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STATE EMPLOYEES GRIEVANCE BOARD**

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RICHARD DUNLAP

and

CHARLES KUHL

v.

Docket Nos. 20-88-266/

20-88-264

KANAWHA COUNTY BOARD OF EDUCATION

DECISION

Grievants Richard Dunlap and Charles Kuhl, the unsuccessful applicants for the position of principal of Dunbar Junior High School which was filled September 1988, allege that the successful applicant, Lynda Gilkeson, had not fulfilled one of the state minimum requirements for a principalship, i.e., completion of three years of classroom teaching.¹ At Level I the evaluators ruled they had no

¹There was some controversy between the parties whether the requirements of Policy 5202, "Minimum Requirements for the Licensure of Educational Personnel," adopted by the West Virginia Board of Education November 16, 1987, or its predecessor, "Standards For The Approval Of Teacher Education Programs In West Virginia," applied to Ms. Gilkeson's credentials since she was issued a professional administrative certificate in May 1985. KCS Ex. 10. However, since under both policies a principal must have three years of classroom teaching (at the same instructional

(Footnote Continued)

authority to decide the grievances. The grievances were consolidated at Level II and denied after hearing of November 3, 1988.² Respondent Kanawha County Board of Education waived decision at Level III and Grievants filed at Level IV on December 29, 1988. A hearing was held on March 1, 1989.³ On March 15, 1989, a letter-brief was received from Respondent's counsel and a memorandum was received from Grievants.

The parties agree that Ms. Gilkeson had been a classroom teacher for the school years 1976-1977 and 1977-78. Grievants only dispute that the third year of required classroom teaching was fulfilled by Ms. Gilkeson's duties in 1984-85, as Respondent contends. Ms. Gilkeson was a Community Education Coordinator at Andrew Jackson Community Education Center from 1978 until 1987 and that was her title. Further, the record indicates that normally a community education coordinator administers after-school

(Footnote Continued)

level as the principalship), it is immaterial which policy applied in this instance.

²At Level II each grievant contended that he was the most qualified applicant. The grievances were modified at Level IV to contend only that Ms. Gilkeson was not qualified and to therefore request that, upon granting of the grievances, Respondent be required to reassess Grievants' qualifications and instate the more qualified. See Dillon v. Bd. of Educ. of County of Wyoming, 351 S.E.2d 58 (W.Va. 1986). At the Level IV hearing the parties stipulated that the grievants, who were the only other applicants for the position, were qualified to be junior high school principals.

³When the grievances were filed Grievants' counsel requested that the hearing be delayed.

activities. Respondent contends, however, that, because Ms. Gilkeson had regular teaching responsibilities during the 1984-85 school year, that year of experience was qualifying teaching experience.

Mr. Cy Faris, Associate Superintendent of Kanawha County Schools, in charge of the Personnel Division, in his testimony characterized Ms. Gilkeson's experience in 1984-85 as half-time teaching and stated that it is not unusual for teachers such as kindergarten teachers to work half-time but to receive full credit for the time so employed.

Ms. Gilkeson testified that while her duties as Community Education Coordinator ordinarily only required her to teach as a pinch-hitter, in 1984-85 she worked under a formal agreement that she teach one ninth-grade English class and six art classes at the seventh and eighth-grade levels. Because the art classes met every other day, each day she would teach the English class and three art classes, a total of four classes. The classes were at different times of the day but apparently during the regular schoolday.

Grievants rely on Mr. Cyrus's characterization of Ms. Gilkinson's time spent teaching as "half-day" and argue that such teaching cannot be considered classroom teaching, on the grounds that a majority of Ms. Gilkeson's time was not spent teaching. Grievants cite W.Va. Code §18A-1-1(c)(1), which defines "classroom teacher" as "The professional educator who has direct instructional or counseling

relationship with pupils, spending the majority of his time in this capacity."

While Grievants' reliance on the definition may be appropriate, this record fails to establish that the definition was not fulfilled by Ms. Gilkeson's duties in 1984-85. Ms. Gilkeson's more exact testimony on how much she taught is accepted as correct over the more general characterization of the time she spent teaching as half-time by Mr. Faris. Grievants have not shown that junior high school teachers normally teach eight or more classes on a daily basis (and the undersigned doubts that such is the case) nor have they otherwise established that the four classes Ms. Gilkeson taught each day did not require a majority of her time. Grievants accordingly failed to establish that Ms. Gilkeson did not spend a majority of her time in classroom teaching in 1984-85.

Grievants also argue that, in that Ms. Gilkeson taught half-time, that time should be considered 90 days, one-half the instructional school year of 180 days, and that such 90 days would not fulfill the requirement that, in order to receive credit for a year's teaching, a teacher must teach 133 days of a school year. While Grievants are correct that a teacher must teach 133 days of a school year to get credit for the year for certain purposes, see Harkins v. Ohio Co. Bd. of Educ., 369 S.E.2d 224 (W.Va. 1988), Ms. Gilkeson taught daily during the 1984-85 instructional school year. Grievants provide no support for why she should not be

each of the days in 1984-85 she taught the four classes she was assigned and therefore did not establish she did not teach 133 days.

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

Findings of Fact

1. Grievants were the unsuccessful candidates for the principalship of Dunbar Junior High School, which was filled September 1988. They were qualified for the position.

2. Lynda Gilkeson, the successful candidate for the Dunbar Junior High School principalship, was issued a professional administrative certificate in 1985.

3. Ms. Gilkeson was a full-time classroom teacher during the school years of 1976-77 and 1977-78.

4. Throughout the school year 1984-1985 Ms. Gilkeson taught one ninth-grade English class and six art classes at the seventh and eighth-grade levels. Since the art classes met every other day, each day she taught a total of four classes. The classes apparently met during the regular school day.

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); Bulford v. Preston Co. Bd. of Educ., Docket No. 39-87-204 (Feb. 26, 1988).

2. Three years of classroom teaching is required for an educator to be certified as a professional administrator and also is one of the West Virginia minimum qualifications for a principal.

4. Grievants did not establish that Ms. Gilkeson's teaching of four classes daily during the 1984-85 school year did not require a majority of her worktime and therefore did not establish that she was not classroom teaching that school year. See W.Va. Code §18A-1-1(c)(1).

3. Grievants failed to establish that Ms. Gilkeson did not teach 133 days in 1984-85, for she taught on a daily basis for the entire school year, although not for the full day. Compare Harkins v. Ohio Co. Bd. of Educ., 369 S.E.2d 224 (W.Va. 1988).

4. Grievants did not establish any misapplication of any policy or violation of any statute by Respondent in deciding Ms. Gilkeson was qualified to be a junior high school principal.

Accordingly, the Grievances are **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County and such appeal must be filed within

thirty (30) days of receipt of this decision. See W.Va. Code §18-29-7. Neither the West Virginia Education and State Employees Grievance Board or any of its Hearings 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.


SUNYA ANDERSON
HEARING EXAMINER

DATE: April 7, 1989