier is more impressive physically and has the advantage of being a new broom. (Board Exhibit C).

By letter dated December 4, 1986, Superintendent Lannan informed Mr. Frashier of his transfer from teacher at Ripley High School to assistant principal at Ripley Middle School, effective December 8, 1986.<sup>4</sup> By letter dated December 5, 1986, Superintendent Lannan informed grievant of the selection of Mr. Frashier, noting that

...I was most interested in placing a person whose experience, background and training included a

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<sup>4</sup> The minutes of the board meeting on December 4, 1986, indicate that the motion to transfer Mr. Frashier passed by 3-1 vote, with Mr. Hill casting the dissenting vote. (Board Exhibit E).

strong orientation in adolescent (sic) education to complement the elementary and middle school orientation of the present principal and staff at Ripley Middle School. (Grievant's Exhibit 5).<sup>5</sup>

Grievant contends that he was the more qualified candidate of the two finalists and that the "strong orientation in adolescent education" qualification was neither listed on the job posting nor a point of discussion during the two interviews; that Superintendent Lannan did not interview any of the candidates and was unfamiliar either with the seniority of the two candidates or their qualifications and concluded that their evaluations were "essentially equal" (T. 29). Finally, grievant's representative relies upon several decisions of the Education Employees Grievance Board and the Supreme Court of Appeals of West Virginia.

Counsel for the board of education asserts that W.Va. Code, 18A-4-8b does not apply to administrative positions and the assistant

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<sup>5</sup> Grievant interpreted "adolescent education" in the letter to mean that he needed secondary education experience (T. 4). He stated that the job posting had not indicated as a qualification experience in adolescent or secondary education and was not mentioned in either of the interviews (T. 5).

Also, Board Exhibit B, a copy of a job posting for assistant principal at Ripley Middle School noted

Certification Required: Middle  
Childhood Education  
Employment Term 210 days

principalship position herein does not amount to a promotion;<sup>6</sup> that W.Va. Code, 18A-4-8b does not require that the most qualified candidate be selected but that such decisions be made on the basis of qualifications. (T. 30).

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

#### FINDINGS OF FACT

1. Grievant is employed by the Jackson County Board of Education as a teacher at Ripley Middle School; he has been a teacher for nineteen years and has served the last nine years at Ripley Middle School.

2. Grievant holds a Masters degree in elementary administration and junior high and approximately forty post-Masters hours; he also holds a principal's certification for grades K-8. He has received good evaluations from the principal at Ripley Middle School and has gained administrative experience at the school.

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<sup>6</sup> See, however, Nathan Sharp v. Kanawha County Board of Education, Docket No. 20-85-001 and William Slade v. McDowell County Board of Education, Docket No. 33-86-050 in this regard. Also, it is noted that the transfer to the assistant principal's position would involve a salary increase and an extended contract year (210 days viz a viz 200 days as a teacher) and would amount to a promotion.

3. On September 16, 1986, the position of assistant principal at Ripley Middle School became vacant and the position was posted; the qualifications listed on the notice were

1. Minimum of a Masters degree.
2. Certification as a middle school principal.
3. Minimum of three years successful teaching experience.

4. Grievant applied for the position and was interviewed by the principal of Ripley Middle School, who recommended grievant to Superintendent Lannan on the basis of grievant's certification and teaching experience at that level. Grievant was also interviewed by the director of middle/adolescent education for Jackson County Schools, who concluded that as between applicants James Frashier and grievant, grievant was the better student and had the advantage of knowing the children at the school; he recommended both Frashier and grievant to Superintendent Lannan, who did not interview any of the applicants.

5. Superintendent Lannan recommended Mr. Frashier to the board on the basis of a strong orientation in adolescent education, a factor not theretofore alluded to in the posting and/or interviews. As the applicant with most seniority grievant was given a letter indicating the reasons for his non-selection.

6. The bulk of grievant's teaching experience and certification has been in grade levels 7 and 8 and he has extensive experience in grade levels 3 through 8, the middle school levels. Mr. Frashier's certification is in grade levels 7 through 12 and he has fourteen years of seniority.

7. The selection of grievant to the position in question would have amounted to a promotion.

#### CONCLUSIONS OF LAW

1. W.Va. Code, 18A-4-8b(a) requires promotion and filling of any classroom teacher's position to be done on the basis of qualifications. This requirement is not restricted to a classroom teacher's position but also contemplates promotion to an administrative position. William Slade v. McDowell County Board of Education, Docket No. 33-86-050; Nathan Sharp v. Kanawha County Board of Education, Docket No. 20-85-001.

2. Under W.Va. Code, 18A-4-8b(a) decisions of a county board of education affecting teacher promotions must be based primarily upon the qualifications of the applicants, with seniority having a bearing on the selection process when the applicants have otherwise equivalent qualifications or where the differences 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); Julie Kilmer v. Wayne County Board of Education, Docket No. 50-86-324.

3. County boards of education have substantial discretion in matters relating to the hiring, assignments, transfer and promotion of school personnel but this discretion must be exercised reasonably, in the best interest of the schools and in a manner which is not arbitrary or capricious. State ex rel. Hawkins v. Tyler County Board of Education, 275 S.E.2d 908 (W.Va. 1980).

4. The failure of the Superintendent of Schools to interview the finalists, the addition of requirements not specified in the posting of the position and the general unfamiliarity of the credentials of the finalists is unfair to applicants who have relied upon the criteria described in the posting. Dillon v. Wyoming County Board of Education, 351 S.E.2d 58 (W.Va. 1986).

5. The selection of James Frashier over grievant was arbitrary and contrary to W.Va. Code, 18A-4-8b(a). Dorsey Scott v. Jackson County Board of Education, Docket No. 18-86-009.

Accordingly, the grievance is GRANTED and the board of education is Ordered to award the position of assistant principal of Ripley Middle School to grievant.



Either party may appeal this decision to the Circuit Court of Kanawha County or Jackson County and such appeal must be filed within thirty 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.

A handwritten signature in cursive script, reading "Leo Catsonis", is written over a horizontal line.

LEO CATSONIS

Chief Hearing Examiner

Dated: May 29, 1987