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HERBERT HYRE, JR.

v. Docket No. 49-88-127

UPSHUR COUNTY BOARD OF EDUCATION

DECISION

Grievant Herbert Hyre, Jr., currently employed by Respondent Upshur County Board of Education as a bus operator, alleges that Respondent's failure to promote him to the position of Supervisor of Transportation in September 1987 violated W.Va. Code 18A-4-8b(b). The grievance, filed October 1, 1987, was denied at Level II on April 25, 1988, after a hearing on April 19, 1988. Respondent waived a Level III hearing on May 25, 1988, and the Level IV appeal was filed June 27, 1988. The parties agreed to waive the Level IV hearing in August 1988. Accordingly, this decision is based on review of the record below, supplemented by proposed findings of fact and conclusions of law submitted by the parties.

Grievant was one of four individuals[1] who were considered and interviewed for the position of Supervisor of Transportation by Mr. Lynn E. Westfall and Dr. Richard G. Hoover, Superintendent and Assistant Superintendent of Schools for Upshur County, respectively. It is undisputed that Grievant, with over 33 years of experience as a bus operator with Respondent, had the greatest seniority of any of the applicants.[2] Superintendent Westfall recommended that Mr. Philip E. Hinkle be promoted to the position of Supervisor of Transportation because he and Dr. Hoover concluded that Mr. Hinkle had far superior qualifications of any of the candidates, and the Respondent Board of Education accepted that recommendation.[3] Mr. Westfall testified that neither Grievant nor the other two candidates had experience like Mr. Hinkle's.

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[1] Two other applicants withdrew their applications during their interviews for the position. Transcript of Level II hearing (hereinafter "Tr.") 26.

[2] At the time the applications were considered, the other two unsuccessful candidates each had seven years experience with Respondent and the successful candidate had less than four years.

[3] Superintendent Westfall testified that at the time of Mr. Hinkle's interview he was aware that Mr. Hinkle had owned and operated an automobile repair shop and a trucking firm, supervising maintenance and repair of the vehicles; had supervised ten men at a sawmill operation; had been a police officer; and was a mechanic certified as an inspector. The interviewers also knew that Mr. Hinkle had done public speaking, had worked as an announcer and salesperson for a local radio station, and had completed the Dale Carnegie course in effective speaking and human relations. Tr. 38-39. See also Res. Ex. 3.

Grievant proposes the following conclusion of law:

> Herbert Hyre, Jr., was qualified for the position in question and had satisfactory evaluations of his past service. Consequently, as the senior applicant the Board of Education should have filled the vacant Supervisor of Transportation position with Herbert Hyre, Jr.

Gr. Proposed Conclusion of Law No. 5. While Grievant correctly states the law,[4] see King v. Ritchie County Board of Education, Docket No. 43-87-308-3 (October 31, 1988); Jervis v. Wayne County Board of Education, Docket No. 50-88-084 (November 2, 1988), his grievance must be denied because the evidence fails to establish that he was qualified for the position.

The statute provides in pertinent part as follows:

> A county board of education shall make decisions affecting promotion and filling of any service personnel positions of employment or jobs occurring throughout the school year that are to be performed by service personnel as provided in section eight [s 18A-4-8],

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[4] Respondent relies on Dillon v. Board of Education of the County of Wyoming, 351 S.E.2d 58 (W.Va. 1986), in arguing that it was entitled to promote Mr. Hinkle because he was the the most qualified candidate. Respondent's Proposed Conclusion of Law No. 6. Respondent errs in contending that the ruling enunciated in Dillon applies to the filling of a service employee position such as the one involved in this case under W.Va. Code 18A-4-8b(b), for that ruling was clearly limited to the filling of a professional employee position under W.Va. Code 18A-4-8b(a). However, Respondent correctly relies on the more general ruling of the Court that,

> 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 interest of the school, and in a manner which is not arbitrary and capricious.

[cites omitted.] Id. at 64-65.

> article four of this chapter, on the basis of seniority, qualifications and evaluation of past service.
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> Qualifications shall mean that the applicant holds a classification title in his category of employment as provided in this section and must be given first opportunity for promotion and filling vacancies. Other employees then must be considered and shall qualify by meeting the definition of the job title as defined in section eight [s 18A-4-8] article four of this section, that relates to the promotion or vacancy.

W.Va. Code 18A-4-8b(b).

The parties agree that no candidate for the position held a classification title as a Supervisor of Transportation. Grievant contends that he was qualified because he met the qualifications of the position of Supervisor of Transportation, which is defined at W.Va. Code 18A-4-8 as

> qualified personnel employed to direct school transportation activities, properly and safely, and to supervise the maintenance and repair of vehicles, buses, and other mechanical and mobile equipment used by the county school system.

The vacancy announcement that Respondent posted quoted the statutory definition, and further stated,

> The person employed in this position must have demonstrated leadership skills which are essential to supervising the employees of the Transportation Department and to meeting the needs of the boys and girls of Upshur County Schools and their parents and/or guardian. Most important, this person must have demonstrated great skill in working with other employees, administrators, students, and parents in a highly positive and effective manner. In addition, this person must have demonstrated a knowledge of bus transportation procedures, transportation regulations, and bus mechanics and safety of personnel and students....

Mr. Westfall testified that, in interviewing the applicants, since the position was administrative, the first emphasis was on public relations capabilities, for "probably

ninety to ninety-five per cent of the significance of successfully fulfilling the duties of the job had to do with public relations." Tr. 25. He further testified as follows regarding what qualities are necessary for a Supervisor of Transportation:

> I think that in that particular position, or any other administrative position, one of the chief elements is being able to work effectively with other people to make decisions after having reviewed all of the facts of a given circumstance to insure that harmony exists among the employees and that morale is good. To be able to take suggestions for improvement. To communicate fully with the person to whom that person is directly responsible, who in this case is the Superintendent. And to have a good working knowledge of all of the policies, rules and regulations and laws that apply to the position.

Tr. 40. He also stated that the ability to communicate and the qualities of adaptability and flexibility "are critically important" for the position. Tr. 42. He responded as follows on whether the qualities of a bus operator are similar to the qualities of a Supervisor of Transportation:

> Well there are a few similarities. Assuredly a bus operator has to be able to work with the students and with parents. The kinds of decisions, however, that a bus operator makes are totally different from those incumbent upon a Supervisor of Transportation. There are many more differences in the types of decisions and types of skills necessary for a bus driver than there are similarities between the bus driver position and Supervisor of Transportation.

Tr. 40-41. Finally, he testified as follows regarding the need of the Supervisor to be able to work with a variety of people:

> Q. Is the Supervisor of Transportation required to work with a number of other people, such as bus drivers, mechanics, and clerical staff, parents, students, general public?

> A. All of those people and in addition he must work with the central office administrators and directly with the Board [of Education]. He must also work with vendors in securing bids and quotations. He must [work] with the State Transportation Department in the bid process and in having questions answered with regard to adhereance[sic] to school bus regulations. He must work with the Department of Highways in situations in which buses must be rerouted when bridges are closed, the situation that we are dealing with now. He must work with parents on a regular basis because we are constantly receiving requests for bus run extensions. That person has to have the skills to work with just about anyone who is even in anyway remotely connected to the school system. Because the school transportation system touches everyone in the school system.

Tr. 41.

On direct examination, Mr. Westfall's testimony, in response to questioning based on the view of Respondent that, assuming that all candidates were qualified, it had the right to hire the most qualified individual, substantiated that Respondent had promoted the candidate the interviewers found most qualified, Mr. Hinkle.

On cross-examination Mr. Westfall also further elaborated on the needs of the position, stating that the public relations demands of the job, requiring communication skills, involve not only interpersonal communication but also public speaking skills, for the Supervisor of Transportation must make lectures on safety, and take charge of inservice meetings. Tr. 45. In that on direct examination Mr. Westfall had testified that it is the responsibility of the Supervisor of Transportation to ensure the safety of the buses, on cross-examination, in answer to questioning whether mechanical knowledge is necessary for the Supervisor

of Transportation since the mechanics are supervised by the Chief Mechanic, he responded that the Chief Mechanic works

> [u]nder the direction of the Supervisor of Transportation. However, I think it is significant to note that if that operation of the mechanical department is to be effective that the greater knowledge that the Supervisor of Transportation has of mechanics, the greater the chances are that the mechanics will operate successfully....

Tr. 46.

Of most importance, however, when asked on cross-examination whether he thought Grievant was incapable of fulfilling the duties of the position, he responded that he did think Grievant was incapable, based not solely on Grievant's interview. He related that Grievant had become very upset when he was required to discontinue his practice of parking his bus within the bus garage, a privilege that was accorded only him because of his seniority, when the mechanics needed the space. Mr. Westfall thought Grievant had overreacted. He also stated that he knew that the bus operators were against Grievant's being put into the position of Supervisor of Transportation, and so he was greatly concerned about the morale of the Transportation Department employees, should Grievant be appointed Supervisor. He further testified,

> The third reason was that Mr. Hyre was not loyal to his previous supervisor. He was constantly very publicly critical of the practices and procedures that were employed at the school bus garage, was critical because the Board [of Education] allowed his, the previous Supervisor of Transportaion, to continue in the position, publicly critical, and my feeling is that any person who is being considered for a supervisory position needs to exercise a bit better discretion than Mr. Hyre had exercised in the past with regard to the department and the system in which he worked.

Finally, he noted that several times Grievant had been evaluated as needing improvement in the area of cooperation.[5]

Dr. Hoover's direct testimony was basically limited to his agreement with Mr. Westfall that Mr. Hinkle was the candidate best able to fulfill the position's requirements. On cross-examination he testified that Grievant's interview did not establish that Grievant's capabilities were "deficient" to do the job. He did not address whether any information about Grievant gained outside the interview process qualified or disqualified Grievant for the position, as had Mr. Westfall.

Grievant's testimony related solely to his experience[6] and whether he could carry out specific functions of the position. He answered in the affirmative to questioning whether he had attended all inservice meetings given by the prior supervisors, whether he was familiar with procedures for altering routes, whether he had helped plan routes, whether he felt he could perform that duty for the entire

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[5] Four evaluations were admitted as part of Gr. Ex. 2 and Res. Ex. 1. Two evaluations showed "needs improvement" in the area of cooperation and two rated Grievant as "average" in that area. The legend also provided for possible ratings of "excellent" and "unsatisfactory."

[6] Beside his experience as a bus operator,Grievant had worked in the finishing department for Thompson's Products, Tr. 10, at a "filling station," and in maintenance while in high school, Tr. 16.

county, and whether he had taken his bus for routine maintenance and was familiar with the procedures for maintenance and state inspection of buses. Finally, in response to the question, "Do you feel that [your familiarity] to this system here in Upshur County would allow you to take over the transportation department and to direct it as supervisor for all the bus operators?" he responded "I don't see why." Tr. 12.

Grievant's testimony, while supportive of a determination that he can do many or possibly even all of the functions of the Supervisor of Transportation strictly relating to the maintenance of buses and the planning of bus routes, in no way contradicts Mr. Westfall's testimony that Grievant did not have the communicative skills and the qualities of leadership and cooperation needed for the position, involving supervision of other employees and much communication and working with other individuals.

In addition to the foregoing discussion, the following findings of fact and conclusions of law are appropriate:

Findings of Fact

1. Grievant, employed by Respondent Upshur County Board of Education as a bus operator for over 33 years, applied for and was denied the promotion to Supervisor of Transportation in September 1987.

2. Grievant had the greatest seniority of all four applicants.

3. Grievant's actions had shown a lack of leadership and cooperative capabilities.

4. Grievant did not have "demonstrated leadership skills which are essential to supervising the employees of the Transportation Department and to meeting the needs of the boys and girls of Upshur County Schools and their parents and/or guardian" nor had he "demonstrated great skill in working with other employees, administrators, students, and parents in a highly positive and effective manner," as required by the vacancy announcement of the position.

Conclusions of Law

1. County boards of education have substantial discretion in matters relating to the promotion of school personnel. That discretion must be exercised reasonably, in the best interest of the school, and in a manner which is not arbitrary or capricious. Dillon v. Board of Education of the County of Wyoming, 351 S.E.2d 58 (W.Va. 1986).

2. W.Va. Code 18a-4-8b(b) requires that any decisions affecting promotion and filling of service personnel

decisions are to be made on the basis of seniority, qualifications and evaluation of past service.

3. An applicant may be qualified for a position by holding a classification title in the category of employment or by meeting the definition of the job title, as defined in W.Va. Code 18A-4-8.

4. The qualifications for Supervisor of Transportation required by the announcement of vacancy posted by Respondent for that position were consistent with the definition of Supervisor of Transportation provided at W.Va. Code 18A-4-8.

5. A board of education may exercise its discretion in expanding the requirements of a service position consistently with the definition of the position provided at W.Va. Code 18-4-8. See Nelson v. Lincoln County Board of Education, Docket No. 22-86-116 (February 25, 1987).

6. A board of education is not required to fill any position with a person who does not possess requisite skills. Burley v. Wayne County Board of Education, Docket No. 50-86-188-1 (August 15, 1986).

7. Grievant failed to show that he meets the requirements of the position of Supervisor of Transportation and therefore he is not entitled to instatement to the position.

Accordingly, this grievance is **DENIED.**

This decision may be appealed to the Circuit Court of Kanawha County or Harrison County, but only within thirty (30) days of its receipt. See W.Va. Code 18-29-7. The Grievance Board must be advised of any intent to appeal so that the record of this case can be prepared and transmitted to the Court.

Sunya Anderson

SUNYA ANDERSON
HEARING EXAMINER

Dated: November 7, 1988