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NANETTE FANKHOUSER

v.

Docket No. 05-87-250-3

BROOKE COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Nanette Fankhouser, is employed by the Brooke County Board of Education as a home economics teacher presently assigned to Follansbee Middle School. She alleges a violation of W.Va. Code, 18A-4-8b(a) and W.Va. Code, 18-5-4 when she was not selected for a position vacancy of consumer homemaking teacher at Brooke High School. A level four hearing was conducted December 17, 1987 and neither party submitted a brief or proposed findings of fact and conclusions of law; the board presumably stands on its level two decision submitted as Joint Exhibit No. 6 at the December 17 hearing and argument by its counsel at that time.¹

¹ A level four hearing scheduled for October 28, 1987 was continued by the grievant's representative pending the receipt of information from certification officials at the State Department of Education. No lower level pleadings have been made part of the record but the transcript of the level two hearing conducted September 9, 1987 was submitted and shall be cited as, (T.__).

Grievant has been employed continuously by the board since 1977 teaching home economics at Follansbee Middle School. Until July 31, 1987 she was certified in general home economics, 7-12 and art, 7-12. In the spring of 1987 she learned of an impending vacancy in home economics at Brooke High School. At that time she initiated procedures to earn a vocational or consumers home economics certification; she attained this certification effective July 31, 1987.²

On June 1, 1987 the board posted a position opening for a consumer homemaking teacher at Brooke High School noting that certification in vocational home economics was required. Grievant and another teacher applied for the position and were interviewed by the high school principal and the vocational director who, according to the school superintendent, recommended to him that the applicant other than grievant be employed, namely Eva Ujcich.

Eva Ujcich holds certification for general home economics, 7-12, and mental retardation and attained the vocational home economics, 7-12, certification in 1983. Her experience teaching home economics was limited to an assignment as substitute at

² Noted is that this specialization was complementary to grievant's home economics major and required only six hours of course work, not the in-depth and extended curriculum necessary for a subject matter certification. The endorsement was not available at the time she was earning her teaching degree and has evolved within the State Department of Education from "Vocational Home Economics" to "Consumer and Homemaking" certification.

Bethany Middle School for an undisclosed period of time in 1985. An evaluation complimenting her efforts notes observations on March 13 and 19, 1985 to assess her performance of her substitute duties. She was subsequently employed on a probationary basis at Follansbee Middle School for the 1985-86 and 1986-87 school years. Although she held both general and vocational home economics certification, her employment at Follansbee Middle School appears to have been in her additional certification area, as a teacher for Educable Mentally Impaired or EMI.

The principal and vocational director who recommended that Ms. Ujcich be employed did not appear at either the level two or level four hearings to offer testimony as to their determinations. The school superintendent acknowledged that he leaves such matters in their hands, thus, the basis for the two school administrators' selection remains unknown. The superintendent, in turn, recommended to the board that Mrs. Ujcich be hired for the position. The board, however, did not act on the nomination on several separate occasions, apparently at the request of the grievant who wrote to board members and appeared at the board meetings to persuade the board that she was the most qualified and senior applicant and could attain the vocational educational certification prior to the beginning of the new school term when the employment would begin.³

³ According to the testimony of record, the board was concerned about grievant's statement that she was the most senior of the two employees and awaited some advisory from the state superintendent on the matter.

Grievant argues that she is more qualified for the position in question on the basis of her extended experience teaching in-field in home economics and Eva Ujcich's lack of comparable experience, favorable evaluations outnumbering Ms. Ujcich's, overall employment seniority with the county which is superior to Ms. Ujcich's and her (grievant's) ability to attain the required certification prior to the beginning of the employment period of the position vacancy. Grievant relies on W.Va. Code, 18-5-4 which permits the board to employ qualified teachers or those who will qualify for an existing or anticipated vacancy by the time of entering their duties.⁴ In addition, she deems the board has erred by not furnishing her a letter of reasons for her non-selection as per W.Va. Code, 18A-4-8b(a).⁵ She requests instatement to the home economics position at Brooke High School.

⁴ The provisions of the statute are reflected in State Board Policy 5202(5)(J)(2) which addresses good faith employment of a teacher in anticipation that the candidate is eligible for a certificate and procedures to be utilized should a later determination render the teacher ineligible.

⁵ The statute requires that the most senior employee/applicant not selected for a teaching vacancy be given a written statement of the reasons for non-selection and suggestions for improvement.

The respondent board contends that grievant was not certified in vocational home economics at the time of the job vacancy posting and thus argues that grievant was not the most senior or qualified applicant. It relies on several advisories from the State Superintendent of Schools which relate to professional seniority accrued in certification areas, and further states it was not required to notify grievant of reasons for her non-selection as she was not the senior applicant in the certification area of vocational home economics.⁶

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

⁶The advisories speak of seniority accrued in each area of certification a teacher holds and state that seniority begins upon the date of certification or date of initial employment, whichever is latest in time. This interpretation is consistent with W.Va. Code, 18A-4-8b(a) but speaks only of certification areas. The teacher's total overall statutory professional seniority "shall be determined on the basis of the length of time the employee has been professionally employed by the...board...." Thus, grievant was the more senior teacher/employee than Ms. Ujcich and the board was obligated to furnish grievant with the required letter of reasons for her non-selection and recommendations of how she may improve. Due to the final determinations in this grievance, this matter will not be addressed further.

FINDINGS OF FACT

1. Grievant commenced employment with the board approximately nine years prior to the 1987-88 school year and was assigned to Follansbee Middle School where she has continuously taught home economics. The curriculum included personal development, family relations, management, nutrition, foods, consumer education and clothing and textiles (T.6).

2. Grievant's evaluations, from years 1981 through 1987, were generally positive. In addition, the record contains a glowing employment recommendation from the Chairman of the Home Economics Department of Brooke High School dated January 1977.

3. Upon learning in the spring of 1987 of a probable home economics vacancy at Brooke High School, grievant began to make arrangements to obtain her vocational certification via summer classes at West Liberty State College. The position vacancy was posted June 1, 1987 and grievant applied. She explained to school personnel that she would be certifiable prior to the time that the teaching duties would commence for the position vacancy (T.8).

4. According to the school superintendent, the Brooke High principal and the vocational director recommended the only other candidate for the position, Eva Ujcich. No basis was given regarding the recommendation made to the superintendent and no evidence was presented to support the school officials' determinations. The superintendent, in turn, recommended to the board that it employ Ms. Ujcich and did not personally examine the qualifications of either applicant, a task he relegated to others.

5. Grievant appeared at the board meeting of July 13, 1987 and was permitted to voice her conviction that she was the most senior and qualified applicant; consequently the board tabled any action on the matter. The employment issue was again tabled on July 27, 1987 and the board granted the county superintendent's wishes to seek a ruling from the state superintendent regarding seniority matters (T.9). Grievant followed up with a written appeal to the board dated August 5, 1987. By the respondent's admission, at that time grievant had completed her vocational home economics course work, was certifiable and was awaiting the completion of paperwork from state certification officials (T.14, 15). The board again tabled the matter on August 10, 1987 and, finally, on August 24, 1987, upon the advice of its legal counsel, acted on the superintendent's nomination of Ms. Ujcich.

6. Eva Ujcich is certified in General Home Economics 7-12, Mental Retardation and Vocational Home Economics, 7-12. Ms. Ujcich has what appears to be a brief temporary teaching experience in home economics as a substitute at Bethany Middle School. She commenced probationary employment with the board in 1985-86 and 1986-87 teaching Educable Mentally Impaired at Follansbee Middle School. Several positive evaluations were submitted covering her substitute work in 1985 and her two probationary EMI teaching years; these factors appear to be the entirety of the data comprising her qualifications and the record is silent as to just what additional factors, if any, were considered by administrators who originally recommended her employment.

7. Although grievant was not certified in vocational home economics in June 1987 she had arranged to complete the readily obtainable certification requiring only six hours course work, notified school officials of this fact and was certifiable prior to the board's final action on August 24, 1987. The evidence preponderates that she was an eligible candidate on August 24, 1987 and was the more qualified applicant by virtue of her nine years in-field teaching in home economics, many favorable evaluations of her home economics teaching, an employment recommendation for a home economics position by the department's former chairperson, and overall teaching experience and employment seniority with the board.

CONCLUSIONS OF LAW

1. A county board of education is authorized to meet to employ qualified teachers, or those who will qualify by the time of entering upon their duties, necessary to fill existing or anticipated vacancies for the current or next ensuing school year. W.Va. Code, 18-5-4.

2. County boards of education have substantial discretion in matters relating to the hiring of school personnel but such discretion must be reasonably exercised, in the best interest of the schools and not in an arbitrary and capricious manner. Dillon v. Wyoming County Board of Education, 351 S.E.2d 58 (W.Va. 1986); B. Smith v. Wyoming County Board of Education, Docket No. 55-87-209; Crow v. Marshall County Board of Education, Docket No. 25-87-273-3.

3. W.Va. Code, 18A-4-8b requires that decisions affecting the filling of any classroom teacher's position be made on the basis of qualifications. Shoemaker v. Hampshire County Board of Education, Docket No. 14-87-256-2; Crow v. Marshall County Board of Education, supra. In-field teaching experience is one component to consider in determining a candidate's qualifications. J. Smith v. Wood County Board of Education, Docket No. 54-86-131-1 (November 30, 1987).

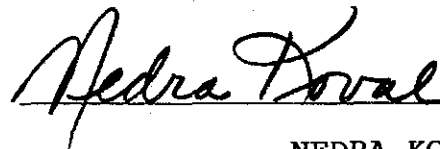
4. Many factors, including objective data and informed subjective judgment, are relevant criteria for consideration of an applicant's qualifications. Higgins v. Randolph County Board of Education, 286 S.E.2d 682 (W.Va. 1981); Parker v. Boone County Board of Education, Docket No. 03-87-128-1; Lafayette v. Randolph County Board of Education, Docket No. 42-87-207-2. In the instant grievance the superintendent merely rubber stamped the recommendations of the school principal and vocational director and admitted that he did not know what factors were originally considered by the school officials who bore the responsibility of selecting the most qualified candidate.

5. Absent a showing of informed subjective judgment or any rational criterion upon which school officials predicated their determinations and non-selection of grievant, Higgins v. Randolph County Board of Education, supra, and based upon the board's erroneous conclusion that grievant was the least senior applicant because she did not hold a readily obtainable vocational certificate at the time of the job posting, the board acted arbitrarily when it did not employ grievant, the applicant with demonstrated superior seniority, evaluation data, and in-field teaching experience and who met all certification requirements at the time of the board's final action prior to the onset of the employment year.

Accordingly, the grievance is **GRANTED** and the board is Ordered to instate grievant to the position of consumer homemaking teacher at Brooke High School.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Brooke 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: February 11, 1988

A handwritten signature in cursive script, reading "Nedra Koval", written over a horizontal line.

NEDRA KOVAL
Hearing Examiner