



**Members**  
James Paul Geary  
Chairman  
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**WEST VIRGINIA EDUCATION AND  
STATE EMPLOYEES GRIEVANCE BOARD**

**GASTON CAPERTON**  
Governor

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**ANSIS SWOPE**

**v.**

**Docket No. 89-20-167**

**KANAWHA COUNTY BOARD OF EDUCATION**

**D E C I S I O N**

Grievant Ansis Swope, employed by Respondent Kanawha County Board of Education as a driver education teacher at Stonewall Jackson High School (Stonewall), alleges that he was improperly denied one of three driver education teaching positions at the new Capital High School (Capital),<sup>1</sup> beginning operations with the 1989-90 school year.

The grievance was denied at Level I on September 14, 1988; at Level II on January 17, 1989, after hearing on January 10th; and at Level III on April 5, 1989. Grievant filed at Level IV on April 11, 1989, and a hearing was held May 10, 1989.<sup>2</sup> Proposed findings of fact and conclusions of

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<sup>1</sup>Capital High School will replace Stonewall and Charleston High School.

<sup>2</sup>A hearing scheduled for May 5, 1989, was continued at  
(Footnote Continued)

law were received from Grievant June 8, 1989; Respondent waived its right to submit proposals.

Respondent issued an announcement of all available teaching positions at Capital, including the three driver education positions, in Spring 1988. Attached to the posted notice was a statement of the qualifications needed for the advertised teaching positions and "performance responsibilities" Respondent required for the teachers at Capital. Included in the former were

- Proper endorsements as required/multiple endorsements desirable...
- Is flexible and adaptable to changes in the daily schedule...
- Shows evidence of a strong commitment to continued personal and professional growth--continuing education, workshops and/or college courses related to curriculum and instruction
- Is computer literate with preferred understanding of modern technology instruction...
- Has preferred training in interdisciplinary curriculum delivery[.]

The first of the listed "performance responsibilities" was "Implements the program(s) of studies through the interdisciplinary learning team delivery mode."

John Clendenen, Principal of Capital, interviewed the six applicants for the driver education positions, as he did applicants for all teaching positions at Capital. In conducting the interviews he used a form that he utilized

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(Footnote Continued)  
the request of Grievant.

At the Level IV hearing the parties agreed that the decision should be made upon the evidentiary records compiled at Levels II and IV.

for all interviews.<sup>3</sup> Clendenen asked questions of the applicants consistent with the form and filled out a form on each applicant, noting the applicant's answers and scoring each answer one to ten, with ten being the highest possible score on each answer. Since the form had eleven parts, the highest possible score was apparently 110.<sup>4</sup> The eleven parts were labelled

1. Degree qualifications and endorsements
2. Team experience (teaching, planning, projects)
3. Technical training (computer literate)
4. Recent content training
5. Flexible and adaptable to changes in the daily schedule
6. Recent workshop experience
7. Understanding of integrated/interdisciplinary curriculum delivery
8. Student-centered delivery
9. Demonstrates enthusiasm (for teaching--for Capital High philosophy)
10. Verbal communications skills
11. Content knowledge[.]

Clendenen testified that the questions asked of each interviewee were designed to establish whether the candidate was suited to the new curriculum and approach to education

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<sup>3</sup>Grievant submitted with his proposed findings of fact and conclusions of law an affidavit from a teacher who applied for and received a social studies teaching position at Capital attesting that Clendenen did not ask him questions based on the subject matters of the form. The affidavit is not accepted as evidence in this matter; even if it were accepted as evidence, it is irrelevant to any issue in this case since Grievant agrees that Clendenen's questions followed the contents of the form.

<sup>4</sup>At Level II Clendenen stated that there was a possibility of 120 points for the interview. He either misspoke or failed to explain how the extra ten points could be earned by the interviewee.

that would be taken at Capital, an "integrated approach to curriculum delivery, which involves new methods of instruction, new emphasis on student achievement, and definitely new teaching instruction methods" (Tr. II-10). The three applicants who were selected for the three driver education positions, Gary Hess, Jimmy Harrison, and Gerald Townson, made the three highest cumulative scores on the interview of 102, 101, and 87, respectively. Grievant ranked fifth, with a cumulative score of 68, after an applicant with a score of 79.

Grievant does not allege that Clendenen's questions were improper, nor does he argue that his answers should have been given higher scores.<sup>5</sup> Rather, he argues that he did not know what kind of answers Clendenen was wanting to hear and therefore answered the questions as relating solely to the subject of driver education, not the integrated approach to be taken at Capital. He said he never saw the posted announcement, but rather applied when advised that all teachers interested in positions at Capital should ask for transfer to that school. He also said he did not know

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<sup>5</sup>In Grievant's proposed findings of fact Grievant does make the statement, "The subjectivity of Principal Clendenen's scoring is demonstrated by Grievant's rating of 7 in computer literacy, though Grievant readily admitted in the interview that he had no computer literacy." The statement raises no issue for consideration since the only alleged indication of Clendenen's subjectivity worked in Grievant's favor. Clendenen stated he gave a 7 to all applicants who expressed a willingness to learn computer technology.

what the "Capital High philosophy" was, although he did not contradict Clendenen's testimony that the philosophy involved a focus on integrated curriculum and a teacher from Stonewall should know that since the approach has been piloted at Stonewall for two years.

Grievant also contends that his seniority both as the applicant "second most senior with respect to the length of time professionally employed by the Board and most senior with respect to length of time certified or licensed in safety education" was not properly considered in the selection. He relies on the ruling in Dillon v. Bd. of Educ. of County of Wyoming, 351 S.E.2d 58, 62 (W.Va. 1986),

In the case of the classroom teacher, however, seniority implies more than just a reward for length of service. The performance of the classroom teacher is evaluated regularly, with an eye toward constant improvement of his or her professional skills. Consistently positive evaluations reflect not only professional accomplishment, but indicate invaluable practical knowledge that can be brought to a new position. In this context, seniority itself connotes some element of qualification.

Respondent was required to hire the most qualified candidates for the positions. W.Va. Code §18A-4-8b(a).<sup>6</sup>

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<sup>6</sup>Grievant's proposals quote the statement, "Any decision concerning promotion, demotion, transfer or termination of employment should be based upon such evaluation, and not upon factors extraneous thereto[,]" of West Virginia Board of Education Policy 5300(6)(a). While that policy mandates, e.g., that an individual with poor evaluations should not be promoted, it has no applicability here where there is no contention that some or all of the other applicants had poor evaluations, and, indeed, there was no evidence on any of the applicants' evaluations other  
(Footnote Continued)

Only where the candidates are equal in qualification is the applicant with more seniority with a board of education entitled to a position since that longer experience "connotes some element of qualification." Dillon. Finally, an unsuccessful applicant is entitled to relief where he establishes by a preponderance of the evidence that the interview/selection process used to fill the position was flawed. Kizer v. Roane Co. Bd. of Educ., Docket No. 44-88-143 (Jan. 12, 1989); Milam v. Kanawha Co. Bd. of Educ., Docket No. 20-87-270-1 (May 2, 1988).

Clendenen was not required by Dillon to consider how long the applicants had been certified in safety; no abuse of his discretion has been shown by his acceptance that all applicants were knowledgeable in driver education. Furthermore, while Grievant is correct that the applicants were not given any interview points based on how long they had been employed by Respondent and such failure to consider their relative seniority may have been contrary to Dillon, any error would be harmless. As Grievant concedes, Townson actually had two more years' seniority than Grievant, who has been employed by Respondent since 1969; and the remaining successful candidates, Hess and Harrison, have been employed with Respondent since 1970 and 1972. With so

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than Grievant's testimony that his evaluations have never been unsatisfactory (Tr. II-6).

little difference in the seniority of Hess and Harrison from Grievant's and so great a divergence between their cumulative scores on their interviews of 102 and 101 and Grievant's score of 68, it is clear that, had Clendenen considered the seniority of the applicants, Grievant nonetheless would not have been selected. Finally, no further flaw in the selection process has been established. While Grievant complains of his lack of knowledge as to how to answer Clendenen's questions, that flaw was not in the process Clendenen followed but was of Grievant's own making, for Grievant has neither contended nor shown that any information was not available to him.

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

#### Findings of Fact

1. Grievant Ansis Swope was an unsuccessful candidate for three driver education teaching positions at Capital High School.

2. John Clendenen, the principal of Capital, asked of each applicant for the positions questions that were designed to establish whether the applicant was suited to the new curriculum and integrated approach to education of Capital. Clendenen accepted that all candidates were knowledgeable of driver education and did not question the applicants on that knowledge.

3. The answers to the questions were scored and the scores tabulated. The three applicants Gary Hess, Jimmy Harrison, and Gerald Townson, with the highest scores of 102, 101, and 87, respectively, were selected for the positions based on those scores. The fourth highest score was 79 and Grievant was ranked fifth, with a cumulative score of 68.

4. The relative seniority of the applicants was not considered. One of the successful applicants, Gerald Townson, having been employed by Respondent since 1967, had greater seniority than Grievant, who has been employed by Respondent since 1969. The remaining two successful applicants' seniority date from 1970 and 1972.

#### Conclusions of Law

1. 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).

2. A county board of education in West Virginia has substantial discretion in matters relating to the selection of school personnel, but must exercise the same in a reasonable and not arbitrary and capricious manner. Dillon v. Bd. of Ed. of the Co. of Wyoming, 351 S.E.2d 58 (W.Va. 1986).



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. Since greater seniority of an applicant "connotes some element of qualification," Dillon, such experience should be considered. State ex rel. Oser v. Haskins, 374 S.E.2d 184 (W.Va. 1988).

5. While the evidence indicates that Clendenen did not consider the relative seniority of the applicants, it is clear that even if he had done so Grievant would not have been selected because there was little difference between the seniority of the two successful applicants with lesser seniority than Grievant and Grievant's seniority and a large discrepancy between the interview scores of 102 and 101 of those successful candidates and Grievant's score of 68.

6. Grievant has established no abuse of discretion or flaw in the selection process that would warrant vacating the selection of Gary Hess, Jimmy Harrison and Gerald Townson for the three driver education teaching positions at Capital. Compare Kizer v. Roane Co. Bd. of Educ., Docket No. 44-88-143 (Jan. 12, 1989); Milam v. Kanawha Co. Bd. of Educ., Docket No. 20-87-270-1 (May 2, 1988).

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha 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: June 30, 1989