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**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**

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RUSSELL COPELAND

v.

Docket No. 89-50-578

**WAYNE COUNTY
BOARD OF EDUCATION**

D E C I S I O N

Grievant, an unsuccessful applicant for Respondent's position of Supervisor of Middle Childhood Education, filed a grievance September 26, 1989, alleging,

An applicant with no middle childhood level experience and/or endorsement was selected to supervise Wayne County's middle school program, when such candidates were available from the pool of applicants. Repost and choose most qualified applicant with middle school experience and endorsement.

The Level I evaluator ruled she had no authority to rule on the grievance. The grievance was denied at Level II and consideration of it was waived at Level III. Grievant appealed to Level IV and a hearing was held October 30, 1989. With proposed findings of fact and conclusions of law received from both parties on November 29, 1989, this matter may be decided.

At Level IV Grievant clarified his position, alleging that, because Respondent did not "post the position with the necessary certification and teaching experience requirements

in middle childhood," Grievant's Proposed Conclusion of Law 5, it violated the requirement of W.Va. Code §18A-4-8b(a) that professional positions with a county board of education be filled on the basis of qualifications. He also modified his requested relief, asking that the successful applicant, C. Carter Chambers, be removed from the position and a new selection be made from the individuals who applied for the job having "middle childhood education certification and middle childhood teaching experience." Grievant's Brief 16.

Michael Ferguson, who as Superintendent of Schools of Wayne County interviewed the applicants and recommended Mr. Chambers for the position, testified that middle childhood education is defined as the education of preadolescents ages 10 through 14 and that what grades are included in middle school education is for the county to decide. Accordingly, while some counties include grades five through 8 and some even 7 through 9, grades 6 through 8 are included in Wayne County's middle schools. Moreover, while Wayne County has had some middle schools for several years, only for approximately the past three years has that configuration been utilized throughout the county. Previously grades 1 through 6 were contained in elementary schools and grades 7 through 12 in high schools. Mr. Ferguson moreover testified that prior to recognition of middle school education the teachers of preadolescents were certified grades 1 through 8 or grades 7 through 12; that, while certification with an endorsement in middle school education, covering grades 5

through 8, is now available,¹ no such endorsement is required to teach at those grade levels; and that 7 through 12 certification qualifies a teacher for employment at all levels of a Wayne County middle school since a teacher can teach one grade level below his or her certified grade levels. Mr. Ferguson testified furthermore that with the advent of the middle schools all teachers who had been teaching at the covered grade levels, upon filling out a form, were granted a middle school authorization, which is recognized in West Virginia as equal to a middle school endorsement.

The posting for the position of Supervisor of Middle School Education required a master's degree, a minimum of three years' teaching experience, and "Supervisor's Certificate or be eligible and make commitment to complete requirements for Supervisor's Certificate." By arguing that the posting should have required teaching in a middle school setting and middle school certification, Grievant apparently is arguing that Code §18A-4-8b(a) mandates that those be added to the minimal qualifications for the Supervisor's job. If that is the sum and substance of the grievance, it is denied, for Grievant points to nothing in law or policy so requiring.

¹Grievant's testimony supports that 15 hours of graduate credit in middle school education earns an endorsement.

Further inquiry will be made, however, on the assumption that Grievant is also arguing that, under the facts of this case, those applicants having said qualifications as a matter of law were more qualified than Mr. Chambers and that Mr. Ferguson arbitrarily and capriciously failed to give proper consideration to their qualifications.²

Mr. Ferguson testified that he was confident in evaluating the qualifications of the candidates because he had been a principal of a middle school for 5½ years beginning in 1978 when the school, Wayne Middle School, was one of the first middle schools set up in the county, was president of the Wayne County middle school program, and had served on the state executive committee on middle childhood education. He stated he has a thorough knowledge of programs on middle childhood education.

²While this decision addresses the merits of the contention, as here framed, there are problems with it, as follows: Firstly, Grievant does not contend that he was the most qualified applicant; rather, he essentially is serving as spokesperson for other applicants with middle school certification and experience, even though no other applicant has grieved the selection of Mr. Carter. It is therefore questionable whether he has standing to assert this claim. Secondly, while Grievant's proposals appear to support consideration of four of the applicants, one of those has no certification, holding only authorization, and therefore has no special education in middle school education, and another, while holding a middle school endorsement, has never taught at a middle school. It is therefore uncertain whether Grievant is actually requesting that consideration be given only to him and the only other candidate who had both middle school certification and experience or whether he is actually contending that consideration should be give to those applicants having either middle school experience or certification.

Wayne County posted a number of positions at the time it posted that of Supervisor of Middle School Education. Accordingly, while approximately 20 applications for the position were received, many of the applicants withdrew from consideration, preferring other positions, and for that and other reasons, after interviewing of the applicants, only seven applicants remained. Those seven candidates had from 15 to 24 years professional experience,³ and each had a master's plus 30 and had taught at the middle school level, 5 through 8, though not necessarily in a middle school setting. Mr. Ferguson testified that, while none of the seven had a supervisor's certificate, all, with the possible exception of one of the unsuccessful candidates, were eligible for a supervisor's permit. He also stated that all seven candidates were from the county school system and therefore he knew them all.

Mr. Chambers has been employed by Respondent for 22 years, including 10 years at the seventh- and eighth-grade levels when Buffalo High School had grades 7 through 12. While Buffalo High School had that configuration he also was the school's assistant principal for three years, although he does not have a principal's certificate since at that time one could become a principal without one. He is certified in health and physical education, biological

³Mr. Carter apparently was the third most senior applicant; Grievant was the second least senior.

science, and general science, 7 through 12. He has neither endorsement nor authorization in middle school education.

Prior to the interview each applicant had been asked to fill out a questionnaire. Mr. Ferguson testified that in the interviews he inquired of their qualifications. He said he also considered their philosophy of education, what their viewpoints were as to where the Wayne County Schools were now and where they wanted to see them in the future, and what their goals and ambitions were. He thought it very important that the candidates had taught adolescents in grades 5 through 8⁴ but did not consider it very important whether that teaching had been at a middle school or at another type of school, such as a high school when the seventh and eighth grades were included therein. He also considered whether the applicants were well respected by their peers, stating that all candidates were at least average teachers. He emphasized that Mr. Chambers is regarded as one of the finest science teachers in the county. When asked about the other candidates, no other candidate did he rate as highly. He agreed that Mr. Chambers' being highly respected did have an effect on his thinking. He also was impressed by how Mr. Chambers answered questions in the interview and he knew that Mr.

⁴Apparently only one candidate's experience was primarily at the fifth-grade level; the others' was at the sixth through eighth-grade levels.

Chambers is a superior communicator, being a very open, available person who speaks well and has a good personality. When asked about the fact that Mr. Chambers does not have a middle school endorsement, he stated that he thinks having such is important but the "overall picture is most important."

Thomas Curry, who serves as coordinator of middle childhood education for the West Virginia Board of Education,⁵ testified that middle schools evolved as a reaction to the traditional junior high school approach, for while junior high schools were developed to provide a transition between elementary school, where the focus is student-oriented, and high school, where the focus is subject-oriented, they tended to be organized like high schools, with the students having different teachers for different subjects, and failed to address the special physical, social, emotional and intellectual needs of preadolescents. Accordingly, middle school education involves use of a variety of activities to teach rather than the one activity, lecturing, primarily used in a traditional junior or senior high school. He also testified that "interdisciplinary teaming," where the teachers coordinate the curriculum, is used. While he opined that a teacher who had served only in a traditional junior high school would need some middle school

⁵While Mr. Curry provided his title, that testimony was inaudible on the taped record.

experience to understand the concept, he otherwise emphasized merely that an individual who had not worked with children in the middle school "age range" would have problems. He finally stated that some junior high schools are actually run on the concept considered the middle school approach without using the name and that middle school education is not a "neat package."

In addition to the foregoing discussion, the following are appropriate:

Conclusions of Law

1. It is incumbent upon a grievant to prove the allegations of his complaint by a preponderance of the evidence. Hanshaw v. McDowell Co. Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988); Andrews v. Putnam Co. Bd. of Educ., Docket No. 40-87-330-1 (June 7, 1988).

2. No law or policy requires that certification in middle school education and/or teaching experience in a middle school setting be part of the minimal requirements for Respondent's position of Supervisor of Middle Childhood Education.

3. Decisions involving the promotion of professional education personnel must be on the basis of qualifications. W.Va. Code §18A-4-8b(a).

4. County boards of education have substantial discretion in matters relating to the hiring, promotion, and

assignment of school personnel but the discretion must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious. Dillon v. Bd. of Educ. of County of Wyoming, 351 S.E.2d 58 (W.Va. 1986).

5. Grievant did not establish as a matter of law that the applicants having middle school certification and/or experience were more qualified than the successful applicant, nor did he establish that Mr. Ferguson did not conduct a fair and equitable assessment of the qualifications of all applicants before reaching his conclusion that Mr. Chambers should be awarded the position of Supervisor of Middle Childhood Education.

Accordingly, the grievance is **DENIED**.

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

A handwritten signature in cursive script, appearing to read "Sunya Anderson", written over a horizontal line.

SUNYA ANDERSON
HEARING EXAMINER

Dated: December 14, 1989