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

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RONALD FRAGALE

v.

DOCKET NO. 17-88-214

HARRISON COUNTY BOARD OF EDUCATION

DECISION

Grievant, Ronald Fragale, is currently employed by the Harrison County Board of Education (Board) as a teacher assigned to South Harrison High School. Mr. Fragale filed a level one grievance on September 19, 1988 in which he alleged a violation of W.Va. Code §18A-4-8b(a) when he was not selected as the boys' head varsity basketball coach at Liberty High School. The grievance was denied at level two and the Board waived consideration at level three. A level four appeal was filed November 15, 1988 with the request that a decision be made based upon the record developed at level two. The record and proposed findings of fact and conclusions of law were submitted by March 7, 1989.

The level two record shows that the grievant has fifteen years of seniority and is currently assigned to

South Harrison High School as a drivers education teacher. He had previously served as head coach of the boys' basketball team at South Harrison High School for three years (1976-79) and as head coach at Washington Irving High School for three years (1979-81). While employed in an administrative capacity for six years he was engaged in some general supervision of coaches (T.pp.9-10). The grievant presented no further evidence in support of his allegation.

Wilson Curry, principal at Liberty High School and a member of the interview team, testified on behalf of the Board. Mr. Curry indicated that each of the four applicants were asked standard questions and that the interview team unanimously selected Russell Nutt for the position based upon his training, experience, philosophy, scheduling, attitude towards the job, familiarity with students and community activities.

The grievant argues that he is the most qualified candidate as evidenced by his six years experience as head basketball coach while the successful candidate had no previous experience as a head varsity coach. The grievant requests that he be instated to the position and be awarded back pay from the time Mr. Nutt assumed those duties.

The Board argues that it properly determined Mr. Nutt to be the most qualified candidate based upon a number of factors, not just experience, and that the grievant had failed to prove that he was the most qualified applicant.

The Education and State Employees Grievance Board has held on numerous occasions that "qualifications" is not limited to training or experience but may consist of various elements important to the position being filled. As the Board considered numerous factors relevant to the position, it acted in compliance with W.Va. Code §18A-4-8b(a) and Dillon v. the Board of Education of the County of Wyoming, 351 S.E. 2d 58 (W.Va. 1986) when filling the coaching position in question.

In addition to the foregoing narration it is appropriate to make the following specific findings of fact and conclusions of law.

#### Findings of Fact

1. Grievant is employed by the Harrison County Board of Education as a teacher assigned to the South Harrison High School.

2. The grievant applied for, but did not receive, the position of head varsity basketball coach at Liberty High School.

3. The grievant had been employed as a head basketball coach by the Board for six years from 1976-81.

4. The successful applicant has been in charge of all boys' sports at Salem Junior High School and has held positions of assistant high school basketball and football coach. He has attended numerous summer basketball camps, been involved in community activities working with students, stated a philosophy of coaching compatible with the schools

and exhibited an eagerness to secure and retain the position on a long term basis.

### Conclusions of Law

1. County boards of education have substantial discretion in matters relating to the hiring of school personnel but such discretion must be reasonably exercised, in the best interest of the schools and not in an arbitrary and capricious manner. Dillon v. the Board of Education of the County of Wyoming, 351 S.E. 2d 58 (W.Va. 1986); Smith v. Wyoming County Board of Education, Docket No. 55-87-209 (Jan. 29, 1988); Crow v. Marshall County Board of Education, Docket No. 25-87-273-3.

2. Under W.Va. Code §18A-4-8b(a), decisions of a county board of education affecting the filling of vacant teaching positions must be based primarily upon the applicants' qualification for the job, with seniority having 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. the Board of Education of the County of Wyoming, 351 S.E. 2d 58 (W.Va. 1986); Haines v. Mineral County Board of Education, Docket No. 27-87-257-2 (May 26, 1988); Kilmer v. Wayne County Board of Education, Docket No. 50-86-324-1 (April 14, 1987).

3. The Board made a rational decision that the successful applicant was more qualified for the position in question than was the grievant and did not exercise its discretion in an arbitrary or capricious manner.

Accordingly, the grievance is **DENIED**.

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

DATED: March 29, 1989

Sue Keller

SUE KELLER

HEARING EXAMINER