



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

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

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

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

DENNIE BROWN

v.

Docket No. 55-88-257

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 was one of eight (8) applicants for the posted position of principal at Matheny Grade School in January 1988 which was awarded to Mr. Joseph Stewart. In Wilcox v. Wyoming County Board of Education, Docket No. 55-88-083 (August 2, 1988), the process used to fill the position was determined arbitrary and the Board was ordered to conduct a re-evaluation of all applicants. The re-evaluation was conducted in August 1988 and Mr. Stewart was again chosen. Mr. Brown filed a grievance at Level I September 16, 1988 protesting his non-selection for the position. The grievance was denied following a Level II hearing on the grounds it was not timely filed and the Board waived 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 29, 1989.

By letter dated August 9, 1988 Superintendent Gerald Short informed all applicants of the order to re-evaluate and asked that each notify the central office if they were still interested in the position. Carolyn Wilcox, the original grievant, Gerry Worley, Donald Bowling and Bonnie Meredith had all accepted other positions and declined to participate. Sandra Brown, Phyllis Repass, Joseph Stewart and grievant herein were the remaining applicants and all were given interviews by a selection committee comprised of Mr. Arnold Harless and Mr. Billy Bailey, Assistant Superintendents. During the interviews applicants were asked the same set of open-ended questions. The committee subsequently reviewed a matrix sheet which listed teaching and principal's endorsements, total seniority, seniority as either a principal or assistant principal and salary classifications, i.e., Masters plus 15 hours. The panel recommended Mr. Stewart be awarded the position and the Board subsequently accepted that recommendation.

Grievant contends he is more qualified than Mr. Stewart and the Board's decision was thus a violation of the provisions of W.Va. Code §18A-4-8b(a). The Board maintains its selection process was in compliance with those provisions and consideration of the grievance should be barred by the failure of the grievant to timely protest the original decision to appoint Mr. Stewart to the position.

Inasmuch as the original selection process was, in effect, rendered void by the holdings in Wilcox, the second decision to appoint Mr. Stewart to the position gave rise to a new grievance. Grievant's filing was within fifteen (15) days of that decision and was, therefore, timely. A review of the selection process used in the re-evaluation of candidates and comparison of the relative qualifications of grievant and Mr. Stewart, however, reveal the grievance is without merit.

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

FINDINGS OF FACT

1. Grievant has been employed by the Wyoming County Board of Education as a teacher for approximately thirteen (13) years. He holds teaching endorsements in elementary education, grades 1 through 8 and social studies, grades 1 through 9. Grievant obtained a principal's certificate, grades K through 8, on August 9, 1985 but at the time the vacancy in question was filled, had never served as a principal.

2. Mr. Joseph Stewart, the successful applicant, has been employed by the Board as a teacher for approximately eleven (11)

years and holds teaching endorsements in elementary education, grades 1 through 8 and mathematics, grades 1 through 9. Mr. Stewart obtained a principal's certificate, grades K through 8, on August 10, 1985. Prior to his appointment to the position in dispute, Mr. Stewart had not served as a principal.

3. Both grievant and Mr. Stewart served in unofficial capacities as assistant principals at their respective schools although the lengths of such service was not established.

4. Grievant and Mr. Stewart were asked the same open-ended questions during the interview process. Mr. Harless and Mr. Bailey concluded Mr. Stewart's reactions to said questions and his educational achievements and background made him the more qualified applicant.

5. Superintendent of Schools, Gerald Short, reviewed the interview panel's conclusion and, after consideration of his personal knowledge of the applicants' backgrounds gained through previous interviews and contacts with the applicants, agreed with the panel. His recommendation of Mr. Stewart for the position was accepted by the Board.

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).

3. 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).

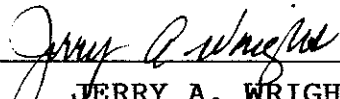
3. The exercise of judgment as to which candidate for a position is the most qualified by individuals who are trained to make such decisions will be upheld unless shown to be arbitrary and capricious or clearly wrong. Shaver v. Jackson County Board of Education, supra; Skinner v. Harrison County Board 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 failed to prove by a preponderance of the evidence that the decision of the Wyoming County Board of Education to appoint Mr. Joseph Stewart to the position of principal at Matheny Grade School was not based on the relative qualifications of all the applicants or that said decision was otherwise arbitrary or capricious.

Accordingly, 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 transmitted to the appropriate Court.


JERRY A. WRIGHT
Chief Hearing Examiner

Dated: May 15, 1989