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FRANK ROGUCKI

v.

Docket No. 11-87-260-3

GILMER COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Frank Rogucki, is employed by the Gilmer County Board of Education and is presently assigned to Glenville Elementary School. On October 14, 1987 he filed a level four grievance appeal alleging the board violated county policy with respect to its selection of a Teaching Principal at Tanner Elementary School, a position vacancy for which he had unsuccessfully vied. A level four hearing was set for November 5, 1987 but cancelled when the parties indicated their agreement to submit the matter for decision based upon the existing record and submission of
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briefs.

¹The record contains a copy of the transcript of the September 17, 1987 level two hearing and numerous exhibits, some which appear to have been entered into the evidence of the grievance at that time. Additional evidence was submitted by the parties at level three upon the board's waiver to level four.

In order to facilitate an adjudicator's review of the record at higher levels, school officials are advised that a level two transcript prepared in-house should contain, at the minimum, an entry identifying documents submitted by each party by number and title and bound to the transcript and an affidavit signed by the transcriber attesting to the accuracy of the transcription.

Some basic facts giving rise to this grievance are not in dispute. On August 25, 1987 a position vacancy was posted for a Teaching Principal at Tanner Elementary School. Qualifications listed were principal's certificate, K-8, master's degree and experience as a principal preferred. Four persons applied for the position including grievant herein who was interviewed by Superintendent Clacy Williams. Two applicants were apparently deemed inappropriate candidates and were removed from further consideration. The remaining candidates appear to have been the grievant and the successful applicant, Dorothy Rhoades.² By letter dated September 3, 1987, grievant was formally advised he had not been selected; the superintendent penned in a note counseling him to seek assistance to improve in the area of classroom management and other areas where he had low evaluations.

Grievant held a master's degree in elementary education administration and twenty-one additional graduate hours, thirteen years experience as a classroom teacher and seven years seniority in Gilmer County. Although grievant did not hold a principal's administrative certificate, according to officials at West Virginia University he was eligible for a temporary license pending completion of two required courses. The record contains a March

² For purpose of clarifying the record, it is noted that only the grievant was sworn in at the level two hearing. Dr. Williams represented the administration and cross-examined the grievant; during the process he also appeared to be giving information regarding Mrs. Rhoades' qualifications and his own determinations in the selection process.

1987 evaluation in which grievant met overall professional performance standards in the low range. The evaluation document showed he exceeded in some indicators and did not meet some others, mainly in the area of classroom management.³

Mrs. Rhoades held a bachelor's degree plus fifteen hours and had eighteen years experience as a classroom teacher, all in Gilmer County. She had not attained a master's degree in education administration and did not hold the principal's certificate.⁴ The record contains a "history" of her evaluations, one dated March 1986 and five others, differently formatted and appearing to encompass the late 1970s and early 1980s. Her overall evaluation for 1986 exceeds performance standards in the low range and the remaining evaluations show above average to excellent ratings.⁵

³Grievant taught science and testified that he may have about 100 students, total; individual classes may involve student activity not found in traditional courses.

⁴A completed application endorsed by officials at West Virginia University for Mrs. Rhoades' temporary principal's license was submitted at level four, but there is no evidence which documents how certification officials at the State Department of Education may have acted upon the request.

⁵Mrs. Rhoades teaches remedial reading and, according to grievant, may have seven or eight students total. Grievant's suggestions that a job posting must include the board's desire for the applicant to hold superior evaluations and that evaluations are only a factor if applicants are equally qualified are without basis in law or policy. However, his contention that the evaluation comparisons made in this case were unfair does have merit.

Grievant alleges the selection process for the position was flawed when the board violated its own policy and interviewed, considered and hired Mrs. Rhoades who did not meet the minimum requirements for the position as posted as she did not hold a master's degree, arbitrarily lowered specifically stated qualifications after the posting period in contradiction of lawful guidelines, and unfairly considered and compared only one of his evaluations with several of Mrs. Rhoades' in areas where their responsibilities are not similar. Grievant contends the board ignored his superior qualifications when it did not select him for the principal's position. Although it appeared at one point that grievant requested instatement to the position, his level four brief clearly states his desire that the position be reposted and filled according to county policy.

The board stands on its determination that Mrs. Rhoades was the better qualified applicant for the position of principal, was eligible for certification and had consistently better evaluations. It urges that there are no statutory restrictions precluding the reduction of posted requirements to fill a needed position.⁶

In addition to the foregoing narration, the following findings of facts and conclusions of law are appropriate.

⁶ The level four brief and level two decision contain numerous findings not properly adduced into the evidence or not substantiated including Mrs. Rhoades' certifiability, the particulars of the selection process and other matters.

FINDINGS OF FACT

1. Prior to the onset of the 1987-88 school year, grievant and several other applicants vied for a posted position of Teaching Principal. Minimal requirements were that the applicant have a master's degree, hold a principal's certificate and, preferably, have principal's experience.

2. Apparently the candidates were narrowed to two; grievant herein and Dorothy Rhoades. Grievant teaches science and has at least 100 students, total; actual class sizes are not known. Mrs. Rhoades teaches remedial reading and has only about seven or eight students according to grievant. Classroom management required of these two candidates in exercise of their teaching responsibilities would not be similar.

3. Grievant held the requisite master's degree, was purportedly certifiable on a temporary basis pending completion of two courses in his education administration program and had thirteen years teaching experience, seven in Gilmer County. Mrs. Rhoades apparently held her bachelor's degree, had completed twelve hours in the administrator's curriculum and had completed an application for a temporary permit which was approved by West Virginia University officials. She had eighteen years classroom teaching experience in Gilmer County.

4. County Board Policy 4115.2 requires that employee applicants who meet the minimum posted requirements for a position vacancy shall be granted an interview. The superintendent did interview grievant but hired Mrs. Rhoades who did not possess a master's degree as stipulated in the job posting.

5. The board's assertion that Mrs. Rhoades was more qualified for a principal's position was not borne out with a rational or fair comparison of the contenders' evaluations, the basis upon which the selection was predicated according to its written argument. It appears that the board examined only grievant's March 3, 1987 evaluation and focused on negative indicators relating to classroom management and compared it with a 1986 evaluation of Mrs. Rhoades' who did excel in classroom management indicators but whose class size is vastly dissimilar to grievant's. In addition, it appears the board considered several more of Mrs. Rhoades' evaluations, all very positive but rendered in the late 1970s or early 1980s and differently formatted than current evaluation forms. None of grievant's evaluations for the same time period are of record.

6. The evidence adduced in this grievance does not contain verified testimony regarding the selection process for the position vacancy, rationale for alteration of posted requirements nor substantiated claims regarding the certifiability of the successful applicant. The evidence preponderates that the selection and employment process was fatally flawed.

CONCLUSIONS OF LAW

1. County boards of education have substantial discretion in matters relating to the hiring of school personnel but such discretion must be reasonably exercised, in the best interest of the schools and not in an arbitrary and capricious manner. Dillon v. Wyoming County Board of Education, 351 S.E.2d 58 (W.Va. 1986); B. Smith v. Wyoming County Board of Education, Docket No. 55-87-209; Crow v. Marshall County Board of Education, Docket No. 25-87-273-3.

2. W.Va. Code, 18A-4-8b requires that decisions affecting the filling of any classroom teacher's position be made on the basis of qualifications. Shoemaker v. Hampshire County Board of Education, Docket No. 14-87-256-2; Crow v. Marshall County Board of Education, supra. Many factors, including objective data and informed subjective judgment, are relevant criteria for consideration of an applicant's qualifications. Higgins v. Randolph County Board of Education, 286 S.E.2d 682 (W.Va. 1981); Parker v. Boone County Board of Education, Docket No. 03-87-128-1; Lafayette v. Randolph County Board of Education, Docket No. 42-87-207-2.

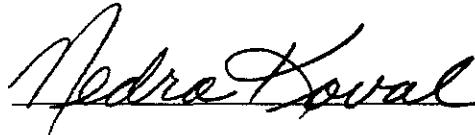
3. The alteration of requirements listed in a posted position without a reposting is unfair to applicants and would-be applicants who have relied on the criteria described in the posting and is indicative of an arbitrary selection and employment process. Dillon v. Wyoming County Board of Education, supra; Yearego v. Jackson County Board of Education, Docket No. 18-87-031-1; Miller v. McDowell County Board of Education, Docket No. 33-87-133-1.

4. The evidence in the instant grievance preponderates that the selection process for the position of Teaching Principal was flawed when the board violated its own hiring policy, altered requirements and qualifications for the vacancy after the posting period and unfairly compared the applicants' evaluations. Evidence was not properly adduced to support the board's determinations or overcome the flawed selection process, thus, the employment appears to be arbitrary and contrary to law.

Accordingly, the grievance is **GRANTED** and the board is Ordered to repost the position, utilize acceptable selection procedures and fill the vacancy as soon as is practicable.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Gilmer 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: February 17, 1988

A handwritten signature in cursive script, reading "Nedra Koval", written over a horizontal line.

NEDRA KOVAL
Hearing Examiner