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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**
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WILLIAM MILAM

v.

Docket No. 20-87-270-1

KANAWHA COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, William Milam, is a principal employed by the Kanawha County Board of Education and assigned to Marmet Junior High School. Mr. Milam filed a grievance in August 1987 alleging a violation of W.Va. Code, 18A-4-8b(a) when he learned he had not been selected for the posted position of principal of Dupont High School. A Level II decision rendered October 23, 1987 was adverse to grievant and an appeal was made to Level IV where an evidentiary hearing was held on January 12, 1988.

The parties dispute both the facts giving rise to the grievance and the applicable law. In July 1987 the Board posted the position

at Dupont High School and ten (10) persons including grievant made formal applications.¹ Five candidates for the job had interviews on August 6, 1987 and were apparently given interview score percentages based on their responses in twenty-eight (28) different areas. These scores were placed on an "Interview Matrix" along with the applicants' grade point averages, years of experience and recent evaluation results.² Under the heading "Community Acceptance" on this matrix, each applicant was given a "yes" or "no". This form was developed by an interview committee staff of five persons with a "staff representative" and "parent representative" providing input.³ The completed matrix was

¹It appears five of these applicants were either not practicing administrators or certified as principals and were not given serious consideration in the selection process.

²This factual information is derived from the matrix sheet submitted by the parties as Joint Exhibit No. 1 which indicates under the heading "Interview Score" a certain number "out of" twenty-eight (28) and a corresponding percentage for a particular applicant, i.e., 22 of out 28 = 79%. It is not clear whether twenty-eight (28) specific questions were asked or the candidates were merely judged in certain categories of performance during the interview.

³The staff representative was a teacher at Dupont High School and the parent representative was Mr. Larry Raines, a member of the Parents Advisory Committee at the school. The role in which Mr. Raines served during the selection process is a point of contention with the parties and is more extensively addressed herein.

presented to Superintendent of Schools, Richard Trumble, and during an executive session of a regular board meeting in August 1987 he submitted the name of Alvin Anderson as his preference for the position. According to Mr. Trumble there was a great deal of discussion about this recommendation and he withdrew Mr. Anderson's name because he felt the Board would not vote to accept him for the job. (T.4,7) The superintendent then recommended another applicant, Mr. Joe Snodgrass, as his second choice and the Board voted to award him the position. The grievant takes issue with certain parts of the interview and selection process and raises three basic arguments concerning the provisions of W.Va. Code, 18A-4-8b(a):

1. An applicant's seniority is a factor in the hiring process under the provisions of this particular section of the West Virginia Code and in the present case, the Kanawha County Board of Education incorrectly calculated the administrative seniority of all the candidates for the position at Dupont High School.
2. The interview committee had a duty to inform candidates of the determinative factors in the selection process before that process began.
3. The hiring process was so tainted by considerations of matters not pertinent to the question of who was the most qualified applicant that the results require a new and impartial selection procedure.⁴

⁴ Grievant's Level IV appeal form indicates in-statement to the position at Dupont High School or an equivalent position and backpay as the relief sought but during the Level IV hearing and in his subsequent legal memorandum the relief changed to a request for this new selection process.

The Board responded:

1. There were no flaws in the interview/selection process and Mr. Snodgrass was hired on the basis of qualifications in accordance with W.Va. Code, 18A-4-8b(a) and the consideration of seniority was therefore unnecessary.

2. Even if seniority was or should have been a factor, the Kanawha County Board of Education correctly calculated the applicants' seniority/experience from the time each was first employed within the Kanawha County School System.

In regard to grievant's second allegation there is no language contained in W.Va. Code, 18A-4-8b(a) which would require the Board to give applicants for positions an advance notice of determinative factors in the hiring process except the provision that the vacancy must be posted with a job description. In addition to this information applicants might prefer to have a list of all the criteria relative to the filling of a position but considering the subjective nature of certain parts of an interview and the need for some spontaneity in the process such a list would be either impossible or impractical. Moreover, Mr. Milam has failed to establish any legal basis in support of this particular allegation contained in his grievance. The grievant's two remaining arguments, however, do have merit.

Grievant's third argument concerns a particular part of the language of W.Va. Code, 18A-4-8b(a), to-wit:

A county board of education shall make decisions affecting promotions and filling of any classroom

teacher's position occurring on the basis of qualifications. If the applicant with the most seniority is not selected for the position a written statement of reasons shall be given to the applicant with the most seniority with suggestions for improving the applicant's qualifications.

The West Virginia Supreme Court of Appeals has interpreted this language to mean promotions must be made 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)⁵ Generally allegations that a county board of education failed to follow these guidelines entail a comparison of the qualifications of all applicants with those of the successful applicant and/or a review of the interview/selection process itself. It is the grievant's contention the guidelines were not followed properly in the present case as evidenced

⁵ Although this decision concerned a teacher's position, the same procedural rights are granted principals and assistant principals pursuant to W.Va. Code, 18A-2-9, which in pertinent part provides:

Nothing contained in this section shall be construed to reduce or limit the rights and privileges of principals and assistant principals as teachers under the provisions of section one [§18-1-1], article one, chapter eighteen of the Code of West Virginia as amended; section one [§18A-1-1], article one, chapter eighteen-A; and other provisions of this Code. (1975, c.201; 1981, c.94.)

by the Board's refusal to hire the person whom the interview committee had determined to be the most qualified and its inappropriate consideration of factors not related to the question of qualifications, namely, those summarized under the heading "Community Acceptance".

Mr. Alvin Anderson was noted on the interview matrix as having the highest numbers under interview score, grade point average and most recent evaluations. He also received a "yes" under community acceptance. Mr. Joseph Beavers, assistant superintendent and a member of the interview committee, testified the committee made the recommendation that Mr. Anderson be selected for the principal's position based on these scores. (T.85) Mr. Trumble also testified he reviewed the matrix, considered his past contacts with the applicants and made a determination that Mr. Anderson was the best qualified. (T.14,15) It is therefore clear the objective and subjective criteria used in the selection process resulted in the submission of Mr. Anderson's name to the Board and it is also clear the Board's refusal to award him the position was not predicated on any independent evaluation of all the applicants. W.Va. Code, 18A-2-1 does provide a bisected procedure for the hiring of school personnel with a county board of education having the final say on a particular applicant but there is nothing in the language of that section of the West Virginia Code which relieves the Board of its part of the obligation to fill

positions on the basis of qualifications imposed by W.Va. Code, 18A-4-8b(a). The Kanawha County Board of Education delegated to the superintendent of schools the responsibility for determining which of the applicants was the best qualified and in the absence of any reasonably independent evaluation of its own was bound to accept that determination. A failure to do so is a strong indication that the selection was not made primarily on the basis of qualifications as required by W.Va. Code, 18A-4-8b(a) and the holding in Dillon, supra. In further support of this claim grievant alleges undue weight was given to the community acceptance factor in the interview/selection process. The evidence adduced at the Level IV hearing is supportive of this allegation. It was the testimony of Mr. Trumble that considerable emphasis is placed upon the acceptance of a principal by the community surrounding a particular school because of research indicating a successful rapport between administrator and parents has the effect of strengthening the morale of all concerned, including staff and students. (T. 27,28) This research has apparently prompted the Kanawha County Board of Education to include the parent representative and staff representative in the interview procedures for the past several years. (T.13) It appears however that this theory, when placed into practice in the present case, did not achieve its intended results but instead actually interfered with what should have basically been a review and consideration of the backgrounds and experience of the applicants. As previously noted, Mr. Anderson had an overall interview score of 79%, eight points higher than any other candidate and a "yes" under

community acceptance but he was rejected by the Board. Mr. Trumble then skipped over the name of Forest Mann, the next highest scorer on the twenty-eight (28) interview questions, who had a "no" under this heading and proceeded to submit the name of Joe Snodgrass who had only a numerical ranking of 61% but had achieved a "yes" in the community acceptance category. The grievant had received a "no" under the heading but had achieved rankings in all other categories which were nearly identical to those of Mr. Snodgrass.⁶ It is evident the qualifications as determined by the interview committee and displayed on the interview matrix assumed a minor role in the process even though the only parent representative present during the interviews did not ask questions of the applicants. (T.83) The testimony of Mr. Beavers even indicated this particular representative, Mr. Larry Raines, had already reached a conclusion that Mr. Snodgrass was his preference for the position and submitted his name in a letter which he gave the committee before the interviews began. (T.83) There was also testimony which indicated at least one applicant actually solicited support from the community by requesting persons to call members of the interview committee and the superintendent of schools voicing their support for his selection. (T.31,32,58) Clearly such practices cannot legitimately be considered part of what Mr. Trumble characterized as an effort to find an administrator who might establish

⁶ This equality in qualifications and Mr. Snodgrass' selection for this position is what gave rise to Mr. Milam's grievance alleging his seniority if calculated correctly was greater than that of Mr. Snodgrass and he therefore should have been awarded the position.

a rapport with the community for the benefit of the school, staff and students. The Board's assertion that it has substantial discretion in matters relating to the hiring, assignment, transfer and promotion of school personnel is correct but that authority must be exercised reasonably and not in an arbitrary and capricious manner. Dillon, supra; State ex rel Hawkins v. Tyler County Board of Education, 275 S.E.2d 908 (W.Va. 1980); Beverlin v. Board of Education, 216 S.E.2d 554 (W.Va. 1975). The Kanawha County Board of Education's failure to place primary emphasis on the qualifications of the five applicants and the inappropriate weight given the personal preferences of a limited number of persons in the school community rendered the selection process an arbitrary and capricious one.

Grievant's remaining argument concerning the seniority of principals and assistant principals has been previously addressed by the West Virginia Education Employees Grievance Board and it has held that professional employees do not attain principal's seniority, even if the principal's certificate is held, until an initial employment as a principal but once that employee is so hired he or she accrues principal's seniority retroactively from the date of the initial hiring if the certificate was held at that time. If the certificate was not held at that time the seniority dates back to the time the certificate was issued. Oshel/Faulkner v. Mason County Board of Education, Docket No. 26-87-136-3; Christian v. Harrison County Board of Education, Docket No. 17-87-146-2. This holding is consistent with an option issued by the State Superintendent of Schools in October 1984. The Board's

policy of calculating principals seniority from the date the employee began working in the county school system regardless of the date of the issuance of the certificate obviously does not conform to this ruling. Of course a Board could look to a principal's performance when he was serving in some other capacity within the school system as an indication of his overall qualifications for promotion but a numerical calculation of seniority to be used in situations where applicants are equally qualified must be based on a quantitative formula.

The record indicates the grievant received his principal's certificate on July 1, 1974 and he was serving as a principal at the time and a correct calculation of his principal seniority would be thirteen (13) years. (Grievant's Exhibit No. 1) (T.72,73).⁷ Mr. Anderson received his certificate on August 10, 1974 and Mr. Snodgrass was issued his certificate on July 1, 1976. The two remaining applicants, Mr. Forest Mann and Mr. Charles Watkins, received certificates on July 1, 1982 and July 1, 1977 respectively. Assuming these four employees all entered into duties as principals or vice-principals

⁷ Grievant entered into his duties as vice-principal at Cedar Grove Community School, a part of the Kanawha County school system, in 1971 and it appears he and the Board at that time were under the assumption he had obtained the certificate required for the position. Grievant testified that he completed the necessary classwork in 1971 and it was his opinion the administration had failed to process his paperwork properly and the certificate was not issued until 1974. He also indicated he had not taken steps to correct this error. (T.64)

on these dates grievant would still be the most senior administrator. It should be noted that Mr. Milam's qualifications, his greater seniority and the holdings herein do not necessarily entitle him to the position in question. As the grievant himself noted in his legal memorandum in support of his position, the selection and appointment of the principal at Dupont High School is not susceptible to such clear determination. The grievant is entitled however to be part of a new, fair and impartial selection process conducted in accordance with the provisions of W.Va. Code, 18A-4-8b(a).

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

FINDINGS OF FACT

1. Grievant, Robert Milam, was first employed by the Kanawha County Board of Education on August 27, 1984 and received his principal's certificate on July 1, 1974 when he was serving as vice-principal at Cedar Grove Community School.

2. In July 1987 the Kanawha County Board of Education posted the position of principal at Dupont High School and five applicants for the position, including grievant, were given interviews.

3. A staff representative from Dupont High School and a

parent representative, Mr. Larry Raines, were present during the interviews and upon their conclusion made recommendations as to whether or not the applicants would be acceptable to the staff and community at Dupont High School.

4. The interview committee then developed a matrix indicating for each applicant a numerical ranking derived from the applicants responses to twenty-eight (28) questions, grade point averages, scores on a recent evaluation, total years of experience in the county school system and a "yes" or "no" under the heading of community acceptance.

5. The interview committee made a determination based on the information on this matrix that Mr. Alvin Anderson was the most qualified applicant for the position of principal at Dupont High School and Superintendent of Schools, Richard Trumble, subsequently concurred with this determination.

6. At a meeting in August 1987, Mr. Trumble recommended to the Kanawha County Board of Education that Mr. Anderson be awarded the position and the Board either expressly or implicitly rejected his nomination.

7. Mr. Trumble then recommended Mr. Joe Snodgrass for the job and the Board decided to award him the position.

CONCLUSIONS OF LAW

1. Promotions of school personnel must be made 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 qualifications criteria are insufficient to form the basis for an informed and rational decision. Dillon, supra.

2. A county board of education is obligated to base its decisions on promotions primarily on qualifications and when it does not directly participate in the evaluation process and delegates the responsibility for a determination of the most qualified applicant for a particular position to the superintendent of schools, it must either accept that determination or conduct a reasonable and rational evaluation of all applicants for said position.

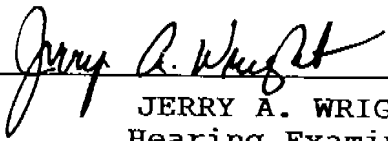
3. The factor of community acceptance used in the interview/selection process to fill the position of principal at Dupont High School was not related to the qualifications of the applicants but merely reflected the personal opinions of a limited number of persons in the Dupont High School community.

4. The inordinate and inappropriate weight given the factor of community acceptance by the interview committee, Superintendent Trumble and the Kanawha County Board of Education resulted in a selection for the principal at Dupont High School which was arbitrary and capricious and thus beyond the discretion of a county board of education normally exercised in such personnel matters. Dillon, supra; Beverlin, supra; State ex rel Hawkins, supra.

5. The Kanawha County Board of Education incorrectly calculated the principal seniority of all five candidates from the date they were first hired in the Kanawha County School system.

Accordingly, the grievance is **GRANTED** and the Kanawha County Board of Education is hereby **ORDERED** to conduct a re-evaluation of the applicants for the position of principal at Dupont High School, William Milam, Alvin Anderson, Joe Snodgrass, Forest Mann and Charles Watkins for the purpose of determining which is the most qualified employee for the position, said re-evaluation to be in accordance with the provisions of W.Va. Code, 18A-4-8b(a) and otherwise consistent with the holdings in this decision.

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.


JERRY A. WRIGHT
Hearing Examiner

DATED: May 2, 1988