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JAMES BLACK

v.

Docket No. 06-88-020-4

CABELL COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, James Black, has been employed by the Cabell County Board of Education since 1970 and is currently assigned to Barboursville High School as a social studies teacher, grades 10-12. He filed a grievance in December 1987 when he was not selected for the position of assistant principal at Salt Rock School alleging a violation of W.Va. Code, 18A-4-8b(a) and W.Va. Code, 18-29-2(o). A Level II hearing was held on January 4, 1988. A decision at that level was adverse to the grievant and the Board waived Level III proceedings and a Level IV evidentiary hearing was held March 16, 1988.

On October 12, 1987 the Cabell County Board of Education

posted the position in question and sixteen (16) teachers made applications. A screening committee was appointed and nine (9) applicants including grievant were given interviews. The committee consisted of Mr. Herbert Varney, Assistant Superintendent for Elementary Education; Mr. Curtis Ross, principal of Salt Rock School; and, Mr. Michael Thompson, Assistant Superintendent for Secondary Education. After the interview process was complete, this committee submitted two names as the top candidates for the position to Superintendent of Schools, Dr. Robert Frum. Dr. Frum then recommended to the Board that Mr. Jerry Hurley be awarded the position and the recommendation was accepted. Mr. Black contends he was the more qualified applicant and the Board's decision constituted favoritism as defined in W.Va. Code, 18-29-2(o).¹ Grievances of this nature generally require a comparison of the qualifications of the grievant and those of the successful applicant and/or a review of the interview/selection process. As there is no allegation of impropriety in the process used the validity of grievant's charges rests on a comparison of qualifications. It should first be noted that Salt Rock School is somewhat unique in Cabell County as it serves students in kindergarten through the ninth grade.

¹ An allegation that the requirement of W.Va. Code, 18A-4-8b(a) that positions be filled primarily on the basis of qualifications has been violated necessarily includes a charge that a certain employee has been given preferential treatment but this issue is ancillary and is not addressed independently herein.

Mr. Black holds professional teaching certification in the areas of social studies, grades 7-12 and health and physical education, grades 7-12. He also possesses a professional administrative certificate as a principal junior/senior high school, grades 7-12 and a Masters degree which were issued on August 16, 1974. Grievant has been a teacher in the Cabell County school system since 1970 and except for some brief work as a substitute has never taught on the elementary or junior school levels. The successful applicant, Mr. Hurley, has a B.A. in elementary education and special education, a Masters degree in behavior disorders and is presently a Ph.D. candidate in educational supervision and curriculum development. His certifications are in elementary education, grades 1-8; educable and trainable mentally handicapped, K-12; elementary school administration, 1-8 and teacher education association certification. Mr. Hurley has taught a sixth grade class at Nichols Elementary School since 1979.

It was the testimony of Mr. Ross, principal at Salt Rock, that his preferences for the position were applicants who had some experience in both elementary and junior high school. (T.__) He also indicated he judged each candidate on their ability to communicate and formed an opinion as to whether or not he could easily establish a working relationship with the person. All members of the committee related their concerns that the successful applicant should have

experience on the elementary school level since the majority of students at Salt Rock are in grades K-6. In an attempt to reach a manageable number of applicants, the committee went through an elimination process and grievant's name was the first to be excluded from consideration.² While it appears the committee members made several subjective considerations when reviewing the records of the applicants and conducting the interviews, it was the grievant's lack of experience on the elementary level that prompted the committee's decision.

Mr. Black testified that he basically felt he was the more qualified applicant because of achievements in his personal and community life. He had once been mayor of the city of Milton, West Virginia, a position in which he had accomplished a great many civic improvements and he had successfully operated two businesses in the Milton area. (T.___) Grievant also cited a trip to the Soviet Union he had made and indicated these experiences served to broaden his horizons and thus enhanced his abilities to be a principal. (T.___) It was Mr. Black's conclusion that he had acquired skills in dealing with people and these skills had been improperly overlooked by the interview

² After the interviews were completed persons on the committee individually wrote down the names of applicants which they considered unsuitable for the position and grievant's name was first on all the lists.

committee.³ Grievant did not provide any substantive evidence, however, to support this claim or his general allegation that he was more qualified than Mr. Hurley.

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

FINDINGS OF FACT

1. Grievant, James Black, has been employed by the Cabell County Board of Education since 1970 as a teacher and is currently assigned to Barboursville High School.

2. On October 12, 1987 the position of assistant principal at Salt Rock School was posted and a number of teachers including grievant made applications for the job.

3. Salt Rock School serves students in grades kindergarten through nine and the majority of the school's students are enrolled in kindergarten through sixth grade.

4. An interview committee was appointed and nine (9)

³Grievant also raised the issue of the inadequacy of a letter sent him by Ed McNeel, Assistant Superintendent, which indicated he as the most senior applicant, was entitled to suggestions for improvement pursuant to W.Va. Code, 18A-4-8b(a). (Grievant's Exhibit No. 5) The letter adequately explains the Board's reasons for hiring Mr. Hurley but as grievant contends it does not adequately inform him of what steps he needs to take to improve.

applicants including grievant were given interviews.

5. Upon completion of these interviews the committee conducted a process of elimination of applicants whereby each member of the committee individually and independently wrote down the names of applicants they considered unsuitable for the position and grievant's name was the first so noted by the members.

6. The interview committee ultimately submitted to Superintendent of Schools, Dr. Robert Frum, the names of the two applicants which it considered the most qualified and Dr. Frum subsequently recommended to the Board that Mr. Jerry Hurley be awarded the position and the recommendation was accepted.

CONCLUSIONS OF LAW

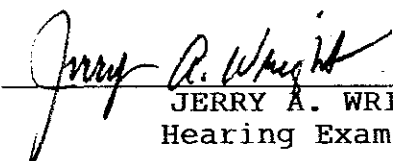
1. W.Va. Code, 18A-4-8b(a) requires a county board of education to fill positions primarily on the basis of qualifications and the selection must not be made in an arbitrary and capricious manner. Dillon v. Board of Education of the County of Wyoming, 351 S.E.2d 58 (W.Va. 1986); Neal v. Mason County Board of Education, Docket No. 26-86-329-3; McBride v. Wayne County Board of Education, Docket No. 50-87-186-1.

2. A grievant must prove by a preponderance of the evidence allegations that a county board of education has filled positions in violation of W.Va. Code, 18A-4-8b(a). Farmer v. Logan County Board of Education, Docket No. 23-87-052-4; Wade v. Marion County Board of Education, Docket No. 24-86-248-3.

3. Grievant, James Black, has failed to establish he was more qualified for the position of assistant principal at Salt Rock School than the successful applicant, Jerry Hurley, or that the Cabell County Board of Education otherwise violated the provisions of W.Va. Code, 18A-4-8b(a) or demonstrated favoritism in the selection process used to fill said positions.

Accordingly, the grievance is **DENIED** but the Cabell County Board of Education is **ORDERED** to direct a letter to the grievant, James Black, specifically and fully explaining what steps he needs to take in order to improve and enhance his professional skills and abilities.

Either party may appeal this decision to the Circuit Court of Cabell County or the Circuit Court of Kanawha County and such appeal must be filed within thirty 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: May 5, 1998