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CAROLYN WILCOX

v.

Docket No. 55-88-083

WYOMING COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Carolyn Wilcox, is employed by the Wyoming County Board of Education as a teacher assigned to Mullens Grade 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). A Level II hearing was held on February 29, 1988 and a decision at that level was adverse to the grievant. 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 applications.<sup>1</sup> 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. Wilcox 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 even if it were conceded that her qualifications were equal to those of the other applicants, her greater seniority would have entitled her to the position.

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<sup>1</sup>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.

The Board takes the position that all the applicants were minimally qualified and since none had ever served as principal and therefore accrued principal's seniority, it was free to make a choice which it felt would be the least disruptive to the students at Matheny Grade School. Mr. Short testified that Mr. Stewart was chosen because he was a teacher at the school and had served in an unofficial capacity as assistant principal when the principal was absent. (T.\_\_) It was also Mr. Short's testimony that the qualifications or personalities of the applicants had no bearing on his decision to recommend Mr. Stewart.<sup>2</sup> No legal authority was cited in support of the Board's position and Mr. Short merely indicated this was his interpretation of the West Virginia Code as it related to the filling of vacancies. (T.\_\_) The contention that seniority as a teacher had no bearing on

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<sup>2</sup>Mr. Arnold Harless, representative for the Board, asked Mr. Short the question, "Mr. Short, you stated that the reason that you selected the individual that you did had no bearing whatsoever upon qualifications, upon personality or any other factor, dealing with the individual?" Mr. Short's response was, "Right. I didn't." (T.\_\_)

a decision concerning a principal's position was apparently based on a State Superintendent of Schools opinion dated January 13, 1987 in which he stated a teacher with a principal's certificate does not accrue principal's seniority until employed as such.<sup>3</sup>

The Board's assertions and conclusions regarding the filling of vacancies are simply without basis, legal or otherwise. The holding in Dillon, supra, was quite clear in its pronouncement that decisions on the filling of vacant teaching positions should be made on the basis of qualifications and the West Virginia Education and State Employee's Grievance Board has held decisions on promotions must be made on the same basis. Slade v. McDowell County Board of Education, Docket No. 23-86-050. It is clear there was not a sufficient exploration of the respective qualifications of all the applicants for the position in question. The testimony of Mr. Short generally reflected a lack of knowledge of certain experiences of the candidates, particularly the amount of time certain candidates, including the grievant, had served

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<sup>3</sup> It is difficult to understand the Board's reliance on this interpretation or the connection between it and the assumption that the applicant's lack of principal's seniority allowed the Board to choose a person on criteria other than qualifications. It should be noted that the emphasis placed on the opinion is indicative of the Board's focus on the question of seniority at the beginning of the interview/selection process.

in an unofficial capacity as assistant principals at their schools. Additionally he indicated the interview process was not conducted to discover individual strengths, weaknesses or achievements but was merely used as a way to become acquainted with the applicants. (T.\_\_) There was a similar failure to explore credentials in Dillon, supra, and the West Virginia Supreme Court of Appeals noted:

Moreover, it is evident that the appellees failed to investigate and evaluate the qualifications, credentials, education and experience of the respective candidates for the vacant position before rendering their decision. Such an investigation and evaluation is required by the Board's own rules and regulations.<sup>4</sup>

It appears an inordinate amount of emphasis was placed on the matrix sheet and the brief employment history it contained to the exclusion of other factors normally considered in any selection

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<sup>4</sup>The Court made reference to Wyoming County Board of Education Policy 3035 in effect at the time, which in pertinent part provided:

(4) Applications will be reviewed and qualifications, certification and experience will be checked by superintendent and staff.

While grievant did not offer current Board policy as evidence, administrative notice may be taken of the fact that this particular section is part of West Virginia Department of Education Policy 5300, et seq. which has generally been adopted by most county boards of education. Additionally, the requirement of a sufficient investigation of credentials is implicitly contained in the language of W.Va. Code, 18A-4-8b(a) requiring boards to base such decisions on qualifications.

process. The lack of an adequate appraisal and consideration of all qualifications is in itself an indication that the selection process was flawed. The fact that Mr. Short made the decision to recommend Mr. Stewart for the position because he was a teacher at Matheny Grade School indicates the process was flawed to the point that it amounted to an arbitrary and capricious use of the discretion normally afforded a county board of education in such matters. Mr. Stewart's assignment to Matheny Grade School cannot logically be considered a qualification and is merely a circumstance of his employment with the Wyoming County Board of Education.

The Board's abuse of its discretion, however, does not necessarily entitle the grievant to reinstatement to the principal's position. Ms. Wilcox did not present sufficient evidence of Mr. Stewart's qualifications to facilitate a comparison and a finding that she was the more qualified. Moreover, the grievant produced no evidence of the credentials and backgrounds of the remaining five (5) applicants except the matrix sheet. It is incumbent upon a grievant to produce such evidence when a violation of W.Va. Code, 18A-4-8b(a) is alleged and he or she claims to be the most qualified applicant for a position. See, Johnson v. Cabell County Board of Education, Docket No. 06-87-248-1.

A failure to produce such evidence renders subsequent reviews of a board's action impossible and generally entails a finding that the grievant did not prove the allegations by a preponderance of the evidence. Randolph v. Harrison County Board of Education, Docket No. 17-88-001-2; Johnson v. Cabell County Board of Education, supra. When a grievant has made a showing, however, that a board's selection process was seriously flawed by considerations of factors other than qualifications, a new and impartial evaluation of all applicants may be the appropriate remedy. Applicants are entitled to be part of a fair and impartial selection process conducted in accordance with the provisions of W.Va. Code, 18A-4-8b (a). See, 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.

#### FINDINGS OF FACT

1. Grievant, Carolyn Wilcox, is employed by the Wyoming County Board of Education as a teacher assigned to Mullens Grade School.

2. On January 12, 1988 the Board posted the position of principal at Matheny Grade School and seven (7) persons were interviewed 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 v. Board of Education of the County of Wyoming, 351 S.E.2d 58 (W.Va. 1986); 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

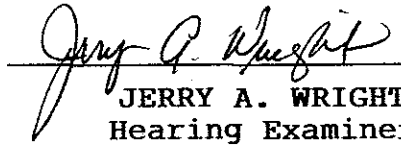


the applicants for the position of principal of Matheny Grade School and the selection of Mr. Stewart because of his assignment to said school were arbitrary and capricious actions and thus beyond the discretion of a county board of education normally exercised in such personnel matters.

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 **GRANTED** to the extent that the Wyoming County Board of Education is hereby **ORDERED** to conduct a re-evaluation of the qualifications of the applicants for the position of principal at Matheny Grade School, Donald Bowling, Dennie Brown, Sandra Brown, Bonnie Meredith, Phyllis Repass, Joseph Stewart and Carolyn Wilcox 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 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 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: August 2, 1988