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**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**

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JAMES D. FAIRCHILD

v.

Docket No. 03-88-160

BOONE COUNTY BOARD OF EDUCATION

DECISION

Grievant, James D. Fairchild, is employed by Respondent Boone County Board of Education as a social studies teacher for learning-disabled students at Sherman High School (SHS). He made application to become SHS regular classroom social studies instructor and was denied that position; accordingly, he filed a Level I grievance on July 20, 1988. The grievance was denied there and at Levels II and III¹ prior to being heard at Level IV on October 20, 1988. Respondent filed its proposed findings of fact and conclusions of law

¹ The Level III transcript is a portion of the record.

on November 11, 1988, and Grievant submitted his like proposal on November 15, 1988.

On June 28, 1988, Respondent posted the job of "Teacher, Social Studies, 7-12" at SHS. The "deadline for receipt of application and resume" to Kenneth R. Mabe, then Superintendent of Schools for Boone County, was listed as Friday, July 8, 1988. Five individuals, including Grievant, made formal written application for the position on or before July 8. Linda Sebok, the successful applicant, learned of the vacancy via the Boone County "Hot Line"² on July 8 and called Respondent's office at 3:10 p.m. on that date from Myrtle Beach, South Carolina, to express interest in the job. Ms. Shirley Hill, secretary to Deloris Jean Davis, then Assistant Superintendent of Schools for Boone County,³ wrote a note, explaining the substance of the phone call from Ms. Sebok, to Ms. Davis and delivered the same to her. Upon her return to West Virginia from South Carolina, Ms. Sebok, upon Ms. Davis' suggestion, wrote a letter confirming her July 8 call to Respondent and dated it "July 8, 1988." Superintendent Mabe recommended that Respondent hire Ms.

² The "Hot Line" is a designated telephone line which, when called, accesses a recording revealing vacant positions throughout the Boone County Board of Education system. The "Hot Line" is constantly updated throughout the year. See Boone County policy AFB, Section III.

³ At the time in question, Ms. Davis was also Director of Personnel for Respondent. She currently serves as Interim Superintendent of Schools for Boone County.

Sebok for the SHS vacancy, and it acted favorably upon his recommendation.

Grievant cites Boone County policy AFB, which is titled "Procedure for Posting Personnel Vacancies" and provides, in pertinent part:

The Superintendent will use the following procedure in posting and receiving applications for posted vacancies:

. . .
. . . Post for five (5) work days all vacancy bulletins, receive written letters of application. . . .

Grievant admits that both he and Ms. Sebok have appropriate certification for the position and that she has more seniority with Respondent than does he.⁴ He argues, however, that Boone County policy requires applications to be in writing and that the vacancy notice stated those applications had to be received by Respondent, via Superintendent Mabe, on or before July 8, 1988. Grievant further asserts that there is no provision in Respondent's policy to allow for applications to be made in any other fashion.

Respondent argues that it should be allowed to interpret its own policy, and that nothing therein precludes the acceptance of applications other than those in writing.⁵ In

⁴ No other applicant had seniority with Respondent, and it appears that only Grievant and Ms. Sebok were considered qualified for the vacancy by Respondent.

⁵ Respondent pointedly invited this Grievance Board's attention to the unusual circumstances in this case,
(Footnote Continued)

the alternative, it claims that either or both of the handwritten note from Ms. Hill to Ms. Davis and the letter from Ms. Sebok dated July 8, 1988 should be found to constitute Ms. Sebok's written application.⁶

In addition to the foregoing, it is appropriate to make the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Grievant, James D. Fairchild, is a teacher employed by Respondent Boone County Board of Education. He is certified in the areas of Social Studies, 7-12, Safety Education, 7-12 and Special Learning Disabilities, K-12. Prior to the commencement of school year 1988-89, he had approximately two years' employment history with Respondent.

2. Linda Sebok, a teacher employed by Respondent, is certified to teach Social Studies, 7-12. Prior to school

(Footnote Continued)

and argued, imaginatively citing Morgan v. Pizzino, 256 S.E.2d 592 (W.Va. 1979), that to interpret its policy to absolutely require written application herein would be inconsistent with construing education regulations "strictly... in favor of personnel."

⁶ It is noted that county boards of education in West Virginia are not required to fill professional positions within any time frame after posting, see W.Va. Code §18A-4-8b(a), as they are with service personnel, see Code §18A-4-8b(b). Therefore, Respondent could have re-posted the job in question, thereby extending the application period beyond July 8, 1988.

term 1988-89, she had approximately five years' employment history with Respondent.

3. On June 24, 1988, Respondent posted the position of Social Studies teacher, 7-12, Sherman High School (SHS). The written notice provided that applications and resumes would be accepted by Kenneth Mabe, then Superintendent of Schools for Boone County, through July 8, 1988.

4. Grievant made written application for the position on or before July 8, 1988.

5. Ms. Sebok, who was vacationing in South Carolina and did not have access to a phone for several days, called Respondent's "Hot Line" job vacancy service on July 8 and learned of the SHS Social Studies position. She called Mabe's office at 3:10 p.m. on July 8, and expressed interest in the job.

6. Four other individuals made written application for the job on or before July 8, 1988.

7. Shirley Hill, a secretary in Respondent's central office, made a written note, on a sheet logging applications for the position in question, regarding Ms. Sebok's call and the substance thereof. She delivered this note to Deloris Jean Davis, then Assistant Superintendent of Schools for Boone County and Director of Personnel, on July 8.

8. Upon Ms. Sebok's return from South Carolina, and at the suggestion of Ms. Davis, she wrote a letter to Respondent in confirmation of her July 8 phone call thereto. Also

at Ms. Davis' suggestion, Ms. Sebok dated the letter "July 8, 1988."

9. Ms. Sebok was the successful applicant for the position.

10. Respondent's written policy, styled "Boone County File: AFB" provides, in pertinent part: "The Superintendent will use the following procedure in posting and receiving applications for posted vacancies: . . . Post for five (5) work days all vacancy bulletins, receive written letters of application. . . ."

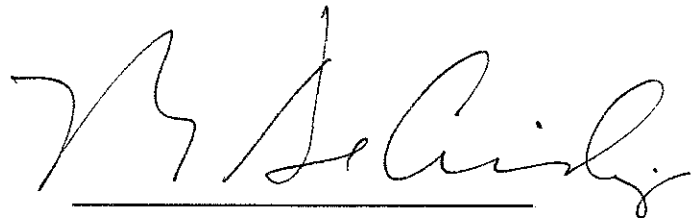
CONCLUSIONS OF LAW

1. A county board of education in West Virginia is bound by procedures it properly establishes to conduct its affairs. Powell v. Brown, 238 S.E.2d 220 (W.Va. 1977). However, a county board of education in West Virginia may likewise interpret its own policies, so long as it does so in a manner not unreasonable, arbitrary or capricious. See Smith v. Bd. of Educ. of the County of Logan, 341 S.E.2d 685, 690 (W.Va. 1985).

2. Respondent's interpretation that its policy "Boone County File: AFB" does not preclude the acceptance of applications for employment other than written ones, in unusual circumstances such as those herein, is reasonable as a matter of law.

Accordingly, this grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Boone County and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code §18-29-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Hearing Examiners is a party to such appeal, and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate Court.



M. DREW CRISLIP
HEARING EXAMINER

Dated: December 7, 1988