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

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DEBRA L. KELPS

v.

Docket No. 18-88-217

JACKSON COUNTY BOARD OF EDUCATION

DECISION

Grievant Debra L. Kelps, employed as an elementary teacher by Respondent Jackson County Board of Education, filed a grievance on September 14, 1988, alleging,

I applied for the position of 5th grade teacher with computer training at Ravenswood Grade School and feel I was improperly denied the position. I was the most senior and qualified for the position.

The grievance was denied at Level I and apparently at Level II¹ after a hearing held October 10, 1988. The grievance

¹ The grievance appeal form states that Grievant's principal issued the Level II decision, which would have been improper if true. The parties submitted a transcript of the Level II hearing before Superintendent of Schools Carroll L. Staats, but no decision by him is included in the record.

was also denied at Level III on November 11, 1988.² Grievant's Level IV appeal was filed November 15, 1988. Although a hearing was requested by the notice of appeal,³ in January 1989 the parties agreed to submit this matter for decision on the record, which was received February 24, 1989. On and before that date the parties also submitted proposed findings of fact and conclusions of law and, in Respondent's case, a proposed decision.

Both parties agree that Grievant, with nine years of teaching experience, was the most senior of the six candidates. Both parties rely on Dillon v. Bd. of Educ. of County of Wyoming, 351 S.E.2d 58, 62 (W.Va. 1986), which held that under W.Va. Code §18A-4-8b(a),

decisions of a county board of education affecting teacher promotions and the filling of vacant teaching 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 decision.

² A detailed decision authored by Ronald Thompson, President, Jackson County Board of Education, was included in the record. However, there is no indication that a hearing was held since no transcript was received. In that transcripts of hearings at lower levels were requested, it is assumed that no hearing was held at Level III.

³ Hearings were scheduled for December 6, 1988, and January 10, 1989, but were continued upon request of the parties.

Grievant specifically relies on the statement in Dillon that,

where several applicants have the same or similar qualifications, there is no rational basis for selecting one applicant over the others except seniority. In such circumstances, the statute, in effect, establishes a presumption that the applicant with the most seniority is more qualified.

Grievant argues that the evidence establishes that she and the successful candidate, Jennifer McAtee, were "at least equally qualified" and that she therefore should have been awarded the job based on her seniority.⁴ Respondent argues that Ms. McAtee was more qualified for the position.

The remainder of this decision is provided in findings of fact and conclusions of law.

Findings of Fact

1. A position for fifth-grade teacher at Ravenswood Grade School was posted August 19, 1988. The posting, Exhibit 8, stated, "Certification Required: Elementary Education with Computer Training." The teacher would teach

⁴ The record is unclear on how long Ms. McAtee had taught. The only testimony on Ms. McAtee's seniority was the testimony of the principal of Ravenswood, who stated that she "had experience teaching at the middle childhood level, which included student teaching in grades 5 and 7, two years...one year teaching at the sixth grade level, two years at the 5th grade level, and was beginning her third year at the fifth grade level[.]" Tr. 4. He also agreed that all of her teaching experience had been done at the middle childhood level. Tr. 22.

one-half day computer education, in a laboratory setting, and half-day the regular curriculum. Tr. 20.

2. The principal of Ravenswood Grade School, Tilden Hackworth, screened the six applications received and reduced the number to three, including Grievant and the successful candidate Jennifer McAtee, who were interviewed by him and the fifth-grade teachers at Ravenswood. Tr. 3. All had good evaluations.

3. All interviewees were asked the same series of five questions and their answers thereto were rated 0--3, Tr. 3. A perfect total score given by an interviewer would be 15. The scores given by all the interviewers for each interviewee were totalled. Ms. McAtee received a totalled score of 73.5, Grievant scored 58.5, and the other applicant scored 45.5.

4. Because there is no certification in computer education, it was necessary for each candidate to demonstrate competency to teach computers. Accordingly, all the interviewees were told before the interview that they would be asked to prepare a sample computer lesson and present it as they would teach it to fifth graders. Grievant did not do so. She testified that she told the interviewers that she would not treat them like fifth-graders. She also told the interviewers that she had not had time to prepare the materials because she had other obligations. By refusing to present a sample computer lesson, Grievant did not demonstrate her competence in computer education to the

interviewers. Ms. McAtee's sample lesson was on "Logo," a program comprising one-third of the computer curriculum at Ravenswood. Tr. 27. Ms. McAtee's sample lesson was rated the higher of the two given.

5. Grievant and Ms. McAtee each have an AB degree plus 15 graduate hours. Grievant has additional certification in kindergarten plus special education. Ms. McAtee has additional specializations at the middle childhood level of science and social studies and experience teaching at the middle childhood level, which includes the the fifth grade. Grievant had taught at the middle childhood level only one-half year, when she taught fifth grade approximately four years prior. Tr. 10.

6. Ms. McAtee had previously taught computer education, including Logo, in a fifth-grade lab. The posted position was very similar to the position Ms. McAtee had held.

7. While both applicants had taken the 18-hour program on computers and in-services offered by Respondent, Grievant had attended a one-day workshop on Apple Computers. At the time of the interview Ms. McAtee was enrolled in a graduate course in computer education.

8. Grievant was more senior than Ms. McAtee.

9. Mr. Hackworth considered the candidates' training, experience and results of the interviews, and decided that Ms. McAtee was the most qualified. He made that recommendation to the Superintendent of Schools of Jackson County,

who in turn recommended Ms. McAtee for the position to Respondent.

Conclusions of Law

1. W.Va. Code §18A-4-8b(a) requires that decisions of a county board of education affecting the filling of vacant teaching 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).

2. 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.

3. The discretionary exercise of a board of education to employ and assign professional personnel for a specialized position in a designated school should not be disturbed when the action was not arbitrary. Myles v. Ohio County Board of Education, Docket No. 35-88-081 (August 1, 1988).

4. Under W.Va. Code §18A-4-8b(a), where one candidate for a position is more qualified, the seniority of another

applicant will not be sufficient to justify denying the position to the more qualified applicant. Dillon; Myles.

5. Not only has Grievant failed to prove by a preponderance of the evidence that Respondent school board acted arbitrarily or capriciously or that she is entitled to reinstatement to the position at issue, the record demonstrates that Respondent made an accurate and rational decision that the successful applicant, Jennifer McAtee, was more qualified for the position in question than was Grievant, especially since Grievant did not demonstrate any competence in computer education to the interviewers.

Accordingly, the grievance is **DENIED.**

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Jackson 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: March 16, 1989