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

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DAVID WALL

v.

Docket No. 89-40-561

PUTNAM COUNTY BOARD OF EDUCATION

DECISION

David Wall, Assistant Principal at Poca Middle School (Poca), an institution operated by Respondent Putnam County Board of Education, submitted the following grievance at Level I:

Violation of. . .[W.Va. Code §] 18A-4-8b(a) in regard to the posted position of Poca. . .principal. The grievant was the most senior applicant for the position and duly qualified. The relief sought is to be awarded said position.

After denial there¹ and Level II² and waiver at Level III, Grievant sought Level IV consideration of his claim, which was there heard November 1, 1989. The parties have submitted opposing fact-law proposals and the case is thus mature.

While a number of issues were raised in the context of this dispute, the resolution of one is controlling to its

¹ There was no response at Level I and it is assumed properly waived since there is no apparent authority there to grant the sought relief.

² The Level II transcript, complete with attendant exhibits, is part of the record at Level IV.

present disposition.³ Code §18A-4-8b(a) instructs as follows:

A county board of education shall make decisions affecting promotion and filling of any classroom teacher's position occurring on the basis of qualifications. If the applicant with the most seniority is not selected for the position a written statement of reasons shall be given to the applicant with the most seniority with suggestions for improving the applicant's qualifications.

It is stipulated that Grievant was the most senior applicant for the position at Poca. After his non-selection therefor, his West Virginia Education Association representative, Susan E. Hubbard, asked Respondent's Superintendent of Schools to provide the referenced "written statement of reasons." The reply, an exhibit at Level II, was,

Dear Susan,

You have requested reasons why David E. Wall was not selected as Poca Middle School principal. First of all, my reading of . . . [W.Va. Code §] 18A-4-8b[(a)] is that a "written statement of reasons" is required for "any classroom teacher's position." The principal's position does not fall within this job category as defined in . . . [W.Va. Code §] 18A-1-1. And secondly, I believe the question properly should originate with Mr. Wall.

However, I have no reason not to relate to Mr. Wall the reasons for his non-selection. Nor do I have reason to doubt that this request did in fact originate with him. Accordingly, I am responding to your letter . . . with a summary of reasons.

About June 18th, Mr. Wall sent me a letter which stated in part that he felt he had not been selected for jobs in the past due to "friendship and politics," and

³ For brief review of certain of the other issues, however, see n. 4, 8.

"because of a definite political situation." He further stated in the same letter that, "to place someone there over me would create a very difficult work situation". . .and, "my effectiveness with the faculty, students and parents would be greatly reduced." The letter also stated that he had, "the support in the people in the community and as you can see. . .the support of the faculty and a . . .[']new board member[']." I saw in this letter some thinly-veiled threats and an effort to use the very power tactics that Mr. Wall speaks against. Enclosed with this letter was a petition signed by about thirty teachers and staff members supporting Mr. Wall and a letter of recommendation from Powell E. Toth. The recommendation was dated May 26. Dr. Toth was elected to the Board of Education this same date for a term beginning July 1st. In addition, I have been informed by Board members of personal solicitations by Mr. Wall. As you know, . . .[W.Va. Code §] 18-4-10 requires that the county superintendent nominate all personnel to be employed. Mr. Wall's attempts to influence a nomination through Board members strikes me as highly improper. Also, his petition was less than professional. I am aware of both community and staff regard for Mr. Wall. I am also aware that several signatories privately disavowed their support for the petition.

There were five applicants for the position in question. Of the five, Mr. Wall was ranked overall No. 4. Two of the candidates withdrew their applications, and among those remaining, Mr. Wall ranked No. 2. I attempted to evaluate the candidates along the following dimensions: (1) Community and faculty leadership, Mr. Wall ranked No. 2. (2) Working with students, Mr. Wall ranked No. 1. (3) Management skills, Mr. Wall ranked No. 2. (4) Plant operations, No. 2, and (5) Curriculum leadership, No. 3.

As usual, we had several candidates qualified to take the job, and the final decision was most difficult.

Sincerely, Sam P. Sentelle, Sup't⁴

⁴ As acknowledged at the Level IV hearing, Superintendent Sentelle was in error in his interpretation
(Footnote Continued)

At Level IV, Dr. Sentelle testified he had received Grievant's June 18 letter, Resp. Ex. 1, and discussed it and his related concerns with members of the Poca principal interview committee prior to its meeting with Grievant. He admitted, however, that he had never informed Grievant of his reaction to the correspondence.⁵ Although Dr. Sentelle emphasized that relative qualifications of the applicants

(Footnote Continued)

that Code §18A-4-8b(a)'s "statement of reasons" requirement does not extend to administrators. See Haines v. Mineral Co. Bd. of Educ., Docket No. 27-87-275-2 (May 26, 1988).

At Level II, Dr. Sentelle admitted he had mistakenly thought the Powell Toth reference was dated May 26, 1989, the "same date" "Dr. Toth was elected to the Board of Education." The letter penned by Dr. Toth on Grievant's behalf was written May 26, 1988, and was related to a post then sought by Grievant, although Grievant apparently had Dr. Toth's permission to use the document generally.

Dr. Sentelle's opinion that Grievant engaged in inappropriate behavior simply by contacting him and Board of Education members is puzzling and troubling. He, Sentelle, bases this conclusion on his statutory prerogative, as county superintendent, to recommend all professional personnel. It would seem that this role, and that of the Board of Education in approving or rejecting all such recommendations, would be a compelling reason for him and Respondent's members to be open to hearing from members of the public, including applicants or potential applicants for positions who well-conduct themselves. As pointed out by Grievant at Level IV, he is at the very least a concerned citizen and the Board of Education is an elected body. It is noted that a county superintendent of schools is also deemed an elected official for certain purposes. See Webb v. Mason Co. Bd. of Educ., Docket No. 26-88-206 (Jan. 5, 1989).

This Decision should not be interpreted to protect applicants from consideration of the manner in which they make contact with persons in positions of authority; nor does it excuse attempts to subvert reasonable hiring procedures or exert improper influences.

⁵ June 18 was before the Grievant's application for Poca; however, it was certainly well after it was generally known the position would be advertised.

was also noted as a reason for Grievant's non-selection, his memorandum to Ms. Hubbard leads to the inescapable conclusion that Grievant's letter was a primary factor. Dr. Sentelle's failure to tell Grievant of his concerns in this regard, in this context, resulted in a denial of due process in a matter related to Grievant's applied-for promotion, a clear violation of W.Va. Board of Education Policy 5300(6)(b).⁶ This is particularly true since a review of Resp. Ex. 1 reveals it to be reasonably interpretable in multiple ways, some of them quite different from that preferred by Dr. Sentelle. At any rate, Grievant was entitled to be advised of these concerns shortly after his application for the Poca principalship was made so that he could, if he wished, explain his point of view thereon.⁷

It is readily apparent the procedures under which the Poca principal was selected were significantly flawed. Further, Respondent professed that, in its view, Grievant was "second in line" behind the successful applicant, Mr. Vernon Goff; therefore, it is reasonable to assume that if the process had not been flawed, Grievant might have been

⁶ "Every employee is entitled to 'due process' in matters affecting his employment, transfer, demotion or promotion."

⁷ The evidence does not reflect that any of Grievant's formal performance evaluations noted any problems similar to those Dr. Sentelle gleaned from Grievant's letter.

selected.⁸ The only alternative available to this Grievance Board is to send this matter back to Respondent for re-evaluation of Grievant and Mr. Goff.⁹

The remainder of this Decision will be presented as formal findings of fact and conclusions of law.

FINDINGS OF FACT

1. Grievant was an unsuccessful applicant for the post of Principal, Poca Middle School.

2. A primary reason he was not selected, as explained in writing by Respondent's Superintendent of Schools, was the content of a letter he, Grievant, had written to the

⁸ A cursory review of the education and work histories of Messrs. Wall and Goff reveal them to be, on the surface at least, somewhat similarly-situated in these aspects of qualifications.

⁹ Grievant adduced testimony to the effect that the former practice in Putnam County was that an assistant principal was rather automatically advanced to the principal's position in his school once a vacancy occurred therein. While he conceded that he should not have been given the Poca job in this "automatic" manner, he did argue that his specific experience at Poca should be afforded some weight. His thoughts in this regard are not without merit.

Grievant also was quite obviously chagrined that he had been "passed over" for the Poca principalship a number of times, once by former Putnam County Superintendent of Schools Herbert Scites, his most recent immediate supervisor. He characterized this and other actions as political in motivation. Even assuming Grievant has been the victim of such or other improper discrimination in prior years, the sole issue in this case is the recent selection of the Poca principal and, therefore, such past injustices, while unfortunate, are irrelevant.

Superintendent some weeks before the application and interview process commenced.

3. Grievant was not advised of the Superintendent's concerns over this letter or given an opportunity to respond thereto. However, the Superintendent had discussed the matter with members of the team interviewing candidates for the Poca vacancy.

CONCLUSIONS OF LAW

1. If a grievant can establish, by a preponderance of the evidence, that a job selection process was flawed to the point that, if the flaw had not been present, he might reasonably have been the successful candidate, he is entitled to at least comparative re-evaluation, with the individual chosen, by the county board of education. See Stover v. Kanawha Co. Bd. of Educ., Docket No. 89-20-75 (June 26, 1989).

2. "Every employee is entitled to 'due process' in matters affecting his . . . promotion." W.Va. Board of Education Policy 5300(6)(b).

3. A county board of education must fill professional vacancies upon the recommendation of its superintendent. Those recommendations must be based primarily upon qualifications. W.Va. Code §18A-4-8b(a); Dillon v. Bd. of Educ. for the Co. of Wyoming, 351 S.E.2d 58 (W.Va. 1986). Only in certain circumstances may evaluative information outside formal performance reviews be considered. See Shaver v.

Jackson Co. Bd. of Educ., Docket No. 18-88-107 (Nov. 7, 1988).

4. In the instant case, Grievant was deprived of due process within the meaning of W.Va. Board of Education Policy 5300(6)(b) by the Superintendent's failure to apprise him of concerns arising from the June 18 letter and allow an opportunity for response, and the Superintendent's subsequent reliance, in part, on those concerns to justify his non-recommendation of Grievant for the Poca principalship.¹⁰

Accordingly, this grievance is **GRANTED** to the extent that Respondent is ordered to re-evaluate Grievant and Mr. Goff promptly and properly under W.Va. Code §18A-4-8b(a) and the instructions of this Decision. If Respondent determines that Grievant is the more qualified applicant, he is entitled to reinstatement as Poca principal and attendant back-pay and -benefits to the beginning of the 1989-90 school term.

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

¹⁰ This Decision should not be read to indicate that a job applicant is entitled to "notice and hearing" on each and every item of information on them that comes before a county board of education. Herein, the June 18 letter was a, if not the, primary reason for Grievant's ill-fated candidacy, and due process protections thus attached.

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. This office should be advised of any intent to appeal so that the record can be prepared and transmitted to the appropriate court.



M. DREW CRISLIP
HEARING EXAMINER

Dated: November 22, 1989