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JOHN R. HAINES

v.

DOCKET NO. 27-87-275-2

MINERAL COUNTY BOARD OF EDUCATION

DECISION

Grievant, John Haines, is employed by the Mineral County Board of Education and is presently assigned as vice-principal at Keyser High School. Mr. Haines filed a level four grievance on November 2, 1987 in which he alleged discrimination and that he had been arbitrarily and capriciously denied promotion to the position of principal at Keyser High School. An evidentiary hearing was conducted on March 15, 1988 and final written statements were filed by March 30.

The grievant argues that the board of education acted arbitrarily and capriciously in filling the position of principal at Keyser High School as he is equally or more qualified and has more seniority than the successful applicant. The grievant

further alleges that he was not given a written statement of the reason(s) for nonselection and that Superintendent Shirley Ball had made verbal and written derogatory comments pertaining to his job performance and character. He requests that the position be vacated, readvertised and filled in accordance with all applicable laws, policies and regulations.

The board argues that all candidates were treated similarly during the selection process and that the successful candidate was determined to be more qualified than the grievant as evidenced by his years of experience as a principal and involvement in professional and civic activities. The board disputes the grievant's allegation that he was not given a written statement of the reason for his nonselection as he was notified by letter dated August 14, 1987 that he had not received the position and that his "...continued effort to expand your experience through on the job training, seminars, workshops and academics will contribute to your professional development."

The law governing this situation is clear and unambiguous that decisions affecting the promotion and filling of professional

positions are to be made on the basis of qualifications.¹ Grievant's exhibits five and six indicate that he has a masters degree plus forty-five hours, has been employed by the board eighteen years and has served as assistant principal at Keyser High School since 1976. He is a member of numerous professional, athletic and civic organizations. The successful candidate, Robert Hutcheson, has a masters degree plus additional graduate credits and has twenty-nine years of experience in the field of education, nineteen of which were as principal at a high school comparable or somewhat larger than Keyser High School. Mr. Hutcheson has been actively involved in professional organizations and has served on the Maryland State Department of Education Review Board, the Middle States Association of Colleges and Schools Visiting Committee, has presented workshops, been a keynote speaker at professional meetings, a presenter at the

¹The grievant seems to argue that the board should have evaluated the applicants, however, that is not the role of the individual members. W.Va. Code, 18-4-10(2) states that it is the duty of the superintendent to nominate all personnel to be employed. If the board refuses to employ that recommended individual the superintendent shall submit another recommendation at such time as the board may direct but no such person shall be employed except on the nomination of the county superintendent.

National Association of Secondary School Principals, participated in a 1984 United Kingdom Study Mission and is past president of both the Allegany County Secondary School Principals Association and the Maryland Association of Secondary School Principals. He also is active in civic organizations.

Superintendent Shirley Ball testified that her recommendation was based upon the information included on the applicants' resumes, references and input from interview sessions. The applicants' seniority was considered but evaluations were not due to their lack of availability for all individuals. The board of education has shown that a thorough selection process was conducted and numerous factors were considered in determining that Mr. Hutcheson was the most qualified applicant. As the successful applicant was more qualified the grievant's reliance on seniority is not persuasive. Only when the applicants have otherwise equivalent qualifications or differences in qualification criteria are insufficient to form the basis for an informed and rational decision does seniority become a determining factor.

If the grievant was the applicant with the most seniority he is entitled to a written statement of reasons for his non-

selection and suggestions for improving his qualifications.² The reasons for nonselection and suggestions for improvement should be specifically stated in order to provide guidance in correcting the deficiencies which prohibited the grievant from gaining the promotion he desires. Information contained in the letter of August 14 is so vague as to be meaningless and does not comply with the statutory intent.

Evidence presented at level four indicates that any verbal comments made by Superintendent Ball which the grievant interpreted to be derogatory has had no impact upon the applicants' qualifications and will not be addressed herein.

In addition to the foregoing narration it is appropriate to make the following specific findings of fact and conclusions of law.

Findings of Fact

1. Grievant has been employed by the Mineral County Board of Education eighteen years and has served as vice-principal at Keyser High School the past eleven years.

²Board Exhibit No. 1 indicates that several candidates had accrued more experience than the grievant, however it is not clear if they had more seniority with the Mineral County Board of Education.

2. The grievant and numerous other individuals applied for the position of principal at Keyser High School.

3. Superintendent Shirley Ball recommended Robert Hutcheson for the position as principal and the board of education approved that recommendation.

4. Information gathered from resumes, references and interviews was used in Superintendent Ball's selection process.

5. Information provided by the grievant indicates that he and Mr. Hutcheson have attained a comparable educational level but that Mr. Hutcheson has nineteen years of experience as a principal while the grievant has none and that Mr. Hutcheson has actively participated in professional organizations while the grievant has not.

6. The grievant has eighteen years seniority with the Mineral County Board of Education while Mr. Hutcheson had none.

7. The grievant's evaluations indicate that he has performed acceptably in his role as vice-principal.

8. Any remarks made by Superintendent Ball interpreted as negative or derogatory by the grievant had no impact on an objective listing of his qualifications.

9. There is no evidence that the grievant was discriminated against during the selection process but rather that he alone met with the board to discuss his candidacy.

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. 50-86-324-1.

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 decision that the successful applicant was more qualified for the position in question than was the grievant.

5. Under W.Va. Code, 18A-4-b(a), where one candidate for 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, Docket No. 50-86-324-1.

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 principal.

7. The grievant has failed to show that he was treated in a discriminatory manner as defined by W. Va. Code, 18-29-3(m).

Accordingly, the grievance is DENIED.

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

May 26, 1988

Sue Keller

SUE KELLER
HEARING EXAMIENR