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DELORES LeMASTER

v.

Docket No. 06-87-074-1

CABELL COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Delores LeMaster, is employed by the Cabell County Board of Education as a supervisor of mathematics in its central office. Ms. LeMaster filed a grievance in February 1987 alleging she was the most qualified applicant for the posted position of Director of Curriculum and Staff Development and the Board's refusal to grant her the job amounted to favoritism and a violation of W.Va. Code, 18A-4-8b(a).¹ Level III hearings were held on March 16, 1987 and March 23, 1987 and the decision at that

¹Grievant also raised the ancillary issue of the Board's failure to provide her with a written statement of reasons why she did not receive the position with suggestions for improvement pursuant to the requirements of W.Va. Code, 18-4-8b(a).

level was adverse to the grievant. Level IV evidentiary hearings were held September 1, 1987; November 9, 1987; March 1, 1988; and, March 16, 1988.²

During the fall of 1986 Superintendent of Schools Dr. Robert Frum was apparently developing plans for a reorganization of the central office and the position in question was created and subsequently posted on January 12, 1987. A number of persons made application and the names of those who were minimally qualified were forwarded to a screening committee consisting of Robert Griffis, Assistant Superintendent for Curriculum; Jerry Brewster, Assistant Superintendent for Secondary Education; and Herbert Varney, Assistant Superintendent for Elementary Education. This

² Hearing Examiner Leo Catsonis by order dated November 10, 1987 remanded the Board's Level III decision for development of findings of fact and conclusions of law. Upon a return to Level IV, the case was reassigned to the undersigned hearing examiner. Counsel for grievant made a motion to strike the Board's findings and conclusions on the grounds that grievant was not given notice of the Board's meeting and only three (3) members were present. A review of Mr. Catsonis' order indicates the Board had only to adopt such findings and conclusions as were applicable to the evidence it had previously heard and it was not necessary to hear additional evidence. The Board's findings were afforded weight herein only to the extent that they did not contradict the extensive testimony and documentation presented at Level IV. The Level III and Level IV hearings are hereinafter referred to as T1 and T2 respectively.

committee reviewed resumes and conducted interviews of applicants including grievant and Ms. Sue Bowen. After this process was complete the names of grievant and Ms. Bowen were submitted to Dr. Frum as the two most qualified persons for the position. Dr. Frum then interviewed these two applicants and subsequently recommended to the Board that Ms. Bowen be awarded the position and the recommendation was accepted.

Ms. LeMaster made three basic allegations in her grievance concerning this interview/selection process:

1. She was more qualified for the position than Ms. Bowen and should therefore have received the position, citing Dillon v. Board of Education of the County of Wyoming, 351 S.E.2d 58 (W.Va. 1986)
2. Ms. Bowen was allowed to attend certain workshops/conferences the subject matter of which pertained to the job in question indicating a predetermined decision on the part of the administration to award her the position when it was created.
3. The duties and responsibilities of the job make it a supervisory position and her possession of a supervisors certificate at the time of the posting should have been given great weight in the selection process but instead was given little if any.³

The Board took the position that there was no evidence to support any theory that a decision had been made to hire Ms. Bowen before the selection process began or that there has been

³ Grievant focused a great deal of attention on this particular facet of her grievance but it is simply a part of her primary allegation that she was the more qualified applicant and is addressed accordingly herein.

any favoritism shown in provisions for members of the central office staff to attend conferences or workshops in their particular fields. As to grievant's third charge, the Board contends the position was properly characterized as administrative but the job posting nevertheless addressed the question of certification by noting a requirement that applicants possess a supervisors certificate or make a written commitment to acquire one within three (3) years.

Among other responsibilities the newly created position entails the implementation and evaluation of the instructional program for all grades of the Cabell County School System. (Grievant's Exhibit No.1) A review of other duties of the job indicates it has a rather broad scope and encompasses an approach toward curriculum which coordinates to a greater degree what is taught on one grade level with the next. In addition to the development and implementation of new curriculum there are a great many duties associated with the training of supervisors, principals and teachers in these methods. The minimum qualifications listed for the position besides the supervisors certificate or commitment to attain one are experience in group processes, surveys and evaluations, knowledge of curriculum development processes, experience in coordination of in-service education, Masters degree, teacher certification and experience, effective oral and written communication skills and good organizational and leadership skills. A preference for someone with experience in working

with curriculum at the elementary, junior high and senior high school levels is also indicated. (Grievant's Exhibit No.1)

Grievant holds teacher certification in mathematics, English and social studies grades 7-12 and has a Masters degree in English. She has also completed more than sixty (60) hours beyond this degree, the majority of which was attained while working toward her supervisor's certificate. She has taught English, mathematics, social studies and science at the junior high level for eight (8) years and mathematics grades 10-12 for ten and one half (10½) years. Additionally, Ms. LeMaster has been mathematics supervisor for grades K-12 for the past fourteen (14) years and has coordinated a computer education program for students and computer training for teachers for five (5) years. Grievant has also served on a number of curriculum related projects including a state math task force and the West Virginia State Mathematics Textbook Adoption Committee. (Grievant's Exhibit No.9, 10).

The successful applicant, Sue Bowen, holds a Masters degree, teacher's certificate and for eighteen (18) years has served as either a coordinator or director in the central board office. (Tl.60) It appears the majority of her time in that office has been spent as director of instructional television in which she worked extensively in nearly all areas of curriculum preparing in-service training for teachers and plans for the introduction of new textbooks. (Tl.62) Ms. Bowen's teaching experience has been on the elementary level but she has dealt with textbook adoption on all grade levels. (Tl.63)

Because of the recent development of the position in question, a comparison of the qualifications of grievant and Ms. Bowen with the responsibilities and duties of the job is difficult but it appears both are at least minimally qualified for it and this was the testimony of several members of the interview committee and Dr. Frum. (T2.___) Dr. Frum indicated however his interviews with the two revealed Ms. Bowen possessed certain qualities and knowledge which made her more preferable for the position. (T2.___) He cited her greater understanding of what he termed as the "mastery learning concept" and impressive oral communication skills. Dr. Frum concurred with Mr. Griffis, Assistant Superintendent of Curriculum, that Ms. Bowen's work in television instruction had enabled her to develop superior communication skills and this had been of particular importance since the person receiving the job would be facing some opposition from principals and teachers on the implementation of new curriculum theories and methods. (T2.___)

A grievant who alleges a position has been filled in violation of W.Va. Code, 18-4-8b(a) necessarily must prove by a preponderance of the evidence that he or she was more qualified than the successful applicant and/or that the selection process was so flawed as to render the hiring of any applicant an arbitrary and capricious decision. See generally, Milam v. Kanawha County Board of Education, Docket No. 20-87-270-1. In cases such as

the present one where there is substantial evidence that subjective criteria may have been the deciding factor in the selection process, the grievant has the same burden to show such criteria was not reasonably associated with the requirements of the position. See, Higgins v. Board of Education of Randolph County, 286 S.E.2d 682 (W.Va. 1981); Strickland v. Kanawha County Board of Education, Docket No. 2-86-013. Ms. LeMaster made no showing that Dr. Frum's concerns during her interview were not rationally connected to the expectations of the position in question.

Grievant also provided no evidence that the interview/selection process was tainted by a pre-selection of Ms. Bowen for the position except an assertion that she was allowed to attend a National Staff Development Council Conference while no other central office staff members were permitted to attend. (Grievant's Exhibit No.19) There was evidence presented by the Board that Ms. LeMaster had been allowed to participate in similar workshop/conferences (Board's Exhibit No.2) and she simply failed to show how attendance at the staff development conference amounted to a predetermination on the Board's part that Ms. Bowen would be the new Director of Curriculum and Staff Development. Similarly grievant's claim that the position was supervisory in nature and her supervisors certificate made her the more qualified candidate was unsupported by the evidence. Although the minimum requirements on the job posting indicated some work with principals and teachers, testimony indicated those contacts would be either

consultation or training oriented. The overall requirements of the job clearly render it administrative in nature and moreover the possession of the supervisors certificate as a requirement was qualified by the provision that an applicant without the certificate would be eligible for the position if he or she made a commitment to get one within three (3) years.

In addition to the foregoing, the following findings of fact and conclusions of law are made.

FINDINGS OF FACT

1. Grievant, Delores LeMaster, is employed by the Cabell County Board of Education as a mathematics supervisor in the central office.

2. On January 12, 1987 the Board posted the position of Director of Curriculum and Staff Development and approximately sixteen (16) persons including grievant made application.

3. A screening committee consisting of Robert Griffis, Assistant Superintendent for Curriculum, Jerry Brewster, Assistant Superintendent for Secondary Education, and Herbert Varney, Assistant Superintendent for Elementary Education interviewed applicants and recommended to Superintendent of Schools Dr. Robert Frum the names of grievant and Ms. Sue Bowen as the candidates it

considered the most qualified for the position.

4. Dr. Frum interviewed grievant and Ms. Bowen and made a determination that Ms. Bowen was the most qualified applicant and the Cabell County Board of Education accepted his recommendation that she be awarded the position.

5. Grievant and Ms. Bowen both met the minimum qualifications for the position contained in the job posting of January 12, 1987.

CONCLUSIONS OF LAW

1. County boards of education have substantial discretion in matters relating to hiring and promotion but the discretion must be exercised reasonably in the best interest of the school system and not in an arbitrary manner. State ex rel. Hawkins v. Tyler County Board of Education, 275 S.E.2d 911 (W.Va. 1980); Beverlin v. Board of Education, 216 S.E.2d 554 (W.Va. 1975).

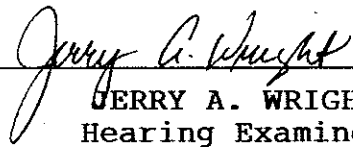
2. W.Va. Code, 18A-4-8b(a) provides that decisions on filling vacant professional positions must be based primarily on qualifications. Dillon v. Board of Education of the County of Wyoming, 351 S.E.2d 58 (W.Va. 1986); Black v. Cabell County Board of Education, Docket No. 06-88-020-4.

3. When a grievant makes allegations that a vacancy in a professional position has been filled in violation of W.Va. Code, 18A-4-8b(a), those allegations must be proven by a preponderance of the evidence. Black v. Cabell County Board of Education, supra; Haines v. Mineral County Board of Education, Docket No. 27-87-275-2.

4. The grievant, Delores LeMaster, has failed to prove by a preponderance of the evidence that she was more qualified for the position of Director of Curriculum and Staff Development than Ms. Sue Bowen or that the Cabell County Board of Education otherwise acted arbitrarily or capriciously in the filling of said position.

Accordingly, the grievance is **DENIED** however the Cabell County Board of Education is hereby **ORDERED** to determine if the grievant, Delores LeMaster, was the most senior applicant for the position of Director of Curriculum and Staff Development and if she was the most senior applicant, to furnish her with a letter which specifically and fully explains what steps she needs to take in order to improve and enhance her professional skills and abilities.

Either party may appeal this decision to the Circuit Court of Cabell County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of said decision. (W.Va. Code, 18-29-7) Please inform this office of your intent to do so in order that the record can be prepared and transmitted to the Court.


JERRY A. WRIGHT
Hearing Examiner

Dated: June 16, 1988