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

GASTON CAPERTON
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BARBARA WILSON

v.

Docket No. 89-50-521

**WAYNE COUNTY
BOARD OF EDUCATION**

D E C I S I O N

Barbara Wilson filed a grievance on June 21, 1989, alleging that Respondent Wayne County Board of Education violated W.Va. Code §18A-4-8b(a) in failing to award her the position of Supervisor of Vocational Education filled June 13, 1989. The grievance was denied at Level II¹ and waived at Level III. It was appealed to Level IV, where a hearing was held September 19, 1989.² Proposed findings of fact and conclusions of law were received from both parties on and before October 20, 1989.

¹The record does not indicate that any decision was made at Level I. It is presumed that no inappropriate bypassing of that level occurred.

²At the hearing the parties agreed that the record below, supplemented by evidence presented at the hearing, would constitute the evidentiary record.

There is little disagreement between the parties on the facts of this matter. Only two applicants were considered for the position,³ Grievant and Arthetta Taylor. In many particulars the history and qualifications of Grievant and Ms. Taylor are similar. Both applicants received bachelor's degrees in home economics in 1971 and both began employment that year with Respondent, working on permit as kindergarten teachers. However, Ms. Taylor graduated in January and was hired in February, while Grievant graduated in June and was hired that month. Both worked as kindergarten teachers through the 1972-1973 school year and thereafter as vocational home economics teachers. Each received a master's degree in 1977. While it was not certain whether Respondent had the most recent statement of Ms. Taylor's salary classification, of record was a 1979 professional certificate stating that she has a master's plus 15, while Grievant has a master's plus 30.

Accordingly, both candidates fulfilled the two required qualifications stated on the description of the job, a master's degree and a minimum of three years' teaching experience in an area of vocational education. Grievant contends, however, that she was the most qualified candidate and indeed the only qualified candidate because only she fulfilled the final, third qualification: "Supervisor's

³There were only three applicants and the third was clearly unqualified for the position.

Certificate or be eligible and make commitment to complete requirements for Supervisor's Certificate."

Neither applicant is certified as a supervisor of instruction. However, Grievant contends and Respondent does not deny that only she was eligible for a temporary license, or permit, for full-time employment as a supervisor of instruction, such as the position at issue here, according to West Virginia Board of Education Policy 5202, which requires for such permit, inter alia, a "master's degree with at least eighteen (18) semester hours of credit applicable to an approved program for general supervisor of instruction," i.e., credit qualifying for certification as a supervisor of instruction. Grievant enrolled in such an approved program at Marshall University in 1986 and her application for the supervisor position stated that she had completed 21 hours of credit qualifying for certification.⁴ Ms. Taylor's application did not state she had any qualifying credit; her cover letter simply stated that she "would make a commitment to complete the requirements necessary for a Supervisor's Certificate." At hearing Respondent conceded that Ms. Taylor had only 6 hours of qualifying coursework. Mr. Michael Ferguson, Superintendent of Wayne County

⁴At the Level IV hearing she testified that she was later notified that an additional course she had taken also was qualifying and therefore she actually had 24 qualifying hours. She also stated that she will have completed the 33 hours of qualifying coursework needed for certification by the end of the Spring Semester 1990.

Schools, also testified that Policy 5202 mandates that an individual filling the Supervisor of Vocational Education position be either certified or eligible for a permit and Ms. Taylor's qualifications fulfilled neither requirement.

Mr. Jim Hale, Director of Vocational Education for Respondent, who reviewed the applications and interviewed the applicants, testified that Ms. Taylor pointed out to him that she had experience supervising adults, having worked with the cooks in organizing food service. Thinking that that experience of Ms. Taylor's balanced out Grievant's greater coursework, he advised Superintendent Ferguson that the two candidates were equally qualified.⁵ Mr. Ferguson in turn accepted that recommendation that the applicants were equally qualified, and, ascertaining that Ms. Taylor had 16½ years seniority to Grievant's 16, he awarded the job to Ms. Taylor based on that seniority. He relied on the decision of Dillon v. Bd. of Educ. of Co. of Wyoming, 351 S.E.2d 58 (W.Va. 1986), where it was held,

Under W.Va. Code, 18A-4-8b(a)(1983), decisions of a county board of education affecting teacher promotions and the filling of vacant teaching positions must be based primarily upon the applicants' qualifications for the job, with seniority having a bearing on the selection process when the applicants have otherwise equivalent qualifications or where the differences in qualification criteria are insufficient to form the basis for an informed and rational decision.

⁵Mr. Hale admitted he had no expertise in certification and did not know about Policy 5202 at the time of his recommendation.

Syl. Pt. 1.

Respondent contends in its proposed conclusions of law that the requirements of Policy 5202 are arbitrary and capricious and not mandated by statute.

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

Conclusions of Law

1. "A county board of education shall make decisions affecting promotion and filling of any classroom teacher's position occurring on the basis of qualifications." W.Va. Code §18A-4-8b(a).

2. "Subject to and in conformity with the constitution and laws of this State, the state board of education shall determine the educational policies of the State and shall make rules for carrying into effect the laws and policies of the State relating to education[.]" W.Va. Code 18-2-5. See also W.Va. Code §18-2-6(a). "The determination of the educational policies of the public schools of the State is vested in the West Virginia Board of Education, and, unless unreasonable or arbitrary, its actions relating to such policies will not be controlled by the courts." Detch v. Bd. of Educ., 145 W.Va. 722, 117 S.E.2d 138 (1960), Syl. Pt. 1.

3. There is no showing that, in promulgating Policy 5202 and requiring 18 hours of qualifying coursework for an

individual to be eligible for a temporary license, or permit, to work as a supervisor of instruction, the state board of education exceeded its authority or abused its discretion, for the policy is not unreasonable or arbitrary. See Detch.

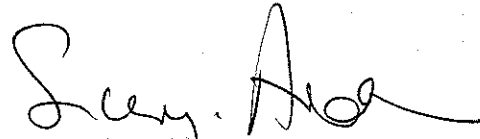
4. Since no applicant was certified as a supervisor of instruction and Grievant was the only candidate eligible for temporary license, or permit, as a supervisor of instruction, she was the only qualified applicant for the position of Supervisor of Vocational Education.⁶

Accordingly, the grievance is **GRANTED**. Respondent is hereby **ORDERED** to instate Grievant into the position of Supervisor of Vocational Education and to provide her back pay less appropriate set-off.

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

⁶In any case, even if Ms. Taylor were not disqualified from the position by her ineligibility for a permit, Grievant's eligibility therefor would render her the most qualified candidate. See Dillon.

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, appearing to read "Sunya Anderson", written over a horizontal line.

SUNYA ANDERSON
HEARING EXAMINER

Dated: November 3, 1989