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

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JANICE STOWERS

v.

Docket No. 89-40-510

**PUTNAM COUNTY
BOARD OF EDUCATION**

D E C I S I O N

Grievant Janice Stowers alleges that Respondent Putnam County Board of Education, in denying her the position of Principal at Eastbrook Elementary School (Eastbrook), violated the requirement of W.Va. Code §18A-4-8b(a) that positions be filled on the basis of qualifications. She further contends that the selection was made in an arbitrary and capricious manner.¹ The grievance, filed July 27, 1989, was denied at Levels I and II and consideration thereof was waived at Level III. The grievance was appealed August 26,

¹Repeated references have been made in this record to an alleged former policy or practice of Respondent that allowed a principal to transfer to another vacant principal position if he or she had been administratively certified longer than any other principal desiring the position and furthermore there were indications that Grievant considered herself entitled to the principalship of Eastbrook based on that policy or practice. At hearing it was ruled that, in that such practice was contrary to Code §18A-4-8b(a), it would not be enforced. That ruling is hereby reaffirmed.

1989, and a hearing was held September 22, 1989.² Proposed findings of fact and conclusions of law were received from the parties on and before October 20, 1989.

While there were six applicants for the position, three candidates were given serious consideration: Grievant, the successful applicant Tresa Learmonth, and Gary Hoffman. Of these three, Grievant was the most senior, having 15 years of professional experience with Respondent,³ while Ms. Learmonth had 13 and Mr. Hoffman 12.

Little evidence was presented on the qualifications of Mr. Hoffman other than that he has been a principal for four years, with permanent professional certification since 1988. The evidence was extensive on the qualifications of Grievant and Ms. Learmonth, only part of which needs to be included here.

Grievant's testimony and documents established that she has a bachelor's degree in elementary education, K through 8, with a specialty in early childhood education. She also received a master's in speech communication in 1979 and certification as an elementary principal in 1986. After becoming certified as a teacher in December 1973, she taught for one semester in Kanawha County, and was hired by

²The parties agreed at hearing that the evidentiary record would consist of the record compiled at Level II, supplemented by the Level IV evidence.

³Grievant was not the most senior of all the candidates.

Respondent in June 1974. She was an elementary school teacher for 13 years, at the kindergarten, third grade, and fifth grade levels. In Fall 1987 she became Principal/Teacher at Nitro-Putnam Elementary School, and the next year Principal of Rock Branch Elementary (Rock Branch), where she remains. She also testified regarding prior experience in the private sector, in particular her experience as an administrative secretary, as providing her skills that are helpful in being an effective principal. She finally testified regarding various other activities and programs she has been involved in, including her service on textbook selection committees, her involvement in an effective schools program, and her attendance at Principals' Academy. She finally testified that her evaluations have always been above average or outstanding.

As with Grievant, Ms. Learmonth testified at length and documentary evidence of her qualifications was presented. She received her bachelor's degree in social studies in 1969 and her master's in special education of the emotionally disturbed in 1974. She became administratively certified in 1983 for principalships in K through 8 and 7 through 12. Prior to working for Respondent she was a teacher in special education from 1971 through 1976, when she became a behavioral specialist for Respondent, and continued to work as a consultant on special education until 1987, when she became Assistant Principal at Winfield Elementary (Winfield), where she served two years. In her positions involving special

education with Respondent, she chaired meetings on placement and curriculum for special education students and was involved in special programs for such students. Ms. Learmonth testified extensively about activities she has worked on, for example, that she has helped develop computer curricula and has organized filing systems by computer. Moreover, because Winfield has a large number of students in special education, as Assistant Principal she continued to work extensively with programs for them; for example, she got a grant so that a playground could be built for the handicapped.

The applicants were interviewed on July 21, 1989, by Superintendent of Putnam County Schools Samuel Sentelle and Director of Early Childhood Education Harold Hatfield. At Level II Grievant testified as follows:

Doctor Sentelle opened the interview with remarks about his concern for stability in the schools and his concern that I had only been at my school for a year. He indicated I had been doing a good job where I was. . . I indicated I should not be punished because I was doing a good job. He made reference to the fact that you hear that Janice Stowers is having problems that she might have to work on, so forth and so on. I interrupted at that point and asked him if I could respond to that, and he said yes. I said, "What problems are you referring to?" He looked at Mr. Hatfield and said something, it was about a teacher that was absent a lot or something, and he could not pinpoint any problem. Then when I pressed the issue later, he said, "Oh, it's just hearsay." After that Mr. Hatfield took over the questioning and asked me pertinent questions. . . .

Tr. 13-14.

Dr. Sentelle testified at Level II that during the interviews of the six candidates, which were about one-half

hour each, he and Mr. Hatfield asked standard questions, deviating from them as necessary, and that, following the interviews, they decided on the ranking of the top three candidates. He stated that in subsequent discussions with Mr. Hatfield; Paul D. Callahan, Assistant Superintendent of Putnam County Schools; and Norman S. Welton, Director of Middle Childhood Education, there was concern regarding the frequent change of principals at the schools which Grievant and Mr. Hoffman serve, along with a third. "The turnover in leadership we felt was generally detrimental to continuity in the curriculum, curriculum integrity in a school." Tr. 43. He moreover stated that the consensus was that Ms. Learmonth was the best qualified. He further testified,

I rated the three myself based on what I had heard and through our discussions. . . . First of all, community and faculty leadership, I ranked them as first being Hoffman, second L[ea]rmonth, third Stowers. We noted that a person unknown to a community generally has better acceptance, at least initially, then someone who is known, for what that is worth. Secondly, as far as closeness to the children or ab[ility] to improvise with children, nurturing of children, whatever you want to call that, we ranked Mrs. L[ea]rmonth first, and I think that was primarily due to her experience in special education. She has served the county for some time, I understand as a coordinator of special education. Second was Mr. Hoffman, third, Mrs. Stowers. In terms of plant management skills, plant operations, first L[ea]rmonth, second Hoffman, third Stowers. Fourth, curriculum skills I did not make any differentiation as to whether--I really could not tell any difference among the three of them. Each candidate was questioned on the effective schools program, and this is a school study and improvement program, which incorporates a data base approach to decisions at the school level, and there was a consensus that L[ea]rmonth was clearly superior in this area.

Tr. 44-45. On cross-examination, he stated that Ms. Learmonth was considered superior regarding the effective

schools program because she had done work in analysis of statistical materials involved in the program. He also stated he considered Ms. Learmonth especially strong in paperwork. Finally, elaborating on the first criterion, he testified,

[S]omeone who is not known in the community, at least initially, would be better accepted than someone who is known. If you are in a community, and you are a good administrator, you cannot help but make a few people dissatisfied.

Tr. 51-52.

For the Level IV hearing Grievant subpoenaed a statement Dr. Sentelle had prepared on July 26, 1989, wherein he memorialized the consideration of the applicants. It is essentially consistent with his testimony at Level II. However, in it Dr. Sentelle noted that Mr. Hatfield's first choice was Mr. Hoffman, with Ms. Learmonth second, and Grievant third. He also emphasized the concern regarding the frequent change of principals in the three schools. Finally, he listed the four categories he had testified regarding at Level II, and stated his ranking of the applicants thereon. As with his testimony, regarding the first, community and faculty leadership, the note stresses that "a person unknown to a community generally has better acceptance initially than someone who is known." Regarding the nurturing category, the note contains an apparent definition thereof, "closeness with children, empathy," and states that Ms. Learmonth was first, "especially due to a special education background." Gr. Ex. 15.

At the Level IV hearing Dr. Sentelle's testimony was consistent with his prior testimony and the note. He added that Mr. Hatfield had told him about some problems at Eastbrook regarding Ms. Stowers, and he did not pursue them beyond their discussions.

At Level IV Mr. Jack Gordon, Principal at Winfield, testified regarding Ms. Learmonth's abilities as Assistant Principal and also testified that, while he had not turned in to administration the evaluations he had prepared on her for the past two years, the evaluations had been very good.

Mr. Callahan, Mr. Welton and Mr. Hatfield also testified at Level IV. Mr. Callahan concurred that he had had informal discussion regarding the appointment with Dr. Sentelle and considered the appointment of Ms. Learmonth reasonable.⁴ When asked about problems at Rock Branch, he testified that there had been problems there but he had not heard of any since Grievant became principal. Asked about the meaning of "nurturing," Mr. Callahan defined it as a "loving, caring climate for instruction of children." Mr.

⁴Dr. Sentelle's note stated that, regarding the day of the interview, July 21, 1989, "During the afternoon, there were at least two discussions of the relative merits of these three candidates among myself, Mr. Hatfield, Mr. Callahan, and Mr. Welton." Mr. Callahan testified that he was not in town during the day of the interview, which was a Friday, and that his first day back at work was Monday, July 24. Grievant proposes that the discrepancy renders the ranking suspect. It may be that the note, written five days after the interview, merely indicates that Dr. Sentelle had forgotten exactly when he spoke to Mr. Callahan, for both men testified they had conferred.

Welton, while stating that the four criteria used by Dr. Sentelle were commonly used, showed uncertainty as to the meaning of "nurturing" in the context of school administration, stating it could be used in different ways, "nurturing the students, nurturing the faculty." He also testified that the discussion he was involved in did not relate to evaluations. He too believed the selection was reasonable.

Mr. Hatfield corroborated the other witnesses on how the interviews were conducted. He stated that he felt strongly about the effective schools program and therefore he questioned the applicants primarily on that issue. He considered Ms. Learmonth most knowledgeable thereon, for she discussed the analytical basis for the program. He stated that the questions did relate to the four criteria Dr. Sentelle had outlined. When asked why he considered Ms. Learmonth superior to Grievant, he stated it was the applicant's "can-do" and "confidence" and that her "knowledge was superior." He thought she showed greater leadership. When he was asked about the "nurturing" criterion, he stated that the applicants were asked, in relation to the effective schools program, "if they felt that all children can learn" and whether they had "developed feelings toward children in that respect." Finally, he stated that he did review evaluations and, although Ms. Learmonth's recent evaluations were not on file, he talked to her principal regarding her capabilities.

Grievant proffered Respondent's Policy GC, "Employee Selection Criteria," which provides, in part, "The following objective criteria may be used in . . . transferring, promoting,. . .employees as it may apply to the posted job vacancy:" and then lists for professional positions,

- College transcript
- Certification endorsements
- Experience in education
- Past evaluations
- Experience in area of application
- Physical and mental health
- Education, degrees, additional hours beyond degrees
- Participation in seminars and workshops
- Recommendations/references[.]

Finally, it provides, "A subjective evaluation shall be derived from an interview and based upon the following criteria: Past performances[,], Ability[,], Leadership [and] Personality[.]" While the policy does not mandate the use of each criterion since it uses the permissive "may," it does not allow for ignoring the criteria and substituting others altogether, for, if so, the policy would simply be a nullity. This record indicates that proper consideration was not given to the criteria of the policy. A board of education must follow its own policies. Powell v. Brown, 238 S.E.2d 220 (W.Va. 1977).

Moreover, while three of the criteria utilized by Dr. Sentelle, community and faculty leadership, management skills-plant operations, and curriculum skills, were appropriate, the nurturing element, at least as applied by Dr. Sentelle, appears to have been an arbitrary criterion, especially since even the administrators were not sure of

the meaning of a "nurturing" requirement for a principal of an elementary school. Moreover, the record supports that the applicants' nurturing capabilities were not really assessed, for Dr. Sentelle's clearly assumed that Ms. Learmonth was superior in "nurturing" simply because she had been in special education.⁵

Similarly, Dr. Sentelle's further assumption that an individual from outside the community would have better acceptance and therefore would be a better candidate is, again, arbitrary. Secondly, even if the assumption were valid, it is contrary to the requirement that appointments be based on qualifications, for Dr. Sentelle even admitted that an administrator who has been doing a good job is apt to have caused some ill-will.⁶

Finally, also contrary to the requirement that the most qualified individual be placed in a position was Dr. Sentelle's clear unwillingness to appoint a principal from one of the three schools which had had high turnover.

⁵If a nurturing capability means that the educator thinks that all children can learn, as Mr. Hatfield opined, all candidates had that capability since the evidence established that all candidates thought all children can learn.

⁶While an individual's acceptance by the community may be considered in determining who is the best qualified for a position, care must be taken that such acceptance not be given inordinate and inappropriate weight. See Milam v. Kanawha Co. Bd. of Educ., Docket No. 20-87-270-1 (May 2, 1988). Even if there were some validity to Dr. Sentelle's assumption, impropriety in the weight given it is clear from the record.

Without a doubt that unwillingness to remove Mr. Hoffman or Grievant from the principalships they hold was a significant factor in Dr. Sentelle's decision to recommend Ms. Learmonth for the position. Such a decision cannot be sustained.⁷

Respondent contended at hearing that any defect in the selection process would be harmless if nevertheless the most qualified candidate had been appointed, and that Ms. Learmonth clearly was the most qualified. While it may well be that, where it is clear that the most qualified candidate was chosen, albeit by a flawed selection process, the appointment could be affirmed, such is not the case here. While this record establishes that Ms. Learmonth and Grievant are both well-qualified and indicates that the same is true for Mr. Hoffman, it does not establish as a matter of law which was the most qualified candidate. Instead, Respondent must give further consideration of the applicants and in proper exercise of its discretion make a decision which is most qualified for the principalship at Eastbrook.

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

⁷The record also indicates that Dr. Sentelle thought there had been problems at Rock Branch under Grievant's tutelage, and, while Dr. Sentelle's concern was apparently unfounded, it may have influenced his decision.

Conclusions of Law


1. "County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, 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).

2. A county board of education in West Virginia is obligated to hire the most qualified applicant for professional positions. W.Va. Code §18A-4-8b(a); Dillon.

3. For the reasons stated in the discussion, supra, the record establishes that the process of selecting Ms. Learmonth was arbitrary and capricious, and the record does not establish as a matter of law which applicant was the most qualified.

Accordingly, the grievance is **GRANTED** and the Putnam County Board of Education is hereby **ORDERED** to conduct a re-evaluation of the applicants for the position of principal at Eastbrook Elementary School for the purpose of determining which is the most qualified employee for the position, said re-evaluation to be in accordance with the provisions of W.Va. Code §18A-4-8b(a) and otherwise consistent with the rulings in this decision.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Putnam 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 cursive script, reading "Sunya Anderson", written in dark ink. The signature is positioned above a horizontal line.

**SUNYA ANDERSON
HEARING EXAMINER**

DATED: November 8, 1989