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STEVE McBRIDE

v.

DOCKET NOS. 50-87-186-1
~~50-87-187-1~~

WAYNE COUNTY BOARD OF EDUCATION

DECISION

Grievant, Steve McBride, is employed as a teacher by the Wayne County Board of Education. Mr. McBride filed a level four grievance appeal on July 6, 1987 in which he alleged that he had been denied a position teaching biology at Tolsia High School although he had been the most qualified applicant. At the level four hearing he additionally raised the issue of retaliation based on this and previous grievances.

In preparation for the anticipated January 1988 opening of a new consolidated (Tolsia) high school, the board posted all of the teaching positions for bid in April 1987. The grievant stated his preference for a biology assignment which was awarded to Mr. Charles Thompson.

The grievant argues that he is more qualified than Mr. Thompson as he had taught at the high school level five years (two years biology), has earned a Masters of Science degree in biological science with a 4.0 grade point average, has published research in biological journals and is experienced in utilizing computer software as part of classroom instruction.

Mr. Thompson has thirteen years of seniority and has taught two years of high school biology. He has previously taught physical science at the elementary level and has worked in a federal program. He has earned a Bachelor of Science degree in biology plus fifteen hours of additional graduate work. Both are certified to teach in the areas of biology and general science, grades 7-12, and have received similar evaluations.

Superintendent Michael Ferguson testified that of six individuals who had applied for the biology position he determined the grievant and Mr. Thompson to be qualified and that he considered resumes, qualifications, credentials, education, past evaluations, experience, seniority and input from their principal when making the teaching assignments. Based upon all available information he determined the applicants to be equally qualified and therefore chose Mr. Thompson who had earned more seniority.

The grievant supports the allegation of retaliation by the board's failure to post a computer teaching position at Tolsia High School despite the need for such an instructor and his strong desire for a position at that school.

The board asserts that the computer class(es) were originally to be assigned to individuals already on staff as no specific certification is required to teach in this area. However, after the beginning of the school year no qualified teachers were available and, in compliance with county policy, the position was temporarily filled and will be advertised for the next school year. The fact that the grievant was given this temporary assignment is offered as evidence that there has been no attempt to keep him from securing a teaching position at Tolsia High School.

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

Findings of Fact

1. The grievant has been employed as a teacher by the Wayne County Board of Education for five years.

2. In April 1987 the grievant applied for, but did not receive, a biology position at the new consolidated high school which was anticipated to open in January 1988.

3. The grievant has a total of six years teaching experience, five in the general area of science (two of which were in high school biology) and one in industrial arts. He has earned a Masters degree in biology and is certified to teach biology and general science, grades 7-12. The grievant has taught computer skills classes and has engaged in unspecified scientific research and publication. His evaluations at Ft. Gay High School have been good.

4. The successful applicant has thirteen years experience, ten in science (two in biology), has a Bachelors of Science degree plus fifteen hours in biology and is certified to teach biology and general science, grades 7-12. He has also received good evaluations and is a renowned local naturalist.

5. At the time the position in question was filled the grievant was teaching physical science at the junior high level and the successful applicant was teaching high school biology.

6. Both applicants possess the required education level and certification to fill the biology position and have received good evaluations of their past performances. Both engage in activities which would complement and enhance their ability to teach biology. While the grievant has completed an advanced degree the successful applicant has earned considerably more seniority. Both have taught biology for two years.

7. When qualifications vary it is the responsibility of the superintendent to evaluate the criteria and to recommend a candidate for the position. As the candidates were determined to be equally qualified the position was awarded to the applicant with more seniority.

8. No position in computer education was posted for Tolsia High School but sometime after the beginning of the school year it was determined that such a position was required. In compliance with county policy the position was temporarily filled for the remainder of the school year and is to be posted and filled permanently prior to the 1988-89 term. The grievant was awarded the temporary position.

Conclusions of Law

1. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer and promotion of school personnel so long as that discretion is exercised reasonably and not in an arbitrary and capricious manner. Dillon v. Board of Education of the County of Wyoming, 351 S.E. 58 (W.Va. 1986); Neal v. Mason County Board of Education, Docket No. 26-86-329-3; Lafayette v. Randolph County Board of Education, Docket No. 42-87-227-2.

2. W.Va. Code, 18A-4-8b(a) requires that a county board of education shall make decisions affecting promotion and filling of any classroom teacher's position primarily on the basis of qualifications 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. Board of Education of the County of Wyoming, 351 S.E. 2d 58 (W.Va. 1986).

3. As both the grievant and the successful applicant were evaluated on various criteria which indicated that each possessed qualifications beyond the minimum standards which enhanced their ability to perform the duties and responsibilities of the position, the use of seniority as the determining factor was proper.

4. The grievant has failed to establish that the board's failure to award him the biology position or its failure to post a computer skills position was action taken in retaliation towards him as a result of his participation in the grievance procedure constituting reprisal as defined by W.Va. Code, 18-29-3(p).

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Wayne 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 April 22, 1988

Sue Keller

SUE KELLER
HEARING EXAMINER