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DEANNA ATKINSON

v.

DOCKET NO. 24-88-090

MARION COUNTY BOARD OF EDUCATION

DECISION

Grievant, Deanna Atkinson, is employed as a special education teacher by the Marion County Board of Education. Ms. Atkinson filed a level one grievance on March 2, 1988 at which time she alleged that the board had denied her the position of special education coordinator as a result of discrimination and in violation of W.Va. Code, 18A-2-2, 18A-4-8b(a), 18-29-2(a) and 5-11-9. The grievance was denied at level two and appealed to level four on May 31. An evidentiary hearing was conducted on July 29 and proposed findings of fact and conclusions of law were filed by September 5.

The grievant argues that she was entitled to the position of special education coordinator as she was the most qualified

applicant as evidenced by certification and experience. The board of education argues that the position was filled with the most qualified applicant and in statutory compliance.

The job posting for the position of special education coordinator listed the qualifications to be valid certification in (a) elementary or secondary education and (b) special education and/or related areas, a masters degree in a field of education, a minimum of 5 years of teaching or equivalent related experience and demonstrated competencies necessary for the position. Job responsibilities include providing leadership in the referral, identification and assessment of exceptional children; assisting administrators/teachers in the initiation, development, introduction and/or implementation of educational programs and curricular materials; providing assistance in the identification, development and provision of staff development programs; providing leadership in the selection, adoption and utilization of textbooks, materials and equipment; providing assistance in the analysis and interpretation of data on program status; providing leadership in the articulation of special education programs by participation in activities such as working with curriculum committees, preparation of bulletins and guides and the dissemination of information from conferences; reporting annual progress

in each area of responsibility and any other related duties as assigned by the immediate supervisor.

The grievant has earned a bachelor of science degree in social studies and a masters degree plus 15 hours in the area of mental retardation with certification in both areas. She has taught 19 years and has worked in the Marion County special education program for 12 years. She has been active in both professional and community activities. The grievant testified that she has experience at all levels and exceptionalities of special education, has trained other educators and served as a leader in variety of professional activities.

The successful candidate, Robert Van Gilder, is certified to teach industrial arts and has earned a masters degree in counseling. He has been credited with 16 years experience having served 3 years in the U.S. Air Force, one year at the Marion County Opportunity Workshop, 10 years as a guidance counselor at North Marion High School and 2 years as a Special Services Liaison.¹

¹ The grievant argues that she and Mr. Van Gilder have equal county seniority, 12 years. Whether his outside experience should be counted towards his seniority was never developed and will not be addressed further as it does not affect the outcome of this decision.

The job responsibilities of Special Service Liaison are to provide leadership and support in the Department of Special Education, establish and implement an improvement process for the liaison position, establish good public and employee relations, maintain professional work habits and upgrade professional skills. A letter dated February 12, 1988 provides a listing of activities and improvements accomplished by the liaison. A few examples include the initiation of curriculum changes impacting dropout prevention; assistance in the development stage of a transitional program for special needs students; provision of counseling, referral service, staff development and community training on suicide prevention and provision of inservice training for instructors.

A two-step procedure was utilized in the selection of the candidate ultimately recommended for the position. An interview committee comprised of Dr. Larry Parsons, Administrative Assistant for Special Services, and Assistant Superintendent Dennis Edge reviewed the personnel files and conducted interviews for all five applicants. The interviews were structured and consisted of predetermined questions. Each applicant was given an opportunity to present his qualifications. Based upon their interview performance and personnel files the committee recommended three

of the applicants to Superintendent John Myers. After reviewing the qualifications of the three finalists, Superintendent Myers determined Mr. Van Gilder to be the most qualified based upon his experience as the Special Service Liaison. Mr. Van Gilder's qualifications were determined to be preferential as his experience was broader in scope. He had worked in the placement of special education students, administered and interpreted testing, assisted counselors, developed programs and worked with teachers and principals, thereby demonstrating the leadership skills required for the position.

While the grievant has more training and experience teaching special education Mr. Van Gilder has the advantage of administrative experience. Neither possesses an administrative degree and both meet the job qualifications as set forth on the position posting. The grievant stresses a comparison of documentary evidence relating to their educational and professional accomplishments; however, that information was only a part of the whole considered by the committee and the superintendent. It is not clear what weight may have been given to the interview or how either candidate was rated for that segment of the evaluation. Both candidates have engaged in similar activities within

the special education program dealing with testing and placement of students, developing curriculum and working with parents and students. The determination that Mr. Van Gilder was more qualified by virtue of his administrative experience is credible and does not indicate the choice to have been arbitrary or capricious.

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 as a teacher since 1968 and has taught in the Marion County school system since 1975.

2. The grievant holds a masters degree plus 15 hours in the area of mental retardation and has been assigned as a special education teacher throughout her tenure in Marion County.

3. In December 1987 the grievant and four other individuals applied for the position of special education coordinator.

4. An interview committee recommended three names to the superintendent after having reviewed the applicants' personnel files and having conducted interviews.

5. After reviewing the files and the interview assessments of the three finalists, Superintendent Myers recommended Robert Van Gilder for the position.

6. Mr. Van Gilder has also been employed by the board of education since 1975 although he has been credited with an additional four years of seniority for experience in the U.S. Air Force and the Marion County Opportunity Workshop. Mr. Van Gilder has served as a guidance counselor for 10 years and as special service liaison for two years.

7. The grievant and Mr. Van Gilder have performed similar duties with the special education program such as testing, developing curriculum and implementing programs.

8. The grievant has extensive experience in teaching special education while Mr. Van Gilder has gained administrative experience within the program.

Conclusions of Law

1. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer and promotion of school personnel so long as it is exercised reasonably and not in an arbitrary and capricious manner. Dillon v. Board of Education of the County of Wyoming, 351 S.E.2d 58 (W.Va. 1986); Lafayette v. Randolph County Board of Education, Docket No. 42-87-227.

2. 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. State ex rel. Hawkins v. Tyler County Board of Education, 275 S.E. 2d 911 (W.Va. 1980); Tenney v. Barbour County Board of Education, Docket No. 01-87-166-2; Haines v. Mineral County Board of Education, Docket No. 27-87-275-2.

3. The decision that a candidate with administrative experience was more qualified for an administrative position than a candidate with appropriate subject area expertise was credible and not arbitrary or capricious.

4. The board did not incur any statutory violations in determining the most qualified candidate for the position.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Marion 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

October 31, 1988

Sue Keller

SUE KELLER

HEARING EXAMINER