



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

GASTON CAPERTON
Governor

Offices
240 Capitol Street
Suite 515
Charleston, WV 25301
Telephone 348-3361

GENE FARMER

v.

Docket No. 23-88-207

LOGAN COUNTY BOARD OF EDUCATION

D E C I S I O N

Gene Farmer is employed by Respondent Logan County Board of Education as teacher, Chapmanville High School (CHS). On August 31, 1988, at Level I of the grievance procedure, he complained he "was the most qualified person for the job of principal at. . .[CHS] but someone else was given the job." After denials there¹ and Level II² and

¹ Grievant's immediate supervisor and Level I evaluator, Ernest Amburgey, was the successful candidate for the CHS principalship. Technically, he did not deny Grievant's claim, but considered himself possessed of a conflict of interest and passed it without decision to Level II. Such action on Mr. Amburgey's part was perfectly appropriate.

² Respondent's tapes of the Level II hearing were found to be blank upon their preparation for transcription. The first day of the Level IV meeting had already passed at this point, and the undersigned did not consider it worthwhile to remand the grievance for yet another Level II proceeding.

Grievant alleged that Respondent purposely "destroyed" the Level II tapes, since he had announced his intention to use them for impeachment purposes. While there is no direct evidence of impropriety on Respondent's part, it is curious that the Level II transcript became unavailable after

(Footnote Continued)

waiver at Level III, Grievant advanced his claim to Level IV November 9, 1988,³ where it was heard February 24, 1989, in Charleston, and March 20 and 21, 1989, in Logan.⁴ The parties submitted written narrative argument and proposed findings of fact and conclusions of law by the agreed-to deadline of April 28, 1989.⁵ At the filing of the

(Footnote Continued)

Grievant declared need thereof.

It is noted that an identical fact pattern occurred in a previous case involving these same parties. Farmer v. Logan Co. Bd. of Educ., Docket No. 23-87-052-4 (Dec. 16, 1987), n. 3; see also Gr. Ex. 5. Respondent was admonished at the Level IV hearing, and is again, of the importance of preserving the integrity of all grievance hearing records.

³ For explanation of the various levels, attention is invited to W.Va. Code §18-29-4.

⁴ A Level IV hearing scheduled for January 12, 1989, was continued upon Respondent's motion and for good cause shown. This delay and related occurrences are the subjects of another grievance, Farmer v. Logan Co. Bd. of Educ., Docket No. 89-23-142 (disposition pending after May 4, 1989, hearing conducted by Chief Hearing Examiner Jerry A. Wright).

⁵ Grievant also offered one additional item of information, namely, a photocopy of the Civil Judgment Sheet in Cook v. Bd. of Educ. of Logan Co., Civil Action No. 2:86-0581 (U.S.D.C., S.D.W.Va. 7/15/88), as he was granted leave to do at the conclusion of the Level IV hearing. Besides this, information presented as fact in post-hearing submissions, but not previously offered into evidence, have been ignored.

Grievant, in his law proposals, cited a Logan County, West Virginia, Circuit Court opinion, Ackison v. Logan Co. Bd. of Educ., Civil Action No. 85-C-891 (1986). He did not provide a copy of this decision, and none was thus readily available to the undersigned; however, its substance, as recounted by Grievant, does not change the outcome herein.

transcript of the Logan portion of the hearing on June 21, this case was rendered ripe for resolution.⁶

For ease of understanding, Grievant's allegations have been categorized as those concerning the interview, the successful applicant, and other miscellaneous matters. These contentions will be discussed accordingly, in the order indicated.

THE INTERVIEW

Grievant and other candidates for the CHS Principalship were interviewed and scored thereon by a team composed of Cosma Crites, Respondent's Personnel Director, and Jack Garrett and George Klipa, Assistant Superintendents for Logan County Schools. Grievant rather vaguely attacked the team's rating methodologies and questioned the meaning of notations on individual interview sheets. Ms. Crites, Mr. Garrett and Mr. Klipa, each of whom has considerable experience in reviewing credentials and hiring staff, explained the process in some detail. All persons interviewed were

⁶ With the Charleston segment of the hearing, the Level IV transcript consumes one thousand twelve pages, not counting exhibits. Grievant presented sixteen witnesses: four members of the Logan County Board of Education; Respondent's Superintendent, two Assistant Superintendents, Director of Personnel, and former Superintendent; three current or former principals and one assistant principal; two teachers; and himself. Respondent offered the testimony of nine persons, some administrators and others teachers. For at least one of the days of the Logan portion of the hearing Respondent chose to close CHS.

asked the same battery of open-ended questions and afforded like opportunity for closing comment and inquiry.⁷ Notes taken by team members generally reflected condensations of statements made directly by interviewees as opposed to personal impressions or other remarks. Prior to any conference between or among them, each of the three gave each candidate a score on a one-to-ten scale in four separate areas, i.e., qualifications and experience, community rapport, administrative skills, and instructional leadership skills. Then, the scores were added one to another and the total treated as the final interview score. Mr. Farmer's score was 74, and Mr. Amburgey's was 93.⁸

At Grievant's request, Respondent provided him with duplicates of all interview sheets and he offered those, under protest, as Grievant's Exhibit 3, during the Charleston segment of the hearing. His complaint was to the effect that certain markings had been added to these forms since he first saw the originals some time before in Respondent's central office. Respondent denied this flatly, and Ms.

⁷ Interestingly, Grievant commented at this point in the interview that he would prefer to start his administrative career as an assistant principal rather than as a principal. Gr. Ex. 3.

⁸ Jack Bailey and Harry Freeman both earned $82\frac{1}{2}$ points. Michael Johnson's score of 88 from a previous interview, according to Ms. Crites, was noted for informational purposes only. Grievant questioned this, but the issue is of no moment in light of the outcome herein.

It is significant that the team ranked Grievant lowest among those with whom they met.

Crites, Mr. Klipa and Mr. Garrett each stated that to the best of their knowledge, the documents were as they appeared at the conclusion of the interviews. Grievant suggested at Level IV in Logan that if he had had time he would have had the originals "carbon-dated" or analyzed by an expert in ink technologies. The undersigned found that Grievant had had notice and adequate time between the Charleston and Logan portions of the hearing to pursue any such concern and allowed no delay for the submission of this evidence,⁹ which in any event would have been of questionable value.

Fairly-conducted interviews are a viable and valid portion of the employment selection process. Shaver v. Jackson Co. Bd. of Educ., Docket No. 15-88-107 (Nov. 7, 1988). There is no indication that these interviews were anything but appropriate in all particulars.¹⁰

⁹ Grievant also suggested that he might like to investigate Respondent's purchasing/inventory practices in an attempt to show that different writing utensils had been used on the same sheets of paper.

¹⁰ The area of "community rapport," on which all applicants were rated, appears to have been related more to familiarity with Chapmanville, its people, and its resources, as opposed to a "community acceptance" factor, which was held improper in Milam v. Kanawha Co. Bd. of Educ., Docket No. 20-87-270-1 (May 2, 1988). See also Whetstone v. Grant Co. Bd. of Educ., Docket No. 12-88-106 (Aug. 29, 1988); Wigal v. Pocahontas Co. Bd. of Educ., Docket No. 38-86-169-2 (Oct. 15, 1987).

THE SUCCESSFUL CANDIDATE

Grievant also contended that Mr. Amburgey had been inappropriately pre-selected for the CHS principalship and that this was evident for several reasons. First of all, he, Farmer, had "heard," possibly even before the job was advertised, that Mr. Amburgey was going to get it. Second, the vacancy posting, unlike other recent administrative notices issued by Respondent, did not require or at least strongly favor candidates with a master's degree in school administration. Finally, Mr. Amburgey actually started work as CHS Principal before Respondent had voted on his appointment.

Grievant did not provide much substance to his assertions about what he "heard" and this point is summarily dismissed. It is unclear what or who was his source of this information, and it is recognized that there is often conjecture about which individual will fill a vacancy, particularly when candidates have not kept their interest secret.

As to the posting itself, Grievant submitted various "Administrative Newsletters" published by Respondent since 1984, Gr. Ex. 2, 4, 8, each of which contained opening notices for principals or assistant principals and each of which listed a master's in school administration as required or desired save one, under which Mr. Amburgey was selected to be CHS Principal. That document contains the notation,

"Masters degree, secondary principal's certificate required." Grievant has offered no evidence tying the authorship of this posting to pre-selection of Mr. Amburgey, directly or circumstantially. In any case, while it is true that Amburgey's master's degree is in counseling while Grievant's is in school administration, it is likewise true that Amburgey, Grievant and all applicants did and do possess the requisite certification in school administration for grades seven through twelve.¹¹ It is worthy of note, furthermore, that Amburgey is only six college hours short of a master's degree in school administration. Gr. Ex. 3.¹²

The issue of Mr. Amburgey's assuming responsibility as CHS Principal prior to Respondent's action on the Superintendent's recommendation that he be hired is a bit more troubling. It indeed appears that he did start work shortly prior to Respondent's formal vote to hire him at a regularly-scheduled meeting in August 1988; however, the evidence reflects that at least a majority of Respondent's members

¹¹ As pointed out by Respondent, Grievant's certificate had expired at the time of his application. However, as noted by Grievant, renewal was a matter of formality and fee payment. The undersigned officially notices that individuals are often hired with technical certification lapse, pending renewal which is generally automatic upon request.

¹² Grievant has presented no authority that mandates a school administration degree prior to advancement to a secondary principalship and indeed, there is none in West Virginia.

were polled and approved the selection before that meeting so that Amburgey could get a head-start on his demanding CHS agenda. While this practice may be somewhat questionable, no prejudice to Grievant is perceived in this specific situation, nor does it indicate pre-selection.

Respondent states in its closing "Argument" that "[a]t no time during the presentation of this case did Mr. Farmer question the qualifications of the successful applicant, Ernest Amburgey, Jr." This sweeping statement is simply untrue. Grievant generally decried Mr. Amburgey's qualifications, declaring "[f]rom a legitimate viewpoint, there is no doubt who is the most qualified person. . . [h]ow in the world can anyone say I am not the most qualified person for this position." Grievant's "Argument," p. 6. Specifically, Grievant holds himself out as most qualified since he is most senior and, in his opinion, most pertinently degreed. As previously noted, Mr. Amburgey holds the required certification and has completed most of the master's degree program in school administration, although the latter is not required for principal's eligibility. Clearly, Grievant is senior to Amburgey, having twenty years with Respondent to Amburgey's fifteen. However, seniority is relevant only when the top candidates for a position are equally well-qualified. W.Va. Code §18A-4-8b(a); Dillon v. Bd. of Educ.

of the Co. of Wyoming, 351 S.E.2d 58 (W.Va. 1986).¹³ Grievant did not question the quality of Amburgey's work, and indeed, the evidence is undisputed that Amburgey's professional record is impeccable. Grievant does quite correctly point out that he has more background with students in grades ten through twelve, i.e., those served by CHS, than Mr. Amburgey, whose primary experience has been with levels seven through nine. However, this, without more, clearly does not render Grievant the more, or equally, qualified secondary administrator.

MISCELLANEOUS

Grievant presented much information not directly pertinent to his non-selection for the CHS principalship prior to school term 1988-89, which is the only subject of this action. This included charges of nepotism and influence-peddling; questions about several previous unsuccessful applications for administrative positions; and criticism of

¹³ Grievant also complained that Respondent failed to provide him, as the most senior applicant for the CHS principalship, with a letter explaining why he was not selected and how he might improve his qualifications for future openings. Such a written statement should have promptly been provided upon Grievant's request and Respondent clearly erred in this regard. Code §18A-4-8b(a); Haines v. Mineral Co. Bd. of Educ., Docket No. 27-87-275-2 (May 26, 1988). However, Grievant announced at the Level IV hearing that he no longer desired this information and the matter was thereby mooted.

fellow employees, by name, and their status compared to his.¹⁴

Grievant did not demonstrate nepotism to be a factor in Logan County, at least insofar as it relates to the subject of this grievance. While he established that political considerations are weighty in some Logan County arenas and at times may have had influence on Respondent's decisions, he again did not demonstrate that such were a factor in the choice of Mr. Amburgey over him. There is no particular relevance to Grievant's past unsuccessful applications, especially since at least one of those mentioned, that for CHS Dean of Students, was reviewed in a previous Grievance Board decision. Farmer v. Logan Co. Bd. of Educ., Docket No. 23-87-052-4 (Dec. 16, 1987). His criticism of fellow employees was general and did not appear in any way to imply

¹⁴ Grievant pursued a markedly similar strategy in Farmer, Docket No. 23-87-052-4 (Dec. 16, 1987). As in that case, see n. 2 thereof, this information has been considered herein "only. . . insofar as it relate[s] to the [G]rievant's charge that his most recent rejection was the result of ongoing practice of favoritism and nepotism on the part of" Respondent.

In that previous case, Grievant also "introduced into evidence several copies of newspaper articles wherein a former superintendent of schools made strong denunciations of what he perceived to be a practice of nepotism and influence peddling on the part of" Respondent "but. . . could not make any direct connection with those charges and his own." Grievant has submitted perhaps identical articles in the instant case. Gr. Ex. 6, 7. Again following the lead of the December 16, 1987, Decision, "they were afforded no weight in the decision of this case." Docket No. 23-87-052-4, n. 4.

a charge of favoritism per Code §18-29-2(); even if it did, it was not tied in any way to the within claim.

Several of the witnesses testified that Grievant did not get along well with them or other people and that they believed he could not perform effectively as CHS Principal due to his social problems. Related to this was evidence, including Gr. Ex. 10, about rather unpleasant past encounters Grievant had with parents and others over his grading practices. Grievant argued that whether or not he "gets along with people" should not have been a factor in Respondent's deliberations and, for that matter, that absolutely nothing outside his formal evaluations could rightfully be considered pursuant to West Virginia Board of Education Policy 5300(6)(a), which provides, in pertinent part, "Any decision concerning promotion. . .should be based upon such evaluation, and not upon factors extraneous thereto." Of course, taken to an extreme, this policy seems to be just as Grievant has interpreted it; interestingly, however, Grievant himself has invited consideration of a number of factors which do not appear in his formal reviews, e.g., "Plaintiff was in service of his country from June 1961 to June 1965 in the United States Air Force."¹⁵ This

¹⁵ Carrying that extreme to an even more ridiculous extent, there is no mention in Grievant's evaluations of his secondary principal's certificate.

When a "promotion" involves movement from the classroom to administration, information other than evaluations must
(Footnote Continued)

invitation, if directed to Respondent during the hiring process, was quite appropriate in light of the instruction of State ex rel. Oser v. Haskins, 374 S.E.2d 184, 187 (W.Va. 1988) (all relevant experience should be considered).

The underlying rationale for Policy 5300(6)(a) is that a school employee should not be affected negatively by a correctible problem of which he has not been advised and granted an opportunity to improve upon. See Rovello v. Lewis Co. Bd. of Educ., 381 S.E.2d 237, 240 (W.Va. 1989); Shaver, supra. In this regard, the evaluations of Grievant's performance as a classroom teacher, Res. Ex. 2, which cover the period 1982 through 1988, range from satisfactory to quite good, with no negative comments from raters.¹⁶ Some of these were reviews of a given day's classroom performance, while others covered several months. It is surprising that Grievant's score in the areas of "cooperation with other teachers," "relations with parents

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necessarily come into play. For instance, a classroom teacher does not have many of the duties of a principal, and therefore could not be professionally evaluated thereon. When a county board of education reviews qualifications of a job applicant, formal evaluations clearly are not the only relevant factor. State ex rel. Oser v. Haskins, 374 S.E.2d 184 (W.Va. 1988).

¹⁶ Grievant's Exhibit 9, a formal observation form completed by Mr. Amburgey on Grievant's performance, has not been considered since it relates to a time after Respondent chose Amburgey over Grievant for the CHS job.

For further, albeit brief, analysis of Policy 5300(6)(a), See Swope v. Kanawha Co. Bd. of Educ., Docket No. 89-20-167 (June 30, 1989), n. 6.

and community," "regard for student opinions," and "motivation of students" was always at least satisfactory, if the social problems testified to were as intense as was implied. However, even certain witnesses who were openly critical of Grievant's capabilities to be an administrator conceded he was effective as a classroom instructor.¹⁷ Further, Grievant expressed during his interview that one of his goals as CHS principal would be to "open up pipelines" of communication with parents, students and the community but to "let them know who's boss. . .there's only one boss." Gr. Ex. 3. Especially when compared to the answers given by Mr. Amburgey and the other candidates, this response from Farmer was, and reasonably so, considered somewhat hostile, see, e.g., T. 170, testimony of Cosma Crites.¹⁸

¹⁷ One witness, Mr. Les Duncan, a former CHS principal, opined at T. 241 that,

The principal of a school must be one who can deal effectively with students and who can motivate teachers to deal positively with the students, and must be one that can deal generally and positively with his peer group, his professionals and his people that serve as service personnel, and must be a person who can go into the community and generally associate with people in the community and build a positive relationship between the community and the students. . .particularly [at CHS].

Duncan went on to say that he did not believe Farmer could match these criteria. He did state, though, that he did find Grievant to be proficient as a teacher.

¹⁸ Other allegations made by Grievant, including some
(Footnote Continued)

Grievant hinted generally that his due process rights per West Virginia Board of Education Policy 5300(6)(b) had been abrogated in this scenario; no such violation is perceived.¹⁹ It appears that Grievant was treated fairly during the hiring process and has been afforded every appropriate notice and full opportunity for hearing on the matter of his unsuccessful candidacy. Finally, Grievant made reference to Respondent's engaging in acts of reprisal against him. That term is defined in Code §18-29-2(p) as "the retaliation of an employer. . .toward a grievant. . .either for an alleged injury itself or any lawful attempt to redress it." The evidence is clear that animosity exists between Grievant and Respondent and that both, at times, may have engaged in behavior not totally appropriate toward the other. However, no connection, even slight, has been established between Grievant's non-selection for the CHS

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related to overall teacher morale in Logan County, the amount of money spent by the West Virginia Education Association in the County, and others, have been reviewed but are not deemed worthy of analysis herein.

¹⁹ "Every employee is entitled to 'due process' in matters affecting his employment. . .or promotion."

Grievant was granted great leeway in this case at Level IV, and presented a tremendous amount of information. Some of this was repetitive and peripherally relevant at best. At the close of the hearing, Grievant was openly pessimistic about his chances of prevailing herein; however, he affirmatively stated that he felt he had been afforded a full and fair opportunity to present his case and believed an impartial decision would be rendered.

principal job and any negative feelings Respondent may have toward him for past involvement in the grievance procedure.

CONCLUSION

The undersigned has carefully reviewed the mammoth record in this case. Grievant simply did not show, by a preponderance of the evidence, that Respondent erred in its determination that Mr. Amburgey was more qualified than he to be CHS principal. Grievant has not demonstrated that the evidence available to Respondent at the time clearly revealed him to be more, or at least equally, qualified with Amburgey; nor has he established that he was prevented from providing Respondent with pertinent information, that Respondent did not factor in material that it reasonably should have, or that Respondent acted inappropriately in any regard which, had the action been absent, would or should have resulted in his advancement to the desired position. His arguments were singularly unpersuasive.

The remainder of this Decision will be presented as formal findings of fact and conclusions of law.

FINDINGS OF FACT

1. Gene Farmer's application for the principalship at Champmanville High School, commencing school year 1988-89,

was unsuccessful. Grievant was the most senior candidate for the position.

2. Ernest Amburgey, Jr., was the successful applicant.

CONCLUSIONS OF LAW

1. In order to prevail, a grievant must prove his case by a preponderance of the evidence. Black v. Cabell Co. Bd. of Educ., Docket No. 06-88-238 (Jan. 31, 1989).

2. "County boards of education have substantial discretion in matters relating to the hiring. . .and promotion of school personnel. Nevertheless, this 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 the Co. of Wyoming, 351 S.E.2d 58 (W.Va. 1986).

3. "[D]ecisions of a county board of education affecting. . .promotions and the filling of vacant. . .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, syl. pt. 1, interpreting W.Va. Code §18A-4-8b(a).

4. The grievance procedure "allows analysis of the legal sufficiency of the selection process at the time it occurred." Stover v. Kanawha Co. Bd. of Educ., Docket No. 89-20-75 (June 26, 1989). That selection process should include a review of all relevant educational and experiential histories of applicants, as reasonably available to the employing board of education at the time. Oser.

5. "Interviews, when conducted fairly, are relevant to making a determination as to applicants' qualifications for professional positions." Shaver v. Jackson Co. Bd. of Educ., Docket No. 18-88-107 (Nov. 7, 1988).

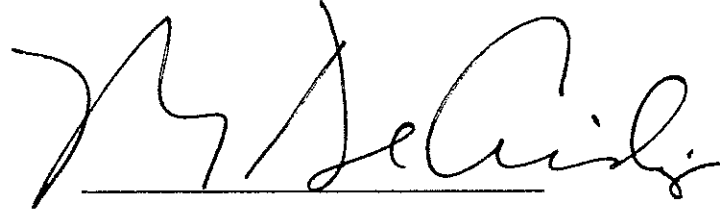
6. "Evaluations of a teacher's past performance are relevant to the process of personnel decision-making. . .in certain circumstances. . .evaluative information outside formal written evaluations [may] be considered in filling positions." Shaver (cite omitted); see also Rovello, Oser.

7. Grievant has not demonstrated that Respondent operated inappropriately in any way so that, had given actions been absent, the outcome of the hiring process herein would or should reasonably have been different. See Stover, Conc. Law 3.

8. In the instant case, Grievant has not met his burden of proof, and Respondent's selection of Ernest Amburgey, Jr., over Grievant is upheld.

Accordingly, this grievance is **DENIED**.

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

A handwritten signature in black ink, appearing to read 'M. Drew Crislip', written over a horizontal line.

M. DREW CRISLIP
HEARING EXAMINER

Date: September 22, 1989