



Moore 2/11

REPLY TO:
401 Davis Avenue
Suite 315
Elkins, WV 26241
Telephone: 636-1123

Members
James Paul Geary
Orton A. Jones
David L. White

**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**
ARCH A. MOORE, JR.
Governor

Offices
240 Capitol Street
Suite 508
Charleston, WV 25301
Telephone: 348-3361

EDWARD F. BARLOW, JR. and
ANTHONY W. COSTELLO

v.

DOCKET NOS. 39-88-025-2
39-88-024-2

PRESTON COUNTY BOARD OF EDUCATION

DECISION

Grievants, Edward F. Barlow, Jr. and Anthony W. Costello, are employed by the Preston County Board of Education as mathematics teachers and are presently assigned to Central Preston High School. Mr. Barlow and Mr. Costello allege violations of W.Va. Code §§18A-4-8b(a), 18-29-2(a) and 18-29-2(o) and the State Board of Education Policy 5300(6)(a) when they were not selected for positions at the Preston County Academic Center. Following level two hearings the grievances were denied and those decisions were appealed to level four on February 18, 1988. The grievances were consolidated at level four and an evidentiary hearing was conducted on March 17, 1988. Both parties submitted proposed findings of fact and conclusions of law by April 18, 1988.

By posting dated November 12, 1987 the board of education announced vacancies for the Preston County Academic Center scheduled to open the 1988-89 school term. The positions listed included two math assignments, one full-time and one half-time. The full-time position was subsequently awarded to another applicant, Deborah Grimes. Grievant Barlow was offered, but refused, the half-time position which remains unfilled.

The grievants argue that because their and Ms. Grimes academic qualifications are so similar that seniority must be the determining factor in awarding the assignments. Grievant Barlow alleges that he was the most senior candidate and should have received the full-time position. Grievant Costello alleges that he was the second most senior applicant and should receive the half-time position.¹

The board of education argues that Ms. Grimes was the most qualified applicant as she has earned a masters degree in education with a specialization in mathematics. Mr. Costello has attained the same degree, however, Mr. Barlow has earned a masters degree

¹Grievant Barlow has 24 years experience, grievant Costello has 17 years experience, and Ms. Grimes his 14 years experience.

in education administration. Second, Ms. Grimes has completed 75 hours undergraduate and graduate credit in the area of math. Mr. Costello has completed 68 hours and Mr. Barlow 69 hours, although each include credits which the administration questions regarding their relevancy to high school instruction.² Third, Ms. Grimes is the only candidate with experience teaching calculus which will be offered at the Academic Center.

Mr. Costello did not specifically apply for either math position, however, the level four grievance appeal form indicates the relief requested to be reinstatement to the half-time position. As that position has not yet been filled this grievance was prematurely filed and is hereby dismissed without prejudice.

Although Mr. Barlow has greater seniority than Ms. Grimes she has acquired a masters degree in the area of mathematics and a review of their graduate credits indicates that she has completed 33 upper level (300 series or higher) hours, 30 of which were courses in specialized areas of math and math education

²The figures reflecting the number of academic credits in math are those provided by the board. Mr. Costello indicates that he has 66 rather than 68 and Mr. Barlow 70 rather than 69.

(statistics, transformational geometry, corrective techniques in math education). Mr. Barlow has earned a masters degree in education administration and has earned 31 graduate credits in math. Twenty-four of those hours were lower level (below 300 series), ten were directed toward elementary education and twenty-one were listed only as "special topics". As Ms. Grimes has completed a graduate course of study more appropriate for teaching higher level math classes and as she has experience in teaching calculus which will be offered at the Center, the decision that she was the most qualified candidate cannot be construed as improper.

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. Grievants are employed by the Preston County Board of Education as math teachers assigned to Central Preston High School.

2. In November, 1987 the board of education posted vacancies for the Preston County Academic Center scheduled to open for

the 1988-89 school term. The announcement included one full-time math position and one half-time math position.

3. Grievant Costello applied for a position, grievant Barlow applied for the full-time position.

4. The full-time position was subsequently awarded to Deborah Grimes. The half-time position was offered to and refused by grievant Barlow.

5. Both grievants have earned more seniority than Ms. Grimes.

6. Grievant Costello requests instatement to the half-time position which has not yet been filled.

7. Ms. Grimes has earned a masters degree in education with a specialization in math. Mr. Barlow has earned a masters degree in education administration. A review of the graduate courses each have completed shows that Ms. Grimes has taken upper level, subject specific classes while Mr. Barlow has completed primarily lower level special topics classes.

8. Ms. Grimes has taught calculus and Mr. Barlow has not. Upper level college preparatory classes, including calculus will be taught at the Academic Center.

Conclusions of Law

1. Under W.Va. Code, 18A-4-8b(a) decisions of a county board of education affecting the filling of vacant teaching positions must be based primarily upon the applicants' qualifications for the job, with seniority having a bearing on the selection process when the applicants have otherwise equivalent qualifications or where the differences in qualification criteria are insufficient to form the basis for an informed and rational decision. Dillon v. Wyoming County Board of Education, 351 S.E. 2d 58 (W.Va. 1986); Jackie Kilmer v. Wayne County Board of Education, Docket No. 50-6-324.

2. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer and promotion of school personnel. Nevertheless, this discretion must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious. Dillon v. Wyoming County Board of Education, supra.

3. 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. Hawkins v. Tyler County Board of Education, 275 S.E. 2d 908 (1980); Garry R. Tenney v. Barbour County Board of Education, Docket No. 01-87-166-2.

4. Under W.Va. Code, 18A-4-b(a), where one candidate for a position is clearly more qualified, the seniority of another applicant will not be sufficient to justify denying the position to the more qualified applicant. Dillon v. Wyoming County Board of Education, supra; Julie J. Kilmer v. Wayne County Board of Education, Docket No. 50-86-324-1.

5. The board made an accurate and rational decision that the successful applicant was more qualified for the position in question than was the grievant.

6. The grievant has failed to prove by preponderance of the evidence that the school board acted arbitrarily or capriciously or that he is entitled to reinstatement to the full-time math position.

7. A grievance alleging that a specific individual was improperly denied a position prior to that position being filled by the board is premature and will not be considered by this grievance board.

Accordingly, the grievance filed by Mr. Costello is DISMISSED without prejudice and the grievance filed by Mr. Barlow is DENIED.

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

May 26, 1988

Sue Keller

SUE KELLER
HEARING EXAMINER