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GERRY D. WORLEY

v.

Docket No. 55-88-035-4

WYOMING COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Gerry Worley, is employed by the Wyoming County Board of Education as a teacher assigned to Oceana High School. She filed a grievance in October 1987 alleging the position of principal at Pineville High School was filled in violation of the requirements of W.Va. Code, 18A-4-8b(a). A Level III hearing was held on January 18, 1988 and a decision at that level was adverse to the grievant. Level IV evidentiary hearings were held on March 17, 1988 and May 5, 1988.

The position of principal at Pineville High School was posted on September 9, 1987 and six (6) persons including grievant made application. All applicants were interviewed by Mr. Gerald Short,

Superintendent of Schools, and he subsequently recommended Mr. Raymond Rose and the Wyoming County Board of Education accepted the recommendation.

Ms. Worley takes issue with this selection and asserts that she is more qualified than Mr. Rose. She offers the additional argument that even if it were conceded they were equally qualified, she had the greater principal's seniority and should have been awarded the position.

Grievant holds a teacher's certification in social studies grades 7-12 and a principal's certificate grades 7-12, which was issued on July 1, 1977. She also has a Masters degree plus thirty (30) hours and twenty years of employment with the Wyoming County Board of Education. She served as assistant principal of Oceana High School for two and one-half ( $2\frac{1}{2}$ ) years and two and one-half ( $2\frac{1}{2}$ ) years as head principal at the same school. Additionally, Ms. Worley is a member of several education associations and civic organizations. The successful applicant, Mr. Raymond Rose, holds teacher's certification in health and physical education grades 7-12 and a principal's certificate grades 7-12, which was issued on August 12, 1977. He has a Masters degree plus fifteen (15) additional hours and has been employed by the Board for sixteen (16) years. During the last six (6) years Mr. Rose has served as assistant principal at Pineville Junior High School.

A review of the qualifications of the remaining eight (8) applicants indicate grievant and Mr. Rose were the top candidates for the position and this was confirmed by the testimony of Mr. Short.<sup>1</sup> A comparison of the credentials of grievant with those of Mr. Rose, however, does not indicate the grievant was more qualified. Ms. Worley did serve two and one-half (2½) years as a principal whereas Mr. Rose has only served as an assistant principal but his service has been during the last six (6) years and the Board could logically conclude he had a more current understanding of the position and its duties and responsibilities. Overall the qualifications of the two applicants are equal or so close that any differences could not reasonably form the basis of a preference for one or the other and normally a superintendent's subjective impressions of abilities gained through the interview process are the determining factors in such cases. Superintendent Short testified however that no such impressions were obtained through the interview process and it was conducted primarily as a means to become acquainted with

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<sup>1</sup>A matrix sheet (Board's Exhibit No. 1) used throughout the selection process indicates grievant and Mr. Rose had more previous experience in a principal/assistant principal position than the other four applicants.

all the applicants as he would be working with them in various capacities. (T.\_\_) Mr. Short indicated he considered Ms. Worley and Mr. Rose equally qualified and made the final decision to recommend Mr. Rose on the basis of seniority. (T.\_\_) This is in keeping with the holding 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 seniority has a bearing on the filling of vacant positions when applicants have otherwise equivalent qualifications or the differences in qualification criteria are insufficient to form the basis for an informal and rational decision.

The grievant and the Board, however, offer opposing views as to how this seniority should be calculated and focus their attention on "principal's seniority". Ms. Worley takes the position that since she received her principal's certificate in July 1977 and began duties as an assistant principal at Oceana High School in 1977, she has been accruing principal's seniority since that date despite the fact that she returned to a teacher's position in 1982. According to this method of calculation, grievant would have ten (10) years of seniority as an administrator whereas Mr. Rose would only have six (6) years as such. The Board contends grievant's previous years as a principal and assistant principal cannot be counted as principal's seniority until she assumes another administrative position. According to this interpretation grievant would be given no consideration whatsoever

for her five years service as a principal and assistant principal.

In support of her position, grievant cites the cases of Oshel/Faulkner v. Mason County Board of Education, Docket No. 26-87-136-3; Martin v. Mason County Board of Education, Docket No. 26-87-156-3 in which the West Virginia Education Employees Grievance Board held that when a professional employee is initially hired by a board of education as a teacher but is later employed as a principal, the individual will accrue principal's seniority from the initial date of hiring if the individual held a principal's administrative certificate at that time. Grievant makes an analogy to the provisions of W.Va. Code, 18A-4-8b(a) which allow a teacher to accrue seniority in areas of certification other than the one to which he or she is assigned and concludes the same theory should apply to an employee who is employed as a principal and subsequently assumes a teaching position. The Board derives its computation from an opinion of the State Superintendent of Schools dated February 1, 1985 in which he states that a teacher will lose the use of seniority earned through the principal's certificate if he or she ceases to be a principal until re-employed and reassigned as a school principal unless he or she has been assigned to some other administrative position. For reasons hereinafter discussed, the merits of these two methods of calculating principal's seniority need not be reached.

Both parties have mistakenly focused attention on the number of years served as a principal as the determining factor when qualifications are otherwise equal. The length of time an employee has held a principal or assistant principal position is part of his or her qualifications and not a separable "seniority" to be used to decide which of two employees, essentially "tied" for a position, will receive the job. A county board of education may of course use the evaluations of an employee's service as a principal as an indicator of qualifications but when those are determined equal the definition of seniority must be given a broader meaning and is found in W.Va. Code, 18A-4-8b:

(a) The seniority of professional personnel shall be determined on the basis of the length of time the employee has been professionally employed by the county board of education.

There is no distinction between principal's and teacher's seniority contained therein and similarly there is no such distinction made in Dillon, supra. The decisions in Oshel/Faulkner v. Mason County Board of Education, supra and Martin v. Mason County Board of Education, supra did establish a method for the calculation of principal's seniority but in those cases the calculation was used to determine which principals were to be terminated or transferred in a reduction of force situation. In such circumstances there is the obvious need for a determination of how long a professional employee has been a principal since the reduction

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of force effects that particular class of employees. This calculation was necessitated by the holding in State ex rel. the Board of Education of Kanawha v. Casey, 349 S.E.2d 436 (W.Va. 1986) that when a county board of education seeks to reduce the number of principals in its employment, the least senior principal is to be released. There is no similar need to determine principal's seniority in the present case particularly since the two applicants previous experience in principal's positions had been considered as part of their qualifications and those qualifications deemed equal. Moreover, the definition contained in W.Va. Code, 18A-4-8b(a) is clear and unambiguous and requires no interpretation and should be given full force and effect. Lavender v. McDowell County Board of Education, 327 S.E.2d 691 (W.Va. 1984); Kell v. McDowell County Board of Education, Docket No. 33-87-236; Burdette v. Summers County Board of Education, Docket No. 45-87-030-4.

Accordingly, the total seniority of each of the two applicants should have been the determinative factor in filling the vacancy in question. The grievant had twenty (20) years of seniority with the Wyoming County Board of Education at the time the position was filled as compared to the successful applicant's sixteen (16) years and with equal qualifications, she should have been awarded the position.

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

### FINDINGS OF FACT

1. Grievant, Gerry Worley, has been employed by the Wyoming County Board of Education since 1967 and served two and one-half (2½) years as assistant principal of Oceana High School and two and one-half (2½) years as principal at the same school.

2. In September 1987 Superintendent of Schools, Mr. Gerald Short, interviewed and considered the qualifications of six (6) applicants, including grievant, for the position of principal at Pineville High School.

3. Mr. Short made the determination that grievant and Mr. Raymond Rose were the top applicants for the position and that the two were equally qualified and his recommendation that Mr. Rose receive the position was accepted by the Wyoming County Board of Education.

4. The evidence supports Mr. Short's conclusion that grievant and Mr. Rose were the two most qualified applicants for the position and his conclusion that the two were equally qualified.

5. Grievant has twenty (20) years of seniority with the Wyoming County Board of Education and Mr. Rose has sixteen (16) years.



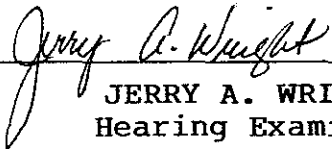
## CONCLUSIONS OF LAW

1. A county board of education must fill vacant positions primarily on the basis of qualifications and seniority has a bearing when applicants have otherwise equivalent qualifications or 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, supra; LeMaster v. Cabell County Board of Education, Docket No. 06-87-074-1.

2. When two applicants for a principal's position have otherwise equivalent qualifications or any differences in qualifications are insufficient to form the basis for an informed and rational decision, a county board of education must award the position to the applicant with the greatest total seniority.

Accordingly, the grievance is **GRANTED** and the Wyoming County Board of Education is hereby **ORDERED** to instate the grievant, Gerry Worley, to the position of principal at Pineville High School and to further compensate her for any loss of wages she may have incurred as a result of the improper filling of said position, less any appropriate set-off.

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: July 13, 1988