



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

**ARCH A. MOORE, JR.**  
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**Members**  
James Paul Geary  
Chairman  
Orton A. Jones  
David L. White

**REPLY TO:**  
101 Harper Park Drive  
Suite D  
Beckley, WV 25801  
Telephone: 255-6155

**Offices**  
240 Capitol Street  
Suite 508  
Charleston, WV 25301  
Telephone: 348-3361

**ROBERT MANLEY**

**v.**

**Docket No. 20-88-038**

**KANAWHA COUNTY BOARD OF EDUCATION**

**D E C I S I O N**

Grievant, Robert Manley, is employed by the Kanawha County Board of Education as a machine shop instructor assigned to the Carver Career Center. He filed a grievance on October 22, 1987, alleging the position of Media Specialist at the Center had not been filled on the basis of qualifications in violation of W.Va. Code, 18A-4-8b(a). A Level II hearing was held on December 2, 1987 and the decision at that level was adverse to grievant. The Board voted on February 18, 1988 to uphold the findings of the Level II hearing evaluator. A Level IV hearing was held on June 17, 1988.

On August 24, 1987 the position in question was posted and grievant and Mr. Dale Grimmatt were the only two applicants.

The attached job description listed duties and responsibilities of the position which included the development of methods to implement media use in the classroom, ordering certain publications for school use, obtaining maintenance for all audio-visual equipment, distribution of educational supplies needed for audio-visual equipment, instruction of teachers and students in the operation of personal computers and providing for all reproduction and printing needed at the school. A Masters degree in vocational education and "additional experience preferred in television, video, audio production and computer technology" were listed as minimum qualifications for the job.<sup>1</sup>

Mr. Husson, principal at the Center, and three central office employees, Ms. Nancy Walker, Ms. Pat Lee and Ms. Norma Miller, comprised the committee which reviewed resumes and conducted interviews of the candidates in which both were asked the same eight (8) open-ended questions. The applicants were given a numerical ranking of 0, 1 or 2 on each question by each member of the committee and were then allowed an opportunity to expand on their qualifications. When the interviews were completed, the scores were added and each member submitted to Ms. Husson their written comments concerning the applicants' responses to the questions.

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<sup>1</sup>The position had been previously listing a Masters degree in media as a minimum qualification but no one applied and on the later posting this requirement was deleted.

All committee members ranked Mr. Grimmatt's responses higher on nearly all questions and he received an overall rating of fifty-eight (58) while the grievant received a total score of thirty-eight (38). There were few discrepancies in the written comments, for both applicants, and the grievant received only minor critical remarks (Board's Exhibit No.4). After review of the rating sheets, Mr. Husson recommended to Superintendent of Schools, Dr. Richard Trumble, that Mr. Grimmatt be awarded the position and the Board subsequently accepted this recommendation.

Grievant contends he was the most qualified applicant for the position and pursuant to the provisions of W.Va. Code, 18A-4-8b should have received the job. Although not specifically stated, this allegation contains a charge that the interview/selection process was manipulated by Mr. Husson because he had a preconceived opinion of the grievant's relative qualifications for the job.<sup>2</sup> The Board denies any such manipulation of the process and asserts the whole process used in the selection of Mr. Grimmatt was designed specifically to insure both applicants an impartial interview and fair assessment of their qualifications. The Board further contends Mr. Grimmatt's greater knowledge of audio-visual equipment, computers and printing processes made him the more qualified applicant.

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<sup>2</sup>Grievant made allusions to this particular part of his grievance through extensive questioning of Mr. Husson on the selection process.

Grievant has been teaching machine shop at the Center for approximately seventeen (17) years and holds a Bachelors degree in vocational education. He also obtained a Masters degree in 1982 and has forty-five additional graduate hours, which include computer training and curriculum development. According to his own testimony he has some knowledge of audio-visual equipment and photography but has never held a media specialist position.

(T.\_\_) The successful applicant also holds a Masters degree in vocational education and for approximately six (6) years served as either a regular instructor in the adult education program at the Center or a related subject instructor. The latter position entailed instruction of students in specialized areas of vocational education as required by other teachers at the Center. The Board contends Mr. Grimmatt also had experience in the media field by virtue of previous assistance to the former media specialist. Grievant takes issue with this contention and asserts Mr. Grimmatt had no experience which could reasonably be considered media-related.

An allegation that a vacancy has not been filled in accordance with the requirements of W.Va. Code, 18A-4-8b(a) generally entails a comparison of the qualifications of the grievant with those of the successful applicant and/or a review of the selection process. Milam v. Kanawha County Board of Education, Docket No. 20-87-270-1; Johnson v. Cabell County Board of Education, Docket No. 06-87-248-1. In the present case a quantitative comparison of the backgrounds of the applicants indicates neither

was particularly qualified to be a media specialist as that position was described in the job posting. The grievant has the requisite educational background but has achieved little if any experience in the operation and maintenance of a media resource room.<sup>3</sup> Similarly, Mr. Grimmett possesses a Masters degree in vocational education but has no experience as a specialist in the media field. The testimony of other employees at the Center including Mr. Robert Doss, Ms. Mary Doss and Mr. Brown, the former media specialist, indicated Mr. Grimmett did not work extensively in the education resource room during his tenure as a related subject instructor but only occasionally assisted in some printing jobs there. (T.\_\_) Reliance on subjective criteria or other indicators of skills or abilities not readily discernible upon a review of resumes in such circumstances would therefore not be improper but necessary. The use of such criteria is only acceptable however when it is reasonably related to the requirements of the position. 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. 20-86-013. What Mr. Husson characterized as personal knowledge of Mr. Grimmett's experience does not appear

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<sup>3</sup>At the Level IV hearing when asked what particular training he had received relevant to the position, he could only cite an ability to use two types of cameras and graduate course work in computer technology and curriculum.  
(T.\_\_)

reasonably related to the duties and responsibilities of the position of media specialist. He testified Mr. Grimmatt had experience as a ham radio operator and had occasionally assisted in the repair of audio-visual equipment at the Center. (T. \_\_) This experience may be indicative of an aptitude in electronics but should not have been considered the controlling factor in the selection process. Had the recommendation to hire Mr. Grimmatt been based solely on Mr. Husson's perceptions of relative qualifications of the applicants, grievant's assertion that the selection was an arbitrary one would have some validity. It is apparent however this was not the case, as the three other members of the interview committee were integrally involved in the process by which the recommendation was made. Their questions were designed to elicit responses which would provide the committee with indications of the applicants' knowledge of the operations of the educational resource center, their views on curriculum planning and what they perceived as the goals of the position. The scores noted in these areas were consistently higher for Mr. Grimmatt and compilations of relative strengths and weaknesses for the applicants completed by the committee clearly showed Mr. Grimmatt's responses made a more favorable impression (Board's Exhibits No.5,6).

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

### FINDINGS OF FACT

1. Grievant, Robert Manley, is employed by the Kanawha County Board of Education as a machine shop instructor assigned to the Carver Career Center.

2. On August 24, 1987 the Board posted the position of Media Specialist at the Center and grievant and Mr. Dale Grimmatt made applications for the job.

3. Mr. Husson, principal at Carver, formed a selection committee consisting of three central office administrators and himself.

4. The committee reviewed resumes and conducted interviews in which the same eight (8) open-ended questions were asked of each applicant.

5. After a review of the committee findings, Mr. Husson recommended to the Superintendent of Schools, Dr. Richard Trumble, that Mr. Dale Grimmatt be awarded the position and the Kanawha County Board of Education subsequently accepted this recommendation.

### CONCLUSIONS OF LAW

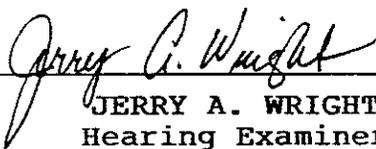
1. When alleging a violation of the provisions of W.Va. Code, 18A-4-8b(a) relating to the filling of positions, a grievant

must establish by a preponderance of the evidence that his or her qualifications were greater than those of the successful applicant for the position and/or the selection was seriously flawed by consideration of factors other than qualifications. Milam v. Kanawha County Board of Education, supra; Johnson v. Cabell County Board of Education, supra.

2. The grievant, Robert Manley, failed to prove by a preponderance of the evidence that he was the more qualified candidate for the position of media specialist at Carver Career Center or that the process used to fill the position was an arbitrary or capricious one.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to 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.

  
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JERRY A. WRIGHT  
Hearing Examiner

Dated: September 7, 1988