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BONNIE MEREDITH

v.

Docket No. 55-88-077

WYOMING COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Bonnie Meredith, is employed by the Wyoming County Board of Education assigned to Pineville Riverside Elementary School. She filed a grievance on February 9, 1988 alleging the position of principal at Matheny Grade School had been filled in violation of W.Va. Code, 18A-4-8b(a).¹ A Level II hearing was held on March 1, 1988 and a decision at that level was adverse to the grievant. The Board waived Level III proceedings and a Level IV evidentiary hearing was held on June 15, 1988.

On January 12, 1988 the Board posted the vacancy at Matheny Grade School and eight (8) persons, including grievant, made

¹Grievant raised the ancillary issue of sexual discrimination in the hiring process but there was simply little if any evidence presented in support of this allegation and accordingly the charge is not addressed further herein.

applications.² Mr. Gerald Short, Superintendent of Schools, conducted interviews and reviewed a matrix sheet containing a list of the applicants, their teaching endorsements, effective date of their principal's certificate, salary classification, total seniority and seniority as a principal. (Joint Exhibit No.1) The Board subsequently accepted Mr. Short's recommendation that Mr. Joseph Stewart be awarded the position.

Ms. Meredith contends she was the most qualified applicant for the position and as such should have been awarded the job and the Board's selection of Mr. Stewart was a violation of the provisions of W.Va. Code, 18A-4-8b(a) and the decision in Dillon v. Board of Education of the County of Wyoming, 351 S.E.2d 58 (W.Va. 1986) in which the West Virginia Supreme Court of Appeals held decisions on promotions must be based primarily on qualifications. She further asserts that her greater seniority should have been the determining factor if her qualifications

² One of the applicants, Ms. Gerry Worley, held a principal's certificate, grades 7-12, which was inappropriate for a grade school principal position and she was therefore not given consideration in the selection process.

were equal to those of the other applicants.³

The Board takes the position that all applicants for the position were equally qualified and since none had achieved any principal's seniority by serving in an administrative capacity, it was free to make a choice which would be the least disruptive to the operation of Matheny Grade School. It was decided that since Mr. Stewart was already assigned to Matheny as a teacher and unofficial assistant principal his selection for the position would serve this purpose.

The lack of basis for the Board's contentions has previously been addressed in Wilcox v. Wyoming County Board of Education, Docket No. 55-88-083 wherein the Board's selection process was found seriously flawed as it was not based primarily on qualifications as required by W.Va. Code, 18A-4-8b(a) and the holding in Dillon v. Board of Education of the County of Wyoming, supra.

³ Of the seven (7) applicants considered for the position only one, Ms. Carolyn Wilcox, had a greater number of years with the Wyoming County Board of Education. Grievant characterized her as "technically" unqualified for the position since her principal's certificate covered grades 1-9 and grades K-8 are served at Matheny Grade School. There was no rebuttal to Mr. Short's testimony that State Board of Education Policy permits the assignment of a principal to a school which served one grade above or one grade below his or her level of certification and there was no serious contention made that Ms. Wilcox was not qualified to be a principal at Matheny.

In Wilcox, supra, the issue of the grievant's failure to produce evidence of all the applicant's qualifications sufficient for a comparison was also noted. Similarly, Ms. Meredith also failed to make a showing that she was the most qualified of all the applicants and thus entitled to the position in question. Evidence was presented concerning her qualifications and those of Mr. Stewart's but there was little evidence produced of the remaining five (5) applicants' qualifications.⁴ However, as noted in Wilcox, supra, the provisions of W.Va. Code, 18A-4-8b(a) implicitly contain a requirement that any process used to fill positions be fair and impartial. A grievant is entitled to be part of a new selection process upon a showing that the Board's choice was based on considerations other than qualifications and was therefore an arbitrary and capricious action. Milam v. Kanawha County Board of Education, Docket No. 20-87-270-1. In addition to the foregoing, the following findings of fact and conclusions of law are made.

⁴Grievant relied on a matrix sheet (Joint Exhibit No.1) which contained only brief employment histories and seniority dates as representative of all relevant qualifications of the other candidates while expanding upon her own through testimony at the Level IV hearing.

FINDINGS OF FACT

1. Grievant, Bonnie Meredith, is employed by the Wyoming County Board of Education as a teacher assigned to Pineville Riverside Elementary School.

2. On January 12, 1988 the Board posted the position of principal at Matheny Grade School and seven (7) persons were considered for the job.

3. Mr. Gerald Short, Superintendent of Schools, subsequently recommended Mr. Joseph Stewart for the position and the Wyoming County Board of Education accepted the recommendation.

4. Mr. Short based his recommendation not on the total qualifications of the applicants but on the fact that Mr. Stewart was at the time a teacher assigned to Matheny Grade School.

CONCLUSIONS OF LAW

1. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer and promotion of school personnel but that discretion must be exercised reasonably in the best interests of the schools and in a manner which is not arbitrary and capricious. Dillon, supra; Haines v. Mineral County Board of Education, Docket No. 27-87-275-2.

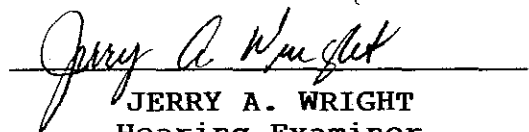
2. A failure on the part of a county board of education to adequately explore and compare the qualifications of all applicants for a position before said position is filled is an arbitrary and capricious action. Dillon, supra.

3. The failure of the Wyoming County Board of Education to evaluate and make comparisons of the qualifications of all the applicants for the position of principal of Matheny Grade School and the selection of Mr. Stewart because of his assignment to said school were arbitrary and capricious actions and thus beyond the discretion of a county board of education normally exercised in such personnel matters.

4. A grievant who alleges a violation of the requirements contained in W.Va. Code, 18A-4-8b(a) that promotions be primarily made on the basis of qualifications must normally prove by a preponderance of the evidence that he or she was the most qualified applicant but upon a showing that the county board of education's selection process was so seriously flawed that it became an arbitrary and capricious action, grievant is entitled to be part of a new and impartial process. Milam v. Kanawha County Board of Education, supra.

Accordingly, the grievance is **DENIED** as to the request to be instated to the position of principal at Matheny Grade School however the grievant, Bonnie Meredith, is to be one of the applicants given reconsideration for said position in accordance with the **ORDER** set forth in Wilcox v. Wyoming County Board of Education, Docket No. 55-88-083.

Either party may appeal this decision to the Circuit Court of Wyoming 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 be inform this office of your decision to do so in order that the record can be prepared and transmitted to the Court.


JERRY A. WRIGHT
Hearing Examiner

Dated: August 2, 1988