



REPLY TO:
101 Harper Park Drive
Suite D
Beckley, WV 25801
Telephone: 255-6155

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

**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**
GASTON CAPERTON
Governor

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

FRANK STEPHEN ANDERSON

v.

Docket No. 55-88-216

WYOMING COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Frank Anderson, is currently employed by the Wyoming County Board of Education (Board) as a language arts teacher at Baileysville High School. He filed a grievance at Level I on August 3, 1988 alleging he was the most qualified applicant for a teaching position at Oceana Middle School and the Board's decision not to award him the job was in violation of W.Va. Code §18A-4-8b(a). A decision following a Level II hearing, held August 23, 1988, was adverse to the grievant and the Board affirmed that decision on November 3, 1988. A Level IV hearing was held January 17, 1989. Proposed findings of fact and conclusions of law were submitted by February 8, 1989.

The position in question was posted July 7, 1988 with a position title of "Elementary Teacher with Language Arts

Endorsements Preferred, Oceana Middle School". "A valid West Virginia teaching certificate in his/her assigned teacher area" was contained under the heading "minimum qualifications". Twenty-one persons, including grievant, made timely applications. No interviews were conducted and the Board ultimately accepted the recommendation of Superintendent of Schools Gerald Short that Ms. Nancy Lemon be awarded the position. In response to an inquiry from grievant as to why he had not received the job, Mr. Short informed him by letter dated August 8, 1988 (Grievant's Exhibit No.2) that "the decision was based on the needs of the school...[t]he fact that the successful applicant had a field in Spanish was a plus in consideration of her qualifications". Mr. Short went on to note that "even though I did not advertise the position for a Spanish teacher, I feel the person that was chosen was the best qualified and will meet the needs of the school".

Grievant contends the posting was misleading as Oceana Middle School does not serve elementary students and his credentials were greater than those of the successful applicant. He requests instatement to the position and reimbursement for costs he has incurred traveling from his home to his present assignment as relief.¹ The Board maintains the position was correctly advertised

¹Oceana Middle School is apparently very close to grievant's home while Baileysville High is some distance away. As grievant did not offer documentation of the actual number of miles traveled or show what an appropriate rate of compensation might be allowable, this request is not considered further herein.

as elementary in order to allow the principal at Oceana the flexibility he needed to make certain assignments within the school and the successful applicant's teaching certificates made her the more qualified candidate.

Grievant holds valid teaching certificates in language arts, grades 7-12 and speech, grades 7-12. He also has a Master's degree in education administration plus fifty-four (54) hours approximately seventeen (17) of which are in the area of reading instruction. Grievant lacks one college course toward completion of a Masters degree in elementary education. He was a principal for ten (10) years at a school serving students in grades 1 through 8 and has approximately two and one-half (2½) years teaching experience in the areas of English, speech and journalism on grade levels 6 through 12. Grievant also holds a permanent authorization to teach grades 5 through 8. The latter enables the grievant to teach any classes within his areas of certification (language arts and speech) on those grade levels.

The successful applicant holds a Bachelor's degree plus fifteen (15) hours and teaching certificates in elementary education, grades 1-8 and Spanish, grades 1-9. According to a matrix sheet prepared during the selection process (Grievant's Exhibit No.3), she has two (2) years five (5) months teaching experience in the Wyoming County School system. It was the testimony of Mr. Richard Cook, principal at Oceana Middle, that upon the request of central office administrators, he communicated his preference that Ms. Lemon be awarded the position. According to Mr. Cook,

her possession of certification in grades 1 through 9 would allow him some latitude in making assignments within the school, which he felt would become necessary due to declining student enrollment. Mr. Cook stated he would have "no problem with Mr. Anderson teaching at his school" and reluctantly testified that he felt there were considerations other than qualifications when the decision to fill the position was made (T.____).

The record as a whole supports the grievant's position and Mr. Cook's latter conclusion. The vacancy should not have been posted as elementary as Oceana Middle is clearly a school serving middle childhood students and any person awarded the job would not and could not be considered an elementary school teacher. Precisely how the successful applicant's elementary education certification would allow the principal flexibility in assignments is not clear but, in any event, it should not have been afforded any greater weight than other aspects of the applicants' qualifications. A further indication of incongruity in the posting and filling of the position is the fact that Ms. Lemon, despite her elementary school experience, did not possess the "preferred" language arts endorsement, yet her certificate in Spanish was a factor considered. Grievant was the only applicant out of twenty-one (21) who possessed the endorsement. There was also the unrefuted testimony of the grievant that Ms. Lemon does not presently teach Spanish or other language arts classes but is assigned only reading classes at the school. Finally, Board records (Grievant's Exhibit No.5) reveal that the person who previously held

the position in question, Ms. Debra Cook, had teaching certificates in the same fields and grade levels as the grievant. This evidence and a comparison of the qualifications of the grievant and Ms. Lemon reveal either an intent to manipulate the selection process or a failure to adequately assess credentials in light of the requirements of the position.

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

FINDINGS OF FACT

1. Grievant was one of twenty-one (21) applicants for a posted vacancy at Oceana Middle School which serves students in grade 5 through 8.

2. Grievant was the only applicant who had achieved a Masters degree and held a certificate in language arts, an area which was preferred on the job posting. Grievant has also completed substantial work on a Masters degree in elementary education and pursuant to an authorization issued by the West Virginia Board of Education, is duly licensed to teach any classes within the language arts area on grade levels 5 through 8.

3. Ms. Nancy Lemon, a two and one-half (2½) year employee of the Board who possesses a Bachelors degree and certifications in elementary education and Spanish, was awarded the position.

CONCLUSIONS OF LAW

1. County boards of education have substantial discretion in matters relating to the hiring and assignment of school personnel but the discretion must be exercised reasonably, in the best interests of the school system and not in an arbitrary or capricious manner. State ex rel. Hawkins v. Tyler County Board of Education, 275 S.E.2d 911 (W.Va. 1980); Beverlin v. Board of Education, 216 S.E.2d 554 (W.Va. 1975); Myles v. Ohio County Board of Education, Docket No. 35-88-081 (August 1, 1988).

2. W.Va. Code §18A-4-8b(a) provides that 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. Board of Education of the County of Wyoming, 351 S.E.2d 58 (W.Va. 1986); Shaver v. Jackson County Board of Education, Docket No. 18-87-107 (November 7, 1988).

3. The exercise of judgment as to which candidate for a position is the most qualified by individuals who are trained to make such decisions will be upheld unless shown to be arbitrary and capricious or clearly wrong. Shaver v. Jackson County Board of Education, supra; Skinner v. Harrison County Board of Education, Docket No. 17-88-114 (September 30, 1988).

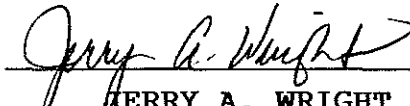
4. Allegations in a grievance must be proven by a preponderance of the evidence. Gerstner v. Gilmer County Board of Education, Docket No. 11-88-184 (January 31, 1989); Hanshaw v. McDowell County Board of Education, Docket No. 33-88-130 (August 19, 1988); Romeo v. Harrison County Board of Education, Docket No. 17-88-013 (September 30, 1988).

5. Grievant has proven by a preponderance of the evidence that the decision of the Wyoming County Board of Education to award Ms. Lemon the position in question was an arbitrary and that said decision was clearly wrong in view of the respective qualifications of all applicants.

6. By virtue of his previous experience, educational background and certifications, grievant was the most qualified applicant for said position.

Accordingly, the grievance is **GRANTED** and the Wyoming County Board of Education is hereby **ORDERED** to instate the grievant, Frank Stephen Anderson, at the beginning of the 1989-90 school term to the position for which he applied at Oceana Middle School.

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 this decision (W.Va. Code §18-29-7). Neither the West Virginia Education and State Employees Grievance Board nor any of its Hearing Examiners is a party to such appeal and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate Court.


JERRY A. WRIGHT
Chief Hearing Examiner

Dated: May 12, 1989