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**WEST VIRGINIA EDUCATION AND
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CHARLES M. SHAVER

v.

DOCKET NO. 18-88-107

JACKSON COUNTY BOARD OF EDUCATION

DECISION

Grievant, Charles M. Shaver, is employed by the Jackson County Board of Education (BOE) and is presently assigned as a classroom teacher at Ripley High School (RHS). Mr. Shaver filed a Level IV grievance on June 11, 1988,¹ alleging that he had been wrongfully denied an assistant principalship at RHS. A hearing was held before this Board on September 29, 1988, at which grievant presented his qualifications and those of the successful applicant, Mr. Dallas Wallen.²

¹ Grievant filed at Level I on January 7, 1988, and the matter thereafter proceeded to Level II, where an extensive hearing, with voluminous documentary evidence admitted, was conducted on April 29, 1988. Subsequent to the denial at Level II, the case was waived by Level III, per W.Va. Code §18-29-4(c), to Level IV.

² Grievant and Wallen were the only two applicants for the job.

Grievant argues he is more qualified than Wallen, or at least equally qualified, and therefore should have been awarded the job based upon his unarguably greater seniority with BOE.³

In November of 1987, the position vacancy of Assistant Principal, RHS, was posted. Both applicants were interviewed by a "team" appointed by Mr. Carroll Staats, Superintendent of Schools for BOE, and composed of RHS Principal Jack Wiseman, RHS Assistant Principal Jim Frashier, and three BOE central office administrators. The team used a list of standard questions, and each member gave the interviewees not only a score for each response,⁴ but also a numerical overall rating. Grievant received 109 out of a possible 200 points; Mr. Wallen, 151. The team concluded that Wiseman, as RHS Principal, should forward Wallen's name to Superintendent Staats for appointment, and he did so. Based thereupon, Staats recommended and BOE approved Wallen's employment as Assistant Principal, RHS.

³ Grievant also complains that he was not, in his view, properly given a statement of reasons why he was not hired for the position, pursuant to Code §18A-4-5b. While the Grievance Board considers BOE's handling of this situation as somewhat questionable, RHS Principal Wiseman did send grievant such a statement under date of January 13, 1988, see Exhibit 2, and at the Level IV hearing, Superintendent Staats adopted this letter as his own. In the Grievance Board's view, this moots grievant's complaint concerning the written reasons for his nonselection.

⁴ Apparently, some of these responses were written. See Exhibit 29.

At the Level IV hearing, BOE presented evidence that its assessment of Wallen as the more qualified candidate was based upon his fourteen years experience as a classroom teacher with BOE; his excellent evaluations during that time; his extracurricular contributions as a coach; his M.A. in Educational Administration and certifications in Math (grades 7-12) and Principalship (grades 7-12); his interview team score; and BOE's concerns about certain aspects of grievant's employment record, including his mid-year resignations of both previous principalships, and deficiencies during those tenures in school upkeep, accounting practices and other areas.

There is no contention that Wallen does not possess all of the qualifications attributed to him. However, grievant argues that he is more qualified, or at least equally qualified, due to his more advanced education and relevant experience. Grievant holds a Master's Degree plus 30⁵ with certifications in Health and Physical Education, grades 1-12, and Principalship, grades 7-12. His career background includes 20+ years with BOE, mostly as a classroom teacher, but with three years as Principal of RHS and one-and-one-half years as Principal of Gilmore Elementary.⁶ Prior to his

⁵ Grievant had only a M.A. plus 24 at the time of application; his salary classification was M.A. plus 15.

⁶ Grievant was Principal at RHS during school years 1978-81, and at Gilmore from the commencement of school year
(Footnote Continued)

assignment⁷ as Assistant Principal of RHS, Wallen had no work experience classified as administrative in nature.

It is undisputed that both applicants herein met the minimum requirements for the post in question. It was therefore incumbent upon BOE to carefully examine the credentials of each to determine if one was more qualified than the other. In making this decision, the candidates' interviews and work histories were taken into consideration. Grievant argues that too much emphasis was placed on the results of the interview, and that certain criticisms of his performances as Principal were not a part of formal evaluations⁸ and/or improvement plans⁹ and therefore should have been discounted.

(Footnote Continued)

1985-86 through December 1986. He was also Administrative Assistant at RHS from February through June, 1978, and a junior high assistant principal in Virginia for one year around 1970.

⁷ Clearly, the elevation to Assistant Principal was a promotion for Wallen, as it would have been for grievant.

⁸ Specifically, grievant complains that alleged deficiencies in his performance at Gilmore were not documented by formal evaluation, and therefore, should have been excluded from consideration pursuant to W.Va. Board of Education Policy 5300(6)(a), adopted April 10, 1981, which reads, in pertinent part:

Every employee is entitled to know how well he is performing his job, and should be offered the opportunity of open and honest evaluation of his performance on a regular basis. Any decision concerning promotion...should be based upon such evaluation, and not upon factors extraneous thereto.

⁹ Although grievant attempted to argue at the Level
(Footnote Continued)

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

FINDINGS OF FACT

1. Grievant is employed by BOE as a classroom teacher at RHS.

2. In November, 1987, two persons, grievant and Mr. Dallas Wallen, another RHS teacher, applied for the position of Assistant Principal, RHS.

3. Both applicants met the minimum qualifications for the position.

(Footnote Continued)

IV hearing that BOE had violated its own policy by not placing him on an improvement plan while he was RHS Principal, no evidence that such a policy existed was presented. Apparently, grievant does not base his contention on W.Va. Board of Education Policy 5300(6)(a) since it was not enacted until after grievant's RHS resignation.

The Grievance Board further notes that improvement plans are never required in situations where deficiencies are not correctable. Hare v. Randolph Co. Bd. of Educ., Docket No. 42-88-132 (October 25, 1988). It appears that grievant, in both principalships, resigned before placement on any sort of improvement plan would have been clearly warranted and certainly, once he had resigned, none of the deficiencies were "correctable" as they related to him.

4. Grievant's qualifications included a M.A. plus 24 hours with certification in secondary principalship, and roughly twenty years with BOE, including about five years of administrative experience, with 3 years as principal of RHS and 1-1/2 years as principal of Gilmore Elementary. Wallen's credentials included a M.A. with certification in secondary principalship, and 14 years' teaching background with BOE, with no administrative career experience.

5. Grievant had resigned both of his previous principalships in mid-year. His RHS resignation was not effective until the end of that school year; his Gilmore resignation was effective immediately.

6. Grievant's RHS resignation was due to personal and professional differences with Dr. James Lannan, who was then BOE's Superintendent of Schools. Grievant's resignation from Gilmore was the result of ill health brought on or aggravated by professional pressures.

7. While a large percentage of evaluative comments made on grievant's principalships must be characterized as positive, at both RHS and Gilmore, grievant, as Principal, received criticism for deficiencies in certain areas, e.g., school upkeep, athletic funds handling, timeliness in preparing reports and teacher evaluations. Some of these criticisms appear in formal written evaluations, see

Exhibits 13, 14, 15; others did not, as in the case of problems with school upkeep, funds handling, completion of paperwork and timeliness in paying bills, all at Gilmore, which did not come to light until after grievant's resignation from that school.

8. Grievant has never been placed upon a formal improvement plan.

9. Both grievant and Wallen have generally excellent evaluations of their performances as classroom teachers.

10. Both applicants were interviewed, and assigned a score based on the interview, by a team appointed by BOE Superintendent of Schools Carroll Staats. Grievant's score was 109 out of a possible 200; Wallen's score was 151.

11. Wallen was selected by BOE to Assistant Principal of RHS; had grievant been selected for the position, it would have constituted a promotion for him, as it did for Wallen.

CONCLUSIONS OF LAW

1. A county board of education in West Virginia has substantial discretion in matters relating to the promotion of school personnel, but must exercise the same in a reasonable and not arbitrary and capricious manner. Dillon v.

Bd. of Ed. of the Co. of Wyoming, 351 S.E.2d 58 (W.Va. 1986).

2. Such decisions affecting professional promotions must be based primarily upon the qualifications of the applicants, with seniority having a bearing on the selection process only when the differences in qualification criteria are insufficient to form a basis for an informed and rational decision. Id.

3. The exercise of judgment as to which candidate is the most qualified by individuals who are trained to make such decisions will be upheld unless shown to be arbitrary and capricious or clearly wrong. Skinner v. Harrison Co. Bd. of Ed., Docket No. 17-88-114 (September 30, 1988).

4. Interviews, when conducted fairly, are relevant to making a determination as to applicants' qualifications for professional positions. See Strickland v. Kanawha Co. Bd. of Educ., Docket No. 20-86-013 (July 24, 1986).

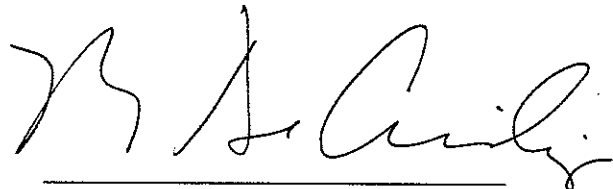
5. Factors concerning an employee's on-the-job performance are relevant for consideration for hiring and/or promotion decisions and are evaluative, even when they do not, for good cause such as not coming to light until after the employee's resignation from a past position, appear in formal written evaluations.

6. Grievant's mid-year resignations were relevant to this application process, in that "[e]mployee work reliability is a legitimate consideration ... [in determining] qualification for job placement when the position entails the direct supervision of a number of other employees." Sloan v. WVU, Docket No. BOR-88-109 (Sept. 30, 1988).

7. Grievant has failed to demonstrate that he was more qualified than, or equally qualified with, the successful applicant; thus, he has not met the burden of proving his grievance by a preponderance of evidence. See Harrison v. Kanawha Co. Bd. of Educ., Docket No. 20-87-134-1 (Oct. 30, 1987).

Accordingly, the grievance is **DENIED**.

This decision may be appealed to either the Circuit Court of Kanawha or Jackson County, but only within thirty (30) days of its receipt. See W.Va. Code §18-29-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Hearing Examiners is a party to such appeal, and should not be so named. The Grievance Board must be advised of any intent to appeal so that the record of this case can be prepared and transmitted to the appropriate Court.



M. DREW CRISLIP
HEARING EXAMINER

Dated: Nov. 7, 1988