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

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SARAH MCCOURT

v.

DOCKET NO. 51-88-047

WEBSTER COUNTY BOARD OF EDUCATION

DECISION

Grievant, Sarah McCourt, is employed by the Webster County Board of Education as a teacher and girls track coach currently assigned to Webster County High School. On March 22, 1988 Ms. McCourt filed a level four grievance appeal in which she alleged that she had been denied the position of Coordinator of Athletic Activities in violation of W.Va. Code, 18A-4-8b and as a result of favoritism. The matter was submitted for decision based upon the record developed at level two and was supplemented by proposed findings of fact and conclusions of law which were submitted by August 17.

The grievant argues that she was the most qualified applicant for the position of Coordinator of Athletic Activities by virtue of her training and experience while the position was awarded based on seniority and favoritism as the successful candidate

is the sister of Superintendent Martha Dean. The board of education argues that all of the applicants were qualified and therefore the position was awarded to the employee with the most seniority as required by W.Va. Code, 18A-4-8b(a).

Although neither the job description or the successful applicant's qualifications are made a part of the record it is established that the position was awarded to Rae Holdren because all of the applicants were qualified and "...[s]imply because she has more years of service with the system...". (T. 9)¹ Merely ascertaining that all candidates meet the minimum qualifications for a position is not enough to trigger reliance upon seniority to fill the vacancy. Before seniority is to be considered two or more candidates must be equally qualified and no such determination has been made in this instance. As Ms. Holdren's and any other applicants' qualifications are unknown it would be premature to grant the relief requested by the grievant; however, the board is directed to reevaluate the applicants and to award the position in compliance with W.Va. Code, 18-4-8b(a)

¹According to the grievant the only requirement for the position was a baccalaureate degree. (T. 5)

and the holding in Dillon v. Board of Education of the County of Wyoming, 351 S.E. 2d 58 (W.Va. 1986), i.e., to the most qualified applicant with seniority being considered only when the applicants are determined to possess equivalent qualifications or where any differences in qualifications are insufficient to form the basis for an informed and rational decision.

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

Findings of Fact

1. Grievant is employed by the Webster County Board of Education as a teacher and coach of the girls track team at Webster County High School.

2. The grievant applied for but was denied the position of Coordinator of Athletic Activities.

3. The level two transcript indicates the qualifications of the grievant but not of the successful applicant or any other applicants.

4. Principal Dan Bean testified that all of the applicants met the minimum qualifications and therefore the position was awarded to the applicant with the most seniority.

5. The successful applicant is the sister of the county superintendent.

Conclusions of Law

1. W.Va. Code, 18A-4-8b requires that decisions affecting the promotion and filling of any classroom teacher's position be made on the basis of qualifications.

2. Extracurricular activity contracts are not exempt from procedural requirements and rights afforded by statute. Hosaflook v. Nestor, 346 S.E. 2d 798 (W.Va. 1986); Smith v. Board of Education of the County of Logan, 341 S.E. 2d 685 (W.Va. 1985); Williams v. Roane County Board of Education, Docket No. 44-86-160-1 and Shoemaker v. Hampshire County Board of Education, Docket No. 14-87-256-2.

3. The Webster County Board of Education's failure to determine whether any applicant was the most qualified of those who met the minimum requirements prior to awarding the position to the most senior applicant was in violation of W.Va. Code, 18A-4-8b and Dillon v. Board of Education of the County of Wyoming, 351 S.E. 2d 58 (W.Va. 1986).

Accordingly, the grievance is **GRANTED** to the extent that the board of education is Ordered to reevaluate the applicants

for Coordinator of Athletic Activities and to award the position in compliance with this decision. If the grievant is determined to be the most qualified she shall be awarded all backpay and benefits effective the date the position was filled in 1987.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Webster 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 Sept. 29, 1988

Sue Keller

SUE KELLER

HEARING EXAMINER