



REPLY TO:
401 Davis Avenue
Suite 315
Elkins, WV 26241
Telephone: 636-1123

Members
James Paul Geary
Orton A. Jones
David L. White

**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**
ARCH A. MOORE, JR.
Governor

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

RUTH ANN RILEY

v.

DOCKET NO. 30-88-015-2

MONONGALIA COUNTY BOARD OF EDUCATION

DECISION

Grievant, Ruth Ann Riley, is employed by the Monongalia County Board of Education and is presently assigned as a fourth grade teacher at North Elementary School. Ms. Riley filed a level four grievance on January 28 in which she alleged that she had been deprived of due process when removed from the acting principalship at Easton and Suncrest Elementary Schools and that she was more qualified and had earned more seniority than the successful applicant for the assistant principalship at the Easton, Woodland and Woodburn Schools.¹ The matter was submitted for decision based upon the record supplemented by

¹ This grievance originally included a second position as assistant principal at the Suncrest and North Elementary Schools, however, this portion of the grievance was withdrawn at level three.

proposed findings of fact and conclusions of law.

The record indicates that the grievant has been employed as a teacher by the respondent since 1975. In January 1987 the grievant was temporarily released from her assignment to participate in a one semester administrative internship at the Easton - Oak Grove - Mt. Pleasant - Woodland Schools. On May 12 the board of education appointed the grievant acting principal at the Easton and Suncrest Schools from May 11 to June 26. Sometime during the summer of 1987 two assistant principalships were advertised for the Woodburn - Easton and Woodland Elementary Schools and the Suncrest - North Elementary Schools. The grievant applied for but did not receive either of these positions and returned to her previous teaching assignment for the 1987 - 88 school term.

The grievant argues that she was not properly transferred from the position of acting principal back to North Elementary School in compliance with W.Va. Code, 18A-2-7 and that she had perceived the acting principalship to be a permanent position. (T. p. 98). She further believes the appointment as acting principal indicated a "moral intent" that she would be a school administrator in some capacity for the current school year. (T.p. 101). Secondly, she argues that she was the most qualified and most senior applicant for the assistant principalship.

The board asserts that the notification sent to the grievant by letter of May 20, 1987 indicates that the appointment as acting principal was temporary and to be effective from May 11 to June 26, 1987 only. When filling the position of assistant principal the administration considered a variety of data: the level graduate education completed and earned grade point average; information gleaned from the applicants' resumes; findings of the interview team and an evaluation of the applicants completed through the W.Va. Principal's Academy Assessment Center Program. In comparing the grievant with the successful candidate it was determined that while both held an administrative certificate the successful candidate had more graduate hours at a higher grade point average and is presently working towards a doctorate in elementary education. The resume of the successful candidate shows more strength in professional activities related to elementary education while many activities listed by the grievant relate to vocational or career activities which were considered less relevant to the position. The interview team posed the same questions to both candidates and determined the grievant answered incorrectly or experienced difficulties with at least eight questions while the successful candidate did not. Additionally, the grievant made comments which indicated negative or less desirable traits to the evaluators. As both applicants

had attended the principals' assessment center those reports were considered. The grievant was determined by those evaluators to be "a better than average candidate" while the successful applicant was designated "a very good candidate" rating which is two levels higher on the performance rating scale. Although the grievant was the most senior applicant the position was awarded to the most qualified applicant.

The facts in this matter indicate that the grievant was never "transferred" from her fourth grade position in the sense contemplated by W.Va. Code, 18A-2-7. There was no permanent change of school, grade level or subject matter but rather the grievant left North Elementary for one semester as a voluntary participant in an administrative internship. During this temporary assignment she was offered and accepted a second temporary assignment as an acting principal. The grievant understood that these positions were temporary as evidenced by her return to the fourth grade position in the fall of 1987.

The fact that the grievant is eager to attain an administrative assignment is evident. However, the board of education has established that a number of factors were considered and that another candidate was determined to be more qualified than the grievant. Absent any evidence of arbitrariness or capriciousness, personnel decisions made by those specifically trained to make such determinations shall be upheld.

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. The grievant has been employed by the Monongalia County Board of Education since 1975 and is presently assigned as a fourth grade teacher at North Elementary School.

2. During the spring semester of the 1986-87 school year the grievant accepted an opportunity to participate in a one semester administrative internship. Beginning in January she was assigned as an intern at the Easton - Woodland and Oak Grove - Mt. Pleasant Elementary Schools.

3. Due to an unexpected vacancy, the grievant was offered and accepted a temporary assignment as acting principal at the Easton - Woodland and Suncrest Elementary Schools.

4. The temporary assignment as acting principal was in effect from May 11 to June 26, 1987.

5. During the summer of 1987 two positions of assistant principal were posted for the Easton - Woodland and Woodburn and the Suncrest-North Elementary Schools.

6. The grievant applied for but did not receive either of the assistant principal positions.

7. The grievant was the most senior applicant for the assistant principal position of question.

8. The grievant returned, without question, to her position as fourth grade teacher at North Elementary School in the fall of 1987.

Conclusions of Law

1. The acceptance of temporary assignments and the return to a permanently assigned position at the conclusion of the temporary assignments does not constitute a transfer as contemplated by W.Va. Code, 18A-2-7.

2. Under W.Va. Code, 18A-4-8b(a) decisions of a county board of education affecting the filling of vacant teaching positions must be based primarily upon the applicants' qualifications for the job, 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. Wyoming County Board of Education, 351 S.E. 2d 58 (W.Va. 1986); Kilmer v. Wayne County Board of Education, Docket No. 50-86-324-1.

3. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer and promotion of school personnel. Nevertheless, this discretion

must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious. Dillon v. Wyoming County Board of Education, supra; Haines v. Mineral County Board of Education, Docket No. 27-87-275-2.

4. The discretionary exercise of a board of education to employ and assign professional personnel for a specialized position in a designated school should not be disturbed when the action was taken in good faith for the benefit of a school system and was not arbitrary. Hawkins v. Tyler County Board of Education, 275 S.E. 2d 908 (W.Va. 1980); Tenney v. Barbour County Board of Education, Docket No. 01-87-166-2.

5. The board made a reasonable and rational decision that the successful applicant was more qualified for the position in question than was the grievant.

6. Under W.Va. Code, 18A-4-8b(a), where one candidate for a position is clearly more qualified, the seniority of another applicant will not be sufficient to justify denying the position to the more qualified applicant. Dillon v. Wyoming County Board of Education, supra; Kilmer v. Wayne County Board of Education, supra.

7. The grievant has failed to prove by a preponderance of the evidence that she was improperly transferred from the position of acting principal or that she is entitled to instatement to the position of assistant principal.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Monongalia 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 July 21, 1988

Sue Keller

SUE KELLER
HEARING EXAMINER