



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

DENNIE BROWN

v.

Docket No. 55-88-256

WYOMING COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Dennie Brown, is employed by the Wyoming County Board of Education (Board) as a principal at Guyan Valley School. He filed a grievance at Level I on August 30, 1988 protesting his non-selection for the position of principal at Baileysville Grade School. The grievance was denied at Level II and the Board voted to waive Level III proceedings. A Level IV hearing was held February 23, 1989 and proposed findings of fact and conclusions of law were received by March 23, 1989.

The position in question was posted June 7, 1988 and grievant, along with three (3) others, made application. There was an informal interview process conducted by Gerald Short, Superintendent of Schools, in which grievant participated. On June 28, 1988 the Board voted to accept Mr. Short's recommendation that Mr. Donald Bowling be awarded the position.

Grievant contends he is more qualified for the position than Mr. Bowling and the Board's decision was a violation of W.Va. Code §18A-4-8b(a). The Board maintains the position was filled on the basis of qualifications as required and that the grievance was not filed within the timelines of W.Va. Code §18-29-4. Because the Board is correct in the latter assertion, the merits of grievant's claim need not be addressed.

Grievant was on vacation in California when the Board voted to award Mr. Bowling the job and was advised of that decision in a telephone conversation with Mr. Short on July 11 or 12. According to grievant Mr. Short stated "Mr. Bowling beat him on one thing and that, as far as he could remember it, was the dates of their principal's certificate" (T.___). Grievant took no action at that time but upon his return from vacation, talked to Mr. Short and discovered his and Mr. Bowling's principal's certificates bore the same date. He then requested by letter dated August 12, 1988 reasons why he had not been selected and Mr. Short responded by letter dated August 22, 1988 that he was not required to do so because of the lapse of time since the position was filled. The grievance was filed on August 30, 1988.

Grievant's contention that his grievance was timely since it was filed within fifteen (15) days of the date he learned of the effective date of his and Mr. Bowling's certificates is not persuasive. The grievable event was neither Mr. Short's statement of what he recollected as one of the reasons for

grievant's non-selection for the position nor the discovery that the dates were the same. It was the Board's action of June 28, 1988 which forms the basis of the grievance and, according to grievant's own testimony, he was well aware of that action as early as July 11, 1988 but yet did not file his grievance until nearly two months later.

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 four applicants for the posted position of principal at Baileysville Grade School.

2. Superintendent Short reviewed the respective qualifications of the applicants, conducted informal interviews and made a recommendation that Mr. Donald Bowling receive the job. The Board, by official vote on June 28, 1988, accepted the recommendation and grievant was informed of that action on July 11 or 12, 1988.

3. Grievant did not file a grievance protesting his non-selection for the position until August 30, 1988.

CONCLUSIONS OF LAW

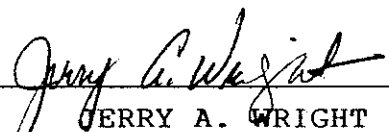
1. Before a grievance is filed and within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date on which the event

became known to the grievant or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance, a grievant must initiate a conference with his immediate supervisor to discuss the matter. A Level I grievance may be submitted shortly thereafter, if the problem remains unsettled. W.Va. Code §18-29-4(a). Thompson v. Logan County Board of Education, Docket No. 23-88-191 (April 28, 1988).

2. Grievant did not timely initiate a conference with his supervisor concerning his non-selection for the position in question or show any valid reason for the delay.

According, the grievance is DENIED.

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 trasmitted to the appropriate Court.


JERRY A. WRIGHT
Chief Hearing Examiner

Date: May 12, 1989