



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

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**Members**  
James Paul Geary  
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Orton A. Jones  
David L. White

**JAMES RAMEY, JR., II**

**v.**

**Docket No. 89-06-177**

**CABELL COUNTY BOARD OF EDUCATION**

**DECISION**

On September 7, 1988, Grievant James Ramey, Jr., II, at that date under contract with Respondent Cabell County Board of Education as a substitute teacher, filed a grievance at Level I, alleging,

This grievance pertains to the hiring of an employer[ee] who has less time as a substitute than I have. They hired Mr. John (Chip) McMillian as a full time teacher without even considering me as full time. I have been substitute since 12-86[.] [H]e was substitute after May 1988.

Grievant is protesting the September 1988 awarding of a physical education teaching position at Davis Creek and Highlawn Elementary Schools.<sup>1</sup> The grievance was denied at

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<sup>1</sup>From statements made by Grievant at the hearings it is also clear that he is additionally contending that he was entitled to a coaching position awarded Mr. McMillian. In that a coaching position is an extracurricular assignment that can only be awarded to an employee of a county board of education, see W.Va. Code §18A-4-16, and, as discussed infra, Grievant is not entitled to the physical education  
(Footnote Continued)

Level I on September 15, 1988, and at Level II, after hearing of October 17, 1988, on January 9, 1989. Grievant was also denied at Level III on April 11, 1989, after hearing of March 30, 1989. Grievant filed at Level IV on April 26, 1989, and a hearing was held June 2, 1989.<sup>2</sup> At the hearing the parties agreed that the decision should be made on the records of the Levels II, III, and IV hearings. Moreover, Grievant, who was unrepresented, waived his right to submit proposed findings of fact and conclusions of law. Respondent submitted such proposals June 13, 1989.

At the Level IV hearing Grievant was preliminarily advised that a board of education must hire the most qualified applicant for a professional position such as the teaching position at issue here. See Dillon v. Bd. of Educ. of County of Wyoming, 351 S.E.2d 58 (W.Va. 1986).<sup>3</sup> Grievant argued that if his evaluations had been fairly examined he would have been found to have been the most qualified. Grievant stated that he thought he had been discriminated

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(Footnote Continued)  
teaching position here involved, no issue regarding the coaching position need be addressed.

<sup>2</sup>A hearing scheduled for May 30, 1989, was continued at the request of Respondent.

<sup>3</sup>Dillon further held that, if two or more candidates for a job are equal in qualifications, the applicant with more seniority with the board of education is entitled to the job. However, seniority as a substitute employee has no application where the filling of a full-time position is involved. See Ginn v. Hardy Co. Bd. of Educ., Docket No. 16-88-185 (Dec. 9, 1988); Satterfield v. Marion Co. Bd. of Educ., Docket No. 24-87-253-2 (Feb. 26, 1988).

against (Tr. III-32). Accordingly, his contentions, though inartful, will be accepted as arguments that the selection process was flawed, see Milam v. Kanawha Co. Bd. of Ed., Docket No. 20-87-270-1 (May 2, 1988), that he was the most qualified candidate, and that he was discriminated against.<sup>4</sup> Grievant's pleadings accordingly are accepted as alleging violations of W.Va. Code §18A-4-8b(a),<sup>5</sup> and Code §§18-29-2(a) and (m), the definitions of "Grievance" and "Discrimination" applicable to these proceedings.

At the Level IV hearing Respondent moved for dismissal of the grievance on the ground that Grievant, as a substitute, had no standing to grieve the filling of a full-time professional position. Respondent relied on the definition of "employee" of Code §18-29-2(c),<sup>6</sup> and Karr v. Jackson Co. Bd. of Educ., Docket No. 18-86-297-1 (Feb. 25, 1987), in particular that decision's conclusion of law that "A

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<sup>4</sup>Grievant does not contend that Mr. McMillian was not qualified for the position.

<sup>5</sup>W.Va. Code §18A-4-8b provides in pertinent part, "A county board of education shall make decisions affecting promotion and filling of any classroom teacher's position occurring on the basis of qualifications."

<sup>6</sup>W.Va. Code §18-29-2(c) provides,

"Employee" means any person hired by an institution either full or part time. A substitute is considered an employee only on matters related to days worked for an institution or when there is a violation, misapplication or misinterpretation of a statute, policy, rule, regulation or written agreement relating to such substitute.

substitute teacher whose contract has expired is not an 'employee' for purposes of contesting the filling of a vacancy by the board of education on the basis of W.Va. Code, 18A-4-8b(a)." In that Grievant was under contract as a substitute when he was denied the full-time position and his pleadings have been accepted as alleging violations of statutes relating to him, Respondent's motion is denied.<sup>7</sup>

Grievant presented only limited evidence with very little probative value in support of his contentions. At Level II he argued that some of his personnel records had been altered and that Respondent had only examined negative evaluations when considering him, but in no way supported those accusations of impropriety. Furthermore, while he testified that supervisors had told him that they had given him favorable evaluations, Grievant called none of them as witnesses. He also tried to excuse certain unfavorable evaluations<sup>8</sup> by explaining that he had been sent to some tough schools and had taught subject matter outside his

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<sup>7</sup>It is questionable whether Respondent should be allowed to raise the issue of standing since at Level III Respondent, in its role as Level III evaluator, rejected the same argument it now poses. In any case, any error in addressing the issue would be harmless in that the contention that Grievant does not have standing is rejected.

<sup>8</sup>It was explained to Grievant at the Level IV hearing that, if such unfavorable evaluations were properly in his personnel file at the time the decision was made not to award him the full-time position, any showing that the evaluations were not fair or accurate would not support his position that the selection process was flawed.

fields of certification. The only credentials Grievant established were that he was a December 1986 graduate of Marshall University with an A.B. degree and that he was certified in physical education and health K-12. He substituted for Respondent from December 18, 1986, to September 20, 1988, when he accepted a full-time teaching position with Lincoln County Schools. While there was much argument at Levels III and IV, Grievant presented no further probative evidence.

Peggy Campbell, Supervisor of Physical Education and Driver's Education, testified for Respondent at Level IV that it is her duty to examine the files of applicants for physical education teaching positions and to designate to Assistant Superintendent Ed McNeel six to eight which she considers the most qualified. She had prepared for hearing summaries of the information on Mr. Ramey and Mr. McMillian she considered when determining which applicants she found most qualified. While her testimony was detailed, the summaries and documents there synopsized do support her comments.

The records she examined show that Grievant's student teaching was rated with the grade equivalent of a "C," while Mr. McMillian's was an "A." On the individual standards on which the applicants were rated, Grievant received a total of 4 excellent, 35 acceptable, and 4 unsatisfactory. Mr. McMillian received a total of 42 excellent, 2 acceptable, and 0 unsatisfactory. Grievant received some negative

comments from his supervisors<sup>9</sup> while the comments on Mr. McMillian were all positive. Ms. Campbell also noted that a resume from Grievant's Marshall University file that he had filled out (Res. Ex. D) was ungrammatical.<sup>10</sup>

Also of file and considered were the applicants' substitute teaching evaluations. For 78 days taught, Grievant was found competent, very competent for 1 day, less than competent for 1 day, and much less than competent for 4 days. Also in the file was a letter from the Principal of Peyton Elementary, dated May 20, 1988, which questioned Grievant's judgment in an incident at the school and requested that he not be sent back to her school as a substitute. Mr. McMillian received an extremely competent rating for 18.5 days taught, very competent for 24.5 days, and competent for .5 days. He received no unfavorable rating.

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<sup>9</sup>University Supervisor Olive Hager noted "weak points are punctuality, dependability, appearance[;] communication skills and planning were poor[;] problems when teaching new material[;] time management often a problem[.]" Cabell County Supervising Teacher Renee Abbott noted "lesson plans were weak[,] a progression was hard for him to develop[,] not ready to teach first class due to tardiness[.]" Cabell County Supervising Teacher Kathy Hosaflook noted "needs more practice in organizational skills and classroom management[.]" University Supervisor Dorothy Hicks noted "needs to learn to control the class better[;] tendency to lose control of temper but improved tremendously[;] did not make corrections during class on errors[.]"

<sup>10</sup>Grievant contended that the resume should not have been considered because it was a rough draft that he later revised and that Respondent should not have been able to get the resume from Marshall University. No error has been established with regard to Respondent's consideration of the resume.

Grievant's file contained no letters of recommendation while Mr. McMillian's had five very favorable letters, two from principals for schools at which he had substituted, one from a teacher under whom he had done his student teaching, and one from the Director of the Cabell County Youth Center where Mr. McMillian had worked.

Ms. Campbell concluded by stating that she gave a list of six individuals who she thought most qualified to Mr. McNeel. Mr. McMillian was on the list; Grievant was not. Mr. McNeel testified that, upon review of the files, he thought Mr. McMillian the most qualified, and so suggested his being hired to Robert Brewster, Superintendent of Schools for Cabell County, who in turn recommended to Respondent that Mr. McMillian be selected for the position.

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

#### Findings of Fact

1. Grievant, a substitute teacher for Respondent, was denied a physical education teaching position at Davis Creek and Highlawn Elementary Schools on September 6, 1988.

2. John McMillian was found to be one of the six best qualified applicants for said teaching position by Respondent's supervisor of physical education, and was further found to be the most qualified applicant by Assistant Superintendent McNeel. Superintendent Brewster in turn recommended to Respondent that Mr. McMillian be hired for the

position, and Respondent did so. Grievant was not one of the six applicants found most qualified by the supervisor of physical education.

#### Conclusions of Law

1. As a substitute teacher Grievant had standing under W.Va. Code §18-29-2(c) to grieve Respondent's denying him a full-time teaching position for which he applied.

2. 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).

3. A county board of education in West Virginia is obligated to hire the most qualified candidate for a professional position. W.Va. Code §18A-4-8b(a).

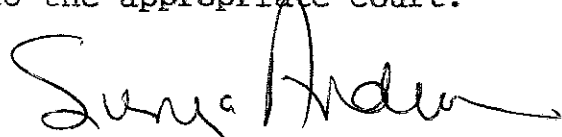
4. Grievant did not establish that his evaluations had been improperly considered, nor did he otherwise establish any flaw in Respondent's selection process. Compare Milam v. Kanawha Co. Bd. of Ed., Docket No. 20-87-270-1 (May 2, 1988).

4. Grievant did not establish that he was more qualified than Mr. McMillian. Rather, the record established that Mr. McMillian was more qualified for the position than Grievant. Accordingly, Grievant did not establish a violation of W.Va. Code §18A-4-8b(a).

5. No evidence of record supported Grievant's contention that Respondent discriminated against him in hiring Mr. McMillian. Accordingly, Grievant did not establish any violation of W.Va. Code §§18-29-2(a) and (m).

The grievance is therefore **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County or the Circuit Court of Cabell County and such appeal must be filed within thirty (30) days of receipt of this decision. See 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: Jun 21, 1989