



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

**GASTON CAPERTON**  
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**JACK ELKINS**

**v.**

**Docket No. 89-03-138**

**BOONE COUNTY BOARD OF EDUCATION**

**D E C I S I O N**

Grievant Jack Elkins, a professional employee of Respondent Boone County Board of Education, began grievance proceedings on August 5, 1988, alleging that he was entitled to the principalship at Whitesville Elementary and Junior High School. The Level I evaluator ruled on August 15, 1988, that she had no authority to decide the grievance. The grievance was denied at Level II on March 16, 1989, and Level III consideration was waived March 29, 1989. Grievant appealed April 3, 1989, requesting that a Level IV decision be based on the record compiled at the lower levels. The record was received May 19, 1989. Proposed findings of fact and conclusions of law were received from both parties on and before June 22, 1989.

Grievant contends that he was more qualified and more senior than the successful candidate, Mark Arvon. He also argues that the interview/selection process was flawed because Mr. Arvon's father, an assistant superintendent of

schools of Boone County, had worked with Kenneth Mabe, who, as Superintendent at the time, interviewed the applicants and made the selection.

The only documentary evidence on the applicants other than Grievant was apparently made part of the record at Level I. Included is a chart showing how much teaching and administrative experience the ten applicants had. That chart shows Grievant had 14 years total experience, which Grievant confirmed in his testimony, to the successful candidate's eleven but also shows that five of the candidates had more seniority than Grievant. While neither Grievant nor Mr. Arvon had experience as an assistant principal or principal, four candidates had such experience. Also included are the administrative certificates of Grievant and Mr. Arvon, which show both candidates to have masters degrees. Grievant is certified as a principal for junior, senior high school, grades 7 through 12, while Mr. Arvon is so certified for elementary, K through 8, and for junior, senior high school, 7 through 12. The Whitesville school has students at grade levels 4 through 9.

Grievant conceded he does not have certification in administration for grades 4 through 6 (Tr. 19),<sup>1</sup> but

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<sup>1</sup>Grievant testified that he thought he had completed all work for such certification but the West Virginia Department of Education had denied him certification because it found five years of his teaching nonqualifying or "illegal" (Tr. 16-17).

testified that he was qualified since the posted notice, which was in evidence, required "a valid West Virginia Administrative Certificate (Elementary School Principal or Secondary School Principal)."<sup>2</sup> While Grievant testified regarding his qualifications,<sup>3</sup> no testimonial evidence was offered on the qualifications of the other candidates, including Mr. Arvon.

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

#### Findings of Fact

1. Grievant Jack Elkins, a professional educator for Respondent, in Summer 1988 applied for the principalship at Whitesville Elementary and Junior High School, which has grades 4 through 9.

2. Grievant was interviewed for at least an hour by then-Superintendent of Schools Kenneth Mabe. After interviewing the ten candidates Mr. Mabe recommended that Mr.

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<sup>2</sup>Respondent contends that Grievant was not minimally qualified for the position since W.Va. Code §18A-3-1 requires certification in all areas for which a professional educator has responsibility. That contention need not be addressed because of the outcome of this decision.

<sup>3</sup>Grievant testified that he was certified as a teacher in physical education and health 7 through 12, and has his masters plus 24. He also has been designated a teacher-in-charge, has had two student teachers, has done inservices on elementary physical education, and has worked as a community education director.

Mark Arvon be selected for the principalship and Respondent followed that recommendation.

3. Grievant is certified in administration for grades 7 through 12 while Mr. Arvon is administratively certified K through 12.

4. Grievant's seniority of 14 years was greater than Mr. Arvon's eleven years but not as great as the seniority of five other applicants.

#### 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. W.Va. Code §18A-4-8b(a) requires that decisions of a county board of education affecting the filling of vacant professional positions 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. Bd. of Educ. of County of Wyoming, 351 S.E.2d 58 (W.Va. 1986).

3. 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 908, 911 (W.Va. 1980); Dillon.

4. While Grievant established that he was more senior than the successful applicant, Mr. Arvon, the evidence established that five of the other eight candidates had greater seniority than Grievant.

5. The record did not establish the qualifications of the other candidates, including Mr. Arvon. Consequently there was no probative evidence that Grievant was more qualified than Mr. Arvon or any of the other candidates. Accordingly, Grievant did not establish a violation of W.Va. Code §18A-4-8b(a).

6. Grievant's contention that the process was flawed because Mr. Arvon's father, an assistant superintendent of Boone County schools, had worked with Mr. Mabe does not in and of itself establish any flaw in the interview/selection process. Compare Kizer v. Roane Co. Bd. of Educ., Docket No. 44-88-143 (Jan. 12, 1989); Milam v. Kanawha Co. Bd. of Educ., Docket No. 20-87-270-1 (May 2, 1988).

Accordingly, the grievance is **DENIED**.

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

  
SUNYA ANDERSON  
HEARING EXAMINER

DATED: July 7, 1989