



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

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JAY T. JERVIS

v.

Docket No. 50-88-084

WAYNE COUNTY BOARD OF EDUCATION

DECISION

Grievant, Jay T. Jervis, has been a permanent, or regular, full-time employee of the respondent, Wayne County Board of Education (BOE) since April 28, 1986, when he was approved for classification as a General Maintenance Worker. Prior to that, he had worked for BOE as a Substitute Assistant Mechanic.¹ In February of 1988, grievant submitted an application in response to BOE's posted notice of an available position as Mechanic. At some point, grievant and all other applicants took a BOE Mechanic proficiency test, in accordance with BOE Policy 5.38.² Grievant earned the

¹ The record reflects that grievant was approved as Substitute Assistant Mechanic by BOE on October 14, 1985, and worked a total of eleven days in that capacity.

² This Board is uncertain that 5.38 is the correct designation for this section of BOE policy; however, it is the only designation found on Exhibit D, which includes the policy.

highest score among all the applicants; however, on March 9, 1988, BOE selected Monroe Copley, who had worked as a Substitute Mechanic for BOE since the summer of 1985, to fill the vacancy.³

On March 10, 1988, grievant requested a written statement of the reasons he did not receive the job, pursuant to W.Va. Code §18A-4-8b(b).⁴ By letter dated March 14, 1988, Michael E. Ferguson, Superintendent of Schools for BOE, provided grievant with the following statement:

I did not recommend you for the position of mechanic because you were not the best qualified applicant for for the position. The applicant who was employed in the mechanic's position possessed superior training and superior work experiences. For these reasons, I found him to be the best qualified applicant for the position.

Some days later, Mr. Jervis initiated this grievance at Level I. His immediate supervisor was without authority to award the relief requested, i.e., instatement as Mechanic and back pay to the date Copley assumed the job, so the matter was summarily advanced to Level II. After hearing and subsequent denial at each of Levels II and III, the grievance arrived at Level IV, where it has been submitted

³ Grievant's score was apparently in excess of ninety percent. Copley's score was not given, but grievant admitted in his proposed findings of fact that it was "acceptable."

⁴ Although grievant's written request was not dated, Superintendent Ferguson's response lists March 10 as the date of that request.

for decision upon the record, with proposed findings of fact and conclusions of law by grievant.

Grievant's salient contention is that his non-selection for the position was violative of Code §18A-4-8b(b), in that: a) he achieved the highest score on the proficiency test; and b) he was a permanent service employee of BOE, whereas the successful applicant was only a substitute.

Code §18A-4-8b(b), in pertinent part, provides:

A county board of education shall make decisions affecting...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...[§18A-4-8]...on the basis of seniority, qualifications and evaluation of past service.

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...[§18A-4-8]...that relates to the promotion or vacancy. If the employee so requests, the board must show valid cause why an employee with the most seniority is not promoted or employed in the position for which he applies. Applicants shall be considered in the following order:

- (1) Regularly employed service personnel;
- (2) Service personnel whose employment has been discontinued in accordance with this section;
- (3) Professional personnel who held temporary service personnel jobs or positions prior to the ninth day of June, one thousand nine hundred eighty-two, and who apply only for such temporary jobs or positions;
- (4) Substitute service personnel;
- (5) New service personnel.

BOE Policy Section 5.38 provides, in pertinent part:

The purpose of the test is to satisfy... [BOE] that the applicant can meet the qualifications of the service position as defined in §18A-4-8 of the Code and is competent in the skills necessary to function successfully in

the given service position.

This policy does not imply that the person achieving the highest score on the test will be awarded the job and does not supersede any provisions of §18A-4-8b of the Code.

Service jobs will continue to be awarded in compliance with §18A-4-8b of the Code "on the basis of seniority, qualifications and evaluation of past service."

BOE's primary defense is that grievant was not "the most qualified applicant",⁵ and further, that it complied fully with all procedural requirements, both state and BOE,⁶ in filling the position and handling the application process. The record specifies that BOE considered grievant's experience inferior to Copley's, in that: Copley had more actual work history in mechanics, with BOE and other employers, than did grievant; Copley's work as a substitute

⁵ At the Level II hearing, Superintendent Ferguson stated his opinion that "it is my obligation and responsibility to recommend to the Wayne County Board of Education the best possible candidate for employment." T. 11. He later defined, in effect, "the best possible candidate" as "the most qualified candidate." T. 16. Ferguson further admitted that grievant was the applicant with the most seniority. T. 12-13.

⁶ BOE defends its non-hiring of grievant by reference to that portion of Policy 5.38 which provides that just because a job applicant achieves "the highest score" on a proficiency test, he or she is not guaranteed the job sought. It is of course true that filling a service personnel slot purely on the basis of such a test score (which may establish qualification) without reference to seniority or evaluation of past work, would be violative of Code §18A-4-8b(b). It is also conceivable that the highest score obtained by an applicant on a given test might not be an acceptable one to demonstrate proficiency.

mechanic for BOE had been exemplary;⁷ and Copley had more extensive relevant training.⁸

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

FINDINGS OF FACT

1. Grievant was first employed by BOE as a Substitute Assistant Mechanic in October, 1985. His actual work in this classification was eleven days in duration.

2. Grievant was permanently employed by BOE in April, 1986 as a General Maintenance Worker.

⁷ At the Level II hearing, grievant's attorney stated in closing that "[t]he question of evaluations has not been brought up, but I feel sure that if it is, that both of the individuals have good evaluations, from talking with my client." T. 19. While this declaration may not properly be considered evidence, it is noted that BOE made no attempt to refute it. More notable is the fact that BOE did not cite any negative evaluation of grievant's past work performance as a reason he was not hired as Mechanic.

⁸ Grievant has far fewer work days in mechanics with BOE than did Copley, and the evidence showed that Copley's mechanic work was far more independent in nature while grievant's work was truly as Assistant to a Mechanic. Further, a comparison of grievant's credentials with Copley's shows that grievant's mechanics experience prior to employment with BOE was sparse at best, Copley's, concentrated. Finally, Mr. Wilts Salmons, BOE's Director of Transportation and a person with direct supervisory experience over both grievant and Copley, wrote Copley a glowing letter of reference to BOE, with strong recommendation that he be hired for the post in question.

3. In February, 1988, grievant applied for a position as Mechanic with BOE. Mr. Monroe Copley, a Substitute Mechanic who had apparently worked full-time for BOE in that capacity since Summer, 1985, also applied.

4. All applicants for the Mechanic post took a proficiency test, in line with BOE Policy. Grievant made the highest test score of all applicants. His score was in excess of ninety percent; Copley's score, while lower, was also an "acceptable" one.

5. "The purpose of the [proficiency] test" was "to satisfy [BOE] that the applicant can meet the qualifications of the service position as defined in §18A-4-8 of the Code and is competent in the skills necessary to function successfully in the given service position." BOE Policy 5.38.

6. Grievant's application and credentials were carefully reviewed and considered by BOE.

7. Copley's background included training superior to that of grievant.

8. Copley's background included more actual job experience in mechanics, both with BOE and other employers, than did grievant's.

9. The evaluations of Copley's performance as Substitute Mechanic with BOE are superior.

10. Mr. Wilts Salmons, BOE's Director of Transportation and a person with supervisory experience over both grievant and Copley, recommended that BOE hire Copley for the job. There is nothing in the record to indicate Mr. Salmons' opinion on grievant's application.

11. Copley was selected for the position and entered onto duty as Mechanic on March 14, 1988.

12. Upon grievant's request, BOE's Superintendent of Schools provided him with a written statement of reasons for his non-selection for the job. That statement was to the effect that he, grievant, was not selected solely because he was not the most qualified applicant.

13. BOE did not give, as a reason for grievant's non-hiring, that his past work evaluations were in any way negative; therefore, it must be presumed that those evaluations were favorable.

14. Grievant alleges that BOE erred in selecting a substitute service employee over a regular service employee qualified as a Mechanic for the position in question, citing W.Va. Code §18A-4-8b(b).

CONCLUSIONS OF LAW

1. In filling a service personnel post, a county board of education in West Virginia must consider seniority, qualifications and evaluation of past service. W.Va. Code §18A-4-8b(b).

2. "Seniority" for purposes herein means that applicants permanently employed as service personnel must be given priority consideration for vacancies over substitute service employees. Id.

3. "Qualifications" for purposes herein is defined as holding a classification title in ... [the relevant] category of employment" or "meeting the definition of the job title." Id. When a person holds a pertinent job classification title, or meets a job title definition, it must be presumed that he or she possesses at least the minimum skills required by that job. See Jones v. Ohio Co. Bd. of Ed., Docket No. 35-86-051 (May 30, 1986).

4. Grievant became "qualified" for the position of Mechanic by virtue of his acceptable score on the BOE Mechanic proficiency test, and not necessarily by making the

highest score thereon, in accordance with BOE Policy 5.38. See, e.g., Jones, supra; Adkins v. Logan Co. Bd. of Ed., Docket No. 23-86-024 (May 22, 1986).

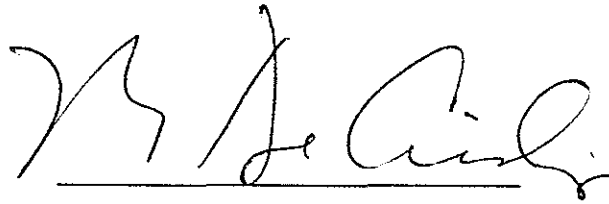
5. A county board of education in West Virginia is bound by procedures it properly establishes to conduct its affairs. Dillon v. Wyoming Co. Bd. of Ed., 351 S.E. 2d 58, 6465 (W.Va. 1986).

6. A county board of education in West Virginia is not required to fill any position with a person who does not possess requisite skills, Burley v. Wayne Co. Bd. of Ed., Docket No. 50-86-188-1 (Aug. 15, 1986); however, a regular service employee who holds a relevant classification title or meets the definition of the job title, as explained above, and who has favorable evaluations of previous work, is entitled to a vacant service position applied for over a substitute service employee perhaps more suited for the job in terms of experience and/or education. Code §18A-4-8b(b).

Accordingly, the grievance is **GRANTED**, and BOE is hereby **ORDERED** to instate grievant in the position of Mechanic, with back pay to March 14, 1988.

This decision may be appealed to either the Circuit Court of Kanawha or Wayne County, but only within thirty

(30) days of its receipt. 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. 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 appropriate Court.

A handwritten signature in dark ink, appearing to read 'M. Drew Crislip', is written over a horizontal line.

M. DREW CRISLIP
HEARING EXAMINER

Dated: 11/2/88