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MAC HALL

v.

Docket No. 29-88-188

MINGO COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Mac Hall, is employed by the Mingo County Board of Education as a Chapter I Reading Director. He filed a grievance at Level I on September 26, 1988 alleging he was the most qualified applicant for the position of principal at Burch High School and the Board's decision to award it to another applicant was in violation of W.Va. Code §18A-4-8b(a). A decision following a Level II hearing held November 1, 1988 was adverse to the grievant and the Board waived Level III proceedings on November 16, 1988. A Level IV hearing was held January 10, 1989.

On August 17, 1988 the position in question was posted and grievant and Mr. Edward Keith made application.<sup>1</sup> Mr. Harry

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<sup>1</sup>The record is unclear as to whether other persons made application.

Cline, Superintendent of Schools, subsequently recommended that Mr. Keith be awarded the position and the Board accepted the recommendation.

Grievant contends he is more qualified than Mr. Keith and pursuant to W.Va. Code §18A-4-8b(a) and the holding in Dillon v. Wyoming County Board of Education, 351 S.E.2d 58 (W.Va. 1986), he should have been awarded the position. Alternatively, grievant asserts he and Mr. Keith are at least equally qualified and because of his greater total seniority, he should have received the job.<sup>2</sup> The Board maintains the job was properly filled on the basis of qualifications, evaluations and seniority. The record as a whole supports the Board's position.

Initially it must be noted that consideration of the grievant's claims is complicated by his failure to produce any testimony of the persons actually involved in the selection process.<sup>3</sup> It appears Mr. John Fullen, Personnel Director, received the applications, verified credentials, i.e. possession of proper

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<sup>2</sup>Grievant relies on Worley v. Wyoming County Board of Education, Docket No. 55-88-035-4 (July 13, 1988).

<sup>3</sup>The grievant subpoenaed no witnesses and Mr. Mahone, Assistant Superintendent of Schools, who appeared at Level IV as representative for the Board, agreed to testify but was not in any way connected with the process. His testimony concerning what weight was afforded certain aspects of the two applicants' qualifications was therefore of little probative value.

administrative certificates, calculated seniority and passed the information on to Mr. Cline. No interviews were conducted and it is not known what specific factors influenced Mr. Cline's decision to recommend Mr. Keith for the job. Absent any evidence that subjective judgment of the applicants' abilities to perform the duties of high school principal played a role, it must be assumed the decision was made on review of the personnel records offered as evidence herein.

Grievant holds a B.A. in Physical Education and a Masters degree plus approximately thirty (30) hours in education administration. He also holds secondary principal and county superintendent certificates. From 1978-83 he served as principal at Lenore High School before accepting his current position as Reading Director in the Board's central office. Grievant worked as a classroom teacher for eight (8) years in Ohio and fifteen (15) years in Mingo County. He has been professionally employed by the Board for approximately twenty-six (26) years.<sup>4</sup> While principal at Lenore, grievant received only one evaluation on which he received an average score of 3.76 on a scale which a score of 4 was considered "very effective" and a score of 3 was considered "effective". In March 1988 his supervisor in the central office

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<sup>4</sup>Grievant could not recall with accuracy how many years he had worked for the Board and records (Board's Exhibit No.5) are not clear.

conducted the first and only evaluation of his performance as a Reading Director which noted that he needed improvement in twelve (12) of the twenty-two (22) areas listed. Four (4) areas were marked "No Opportunity to Observe" and the remaining six (6) were rated "Effective". Grievant signed the evaluation but after adding the comment "This is a violation of Board policy both State and Local".

The successful applicant holds a Masters degree in counseling plus thirty (30) hours and a valid secondary principal certificate.<sup>5</sup> He served as assistant principal at Williamson High School from 1980 to 1985 and as principal at the same school from 1985 until the end of the 1987-88 school term (Board's Exhibit No.4). Mr. Keith was either a classroom teacher or guidance counselor for the remaining thirteen (13) years of his total twenty-one (21) years in Mingo County. On February 16, 1988 he received an evaluation of his performance as principal at Williamson High School on which he was ranked "Meets Standards" in all of the fifty-six (56) areas listed.

According to the testimony of Mr. Mahone, Assistant Superintendent of Schools, the applicants' respective evaluations were given great weight in the selection process by Mr. Cline. Whether or not that weight was a determining factor is not clear (see

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<sup>5</sup>It is assumed that Mr. Keith had to complete at least part of the additional hours in the field of education administration in order to obtain the certificate.

note 3). Nevertheless, grievant contends his March 1988 evaluation should not have been considered at all since it was not part of a regularly scheduled evaluation process and no improvement plan was implemented as required by county and State Board of Education policy.

Grievant's assertion concerning the improvement plan is correct. State Board of Education Policy 5310 specifically provides:

c. Evaluation

6) An improvement plan shall be written by the evaluator, using input from the employee, for areas in which the employee needs improvement.

The provision is obviously intended to give an employee the opportunity to demonstrate his or her ability to correct deficiencies and it is inherently unfair to utilize a poor evaluation when making decisions on the employee's promotion when that opportunity has not been afforded. Grievant, however, has not demonstrated that consideration of his March 1988 evaluation prevented him from getting the disputed position. The successful applicant has three (3) more years experience as a principal than the grievant. Also significant is the fact that Mr. Keith has been a principal or assistant principal for the last eight (8) years whereas it has been six (6) years since grievant served as such.

The Board could quite reasonably conclude that Mr. Keith's more recent experience as a principal would cause him to be more familiar with current administrative techniques and policy and therefore the more qualified applicant.

In addition to the foregoing, the following findings of fact and conclusions of law are incorporated herein.

#### FINDINGS OF FACT

1. Grievant, Mac Hall, is currently employed by the Mingo County Board of Education as a Chapter I Reading Director.

2. Pursuant to a posting of a vacancy in the position of principal at Burch High School, grievant and Mr. Edward Keith made application and Mr. Keith was awarded the job.

#### CONCLUSIONS OF LAW

1. Decisions concerning the filling of professional positions must primarily be based on qualifications and seniority has a bearing when applicants have otherwise equivalent qualifications or the differences in qualification criteria are insufficient to form a basis for an informed and rational decision. Dillon v. Wyoming County Board of Education, 351 S.E.2d 58 (W.Va. 1986).

2. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer and

promotion of school personnel but this discretion must be exercised reasonably and in a manner which is not arbitrary and capricious. State ex rel. Hawkins v. Tyler County Board of Education, 275 S.E.2d 908 (W.Va. 1981).

3. It is incumbent upon a grievant to prove all the allegations constituting the grievance by a preponderance of the evidence. Butler v. McDowell County Board of Education, Docket No. 33-88-208 (March 31, 1989); Lucas v. Mercer County Board of Education, Docket No. 27-88-180 (December 15, 1988); Helton v. Kanawha County Board of Education, Docket No. 20-87-028-1 (October 26, 1988).

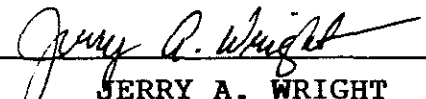
4. Grievant has failed to prove by a preponderance of the evidence that he was the most qualified applicant for the position in question or that the Board's decision to award said position to Mr. Keith was otherwise arbitrary or capricious.

5. Grievant also failed to prove by a preponderance of the evidence that he and the successful applicant were equally qualified.

Accordingly, the grievance is DENIED; however, the Mingo County Board of Education is hereby ORDERED to either remove from the grievant's personnel file the March 1988 evaluation

and conduct a new evaluation of his performance or develop and implement an improvement plan based on deficiencies in said evaluation allowing grievant the opportunity to provide input.

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

  
JERRY A. WRIGHT  
Chief Hearing Examiner

Dated: April 20, 1989