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

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LARRY G. TRACEWELL

v.

Docket No. 89-54-166

WOOD COUNTY BOARD OF EDUCATION

DECISION

Grievant Larry G. Tracewell, a teacher at Franklin Junior High School (Franklin), protests the failure of Respondent Wood County Board of Education to hire him as Assistant Principal at Franklin, contending that he was the "most qualified applicant and that the respondent board failed to follow school policies and laws." Grievant requests instatement to the position plus appropriate back pay and attorney fees.

Grievant began proceedings on December 28, 1988. His grievance was denied at Level I on January 9, 1989, and at Level II on March 21, 1989, after hearing on February 20, 1989. Consideration of the grievance was waived at Level III on April 12, 1989, and Grievant filed his claim at Level IV on May 9, 1989. Grievant requested that the decision be based on the record below. With submission of memoranda

from both parties on and before July 11, 1989, this matter may be decided.¹

It is undisputed that the position was vacated during the 1988-89 Fall Semester, after school had begun, when the prior assistant principal became principal at another school (Tr. 28). Also undisputed is that the successful applicant, Doug Kiger, was hired for the position after Kenneth Hart, the Principal of Franklin, interviewed the fourteen candidates for the position and recommended hiring Mr. Kiger to William F. Gainer, Assistant Superintendent of Wood County Schools. Mr. Gainer concurred in the recommendation and advanced it to the Superintendent of Wood County Schools, who referred it to Respondent, and Mr. Kiger was hired.

Grievant's request for instatement to the assistant principalship must be granted, for his contention that Mr. Kiger had "no administrative certification," Memorandum of the Grievant 2, is supported by the record, and the record further establishes that Grievant was the only candidate holding administrative certification.

Respondent contends, "All fourteen applicants had administrative certification." Memorandum of the Wood County Board of Education 2. Respondent provides the following in footnote to that statement,

¹This matter was transferred from the docket of Hearing Examiner M. Drew Crislip to that of the undersigned.

On[e] line of the transcript appears to indicate to the contrary. On[] page 29 Mr. Hart was asked: "Did any of these fourteen applicants have certification for administrative positions?" Mr. Hart replied: "Only Mr. Tracewell." It is not clear from the record whether Mr. Hart misunderstood the question, whether his answer was interpreted differently by those who heard it, or whether the transcript is in error. In any event, the grievant made no contention in his opening memorandum that the fourteen candidates were not all certified, and the clear import of the record is that they were certified. The Superintendent so found at Level Two. (See the March 21, 1989 "Level II Grievance Response Form" which is the second of the Level Two decision documents issued by the Superintendent). Additionally, the notice of vacancy required such certification as a prerequ[i]site to making an application. (Respondent's Exhibit 2). Unlike end-of-year vacan[c]ies which (at least conceivably) could be filled by a person who would, during the summer months, obtain the necessary certification, this was a mid-year vacancy and could not have been filled by Mr. Kiger unless he had the requ[i]site certification at the time of appointment.

It is of course required that any principalship or assistant principalship must be filled by an individual holding a valid administrative certificate, W.Va. Code §18A-2-9, as Respondent recognizes. Further, Respondent concedes that, unless an applicant for the assistant principalship involved in this case was so certified at the time of application, he would not be certified at the time of filling the position. Respondent is correct that the Level II evaluator, in an addendum to his decision of March 20, 1988, found, "All fourteen of the applicants had certification for administration." The addendum reversed his finding of the day prior that, "Of the fourteen applicants, only Mr. Tracewell had certification for administration." The record does not support Respondent's contention, however, that its "clear import" is that all candidates were

certified, nor is there any support for Respondent's contention that Mr. Hart's answer was erroneous.

There was nothing ambiguous about the question asked Mr. Hart and there is no logical explanation as to what other question Mr. Hart may have thought he was answering, for clearly he was saying that Mr. Tracewell's credentials differed from the other candidates' in a certain way. Furthermore, the record supports that that one difference was that he was the only candidate with administrative certification.

Submitted into the record is a November 21, 1988, memo from Mr. Gainer to "Whom It May Concern," with the stated "Subject" of "Wood County Employees with Administrative Aspirations," which provides,

Any employee who has certification as a secondary principal or who is actively working toward certification should notify my office of your interest in anticipated vacancies.

Please submit:

1. A resume'
2. A statement of your philosophy as it relates to educational administration
3. A minimum of three references from present or previous supervisors, peers and community acquaintances.

Interviews will be scheduled at mutually convenient times.

[Emphasis added] Res. Ex. 8. Mr. Gainer, as representative of Respondent at Level II, also introduced into evidence a handwritten list of individuals under the title "Adm Aspir.," which he explained "represents the list of people who called in reference to the attached memo" (Tr. 54). Mr.

Kiger's name is on the list, as are the names of ten of the other candidates.² Finally, in his closing comments Mr. Gainer stated that Mr. Kiger, after not being selected for another position in the summer of 1988, "followed up by responding to our memo of November 21, 1988, that asked interested administrative aspirants to contact the assistant superintendent of secondary schools." Tr. 64.

Accordingly, the "clear import" of the record is that, rather than applying in response to the later posting³ (Res. Ex. 2) that did, as Respondent contends, state, "The appropriate principal[']s certification is a minimum requirement for the above assistant principal position," Mr. Kiger, like ten of the other candidates, supplied his credentials in response to a memo that specifically encouraged those interested in becoming secondary principals to apply even though they lacked administrative certification. Since that is so, there is no basis not to accept the uncontradicted statement

²Mr. Hart listed the candidates besides Grievant and Kiger as Blaine Auville, Dennis Blatt, Richard Board, David Burton, Robert Dailey, Tom Eschbacher, Viola Huff, Gary Prater, Bruce Rogers, Monty Stoops, William (Buddy) Thomas, and Mike Winland. Tr. 29. Gary Prater and Bruce Rogers were not on the list of administrative aspirants, nor was Grievant on the list.

³The posted notice is undated but it provides, "1988-89 KNOWN VACANCIES FOR WOOD COUNTY SCHOOLS AS OF DECEMBER 2, 1988 thru DECEMBER 9, 1988 by 4:00 p.m."

of Mr. Hart that "[o]nly Mr. Tracewell," of all the candidates, had administrative certification.⁴

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

Findings of Fact

1. Grievant, one of fourteen applicants for the position of Assistant Principal at Franklin Junior High School, which became vacant during the Fall Semester 1988, was the only candidate who had administrative certification.

2. Grievant was denied the position, which was awarded to another candidate, Doug Kiger.

Conclusions of Law

1. All principals, including assistant principals, must hold valid administrative certificates. W.Va. Code §18A-2-9.

⁴Respondent's contention that "Grievant made no contention in his opening memorandum that the fourteen candidates were not all certified" is rejected because Grievant did raise the issue by contending that Mr. Kiger had no administrative certification, as noted supra, and, furthermore, the contention is part of Grievant's overall argument that he was the most qualified candidate. In any case, if the preponderance of the evidence supports a grievable offense, as does the uncontradicted testimony of Mr. Hart, the hearing examiner may consider it. W.Va. Code §18-29-3(j).

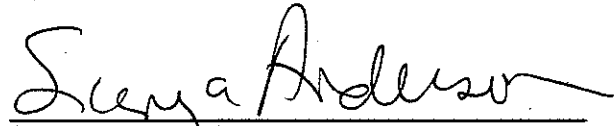
2. It was improper for Respondent to award the assistant principalship to an individual not holding administrative certification rather than to the one candidate, Grievant, who was the only candidate holding that certification and therefore fully qualified for the position. Grievant is therefore entitled to reinstatement to the position.

3. Costs incurred, "including attorney's fees may be awarded to any employee who shall substantially prevail in any proceeding in circuit court (W.Va. Code, 18A-2-11) and may not be awarded at this level." Smarr v. Wood Co. Bd. of Educ., Docket No. 54-86-062 (June 16, 1986).

Accordingly, the grievance is **GRANTED**. Respondent is **ORDERED** to instate Grievant into the position of Assistant Principal of Franklin Junior High School and is further **ORDERED** to provide Grievant back pay from the date on which Mr. Kiger was appointed less appropriate set-off.

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

SUNYA ANDERSON
HEARING EXAMINER

Dated: August 15, 1989