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EARNEST BAILEY

v.

Docket No. 33-88-236

MCDOWELL COUNTY BOARD OF EDUCATION

DECISION

Grievant, Earnest Bailey, is employed by the McDowell County Board of Education (Board) as a teacher at Iaeger High School. He filed a grievance on October 17, 1988 alleging the Board had improperly denied him the position of principal at Panther Elementary School. Grievant's supervisor responded that he had no authority to resolve the grievance and it was denied following a Level II hearing held October 24, 1988. The Board affirmed the Level II findings on November 22, 1988 and a Level IV hearing was held March 21, 1989. The grievant submitted proposed findings of fact and conclusions of law by March 31, 1989. To date the Board has not submitted any such proposals.

On September 16, 1988 the Board posted the position in question. Required qualifications were a valid administrative certificate, grades K-8, and "training and experience in the Effective School Program". Seven persons, including the grievant, made applications and Mr. Kenneth Roberts, Superintendent of Schools, conducted an interview of each in which he posed

eleven (11) open-ended questions. Mr. Roberts reviewed the applicant's responses to these questions, their past administrative experience, seniority and completion of requirements for principal's certificates before making a recommendation that Ms. Betty Williams be awarded the position. The Board ultimately accepted that recommendation.

Grievant contends he and Ms. Williams are equally qualified and the Board should have awarded him the position because of his greater seniority. The Board simply maintains Ms. Williams was the more qualified applicant and, although Mr. Roberts considered seniority in his determination, it was not the controlling factor. The only evidence offered by grievant in support of his contention consists of summaries of his qualifications and those of the successful applicant.

Grievant holds a Masters degree plus thirty (30) hours and is certified to teach several subjects. He taught either on the junior high or high school level from 1964 until 1972, at which time he became principal at Davy Elementary. Grievant held that position until 1975 when he became principal of Panther Elementary, a position he held for seven (7) years. In 1982 he engaged in a private business enterprise but returned to teaching at the beginning of the 1983-84 school term and has since been assigned to either Iaeger Intermediate or Iaeger High School. Grievant holds a valid administrative certificate, grades 1 through 9, which was issued July 1, 1975.

Ms. Williams has taught on the elementary level for approximately thirteen (13) years and also holds a Masters degree and

an administrative certificate, grades 1 through 9. She served as principal of Coalwood Elementary during the 1985-86 and 1986-87 school terms. At the end of the 1986-87 term she was transferred to a teaching position due to a reduction-in-force (RIF) of principals in McDowell County which was necessitated by the closing of a school.

According to the testimony of Mr. Roberts, his determination that Ms. Williams was the most qualified was made after consideration of many factors, including seniority, training, impressions gained through the interviews and the applicants' knowledge of and experience with a program called the "Effective School Movement" (ESM). Mr. Roberts defined ESM as a program in which a school's basic teaching philosophy is clearly identified and high academic achievement is stressed. The implementation of such a program apparently requires some structured training for both teachers and principals. Mr. Roberts noted that Ms. Williams' training was more current and extensive and that, as a principal at Coalwood, she had overseen the introduction of the program there. Mr. Roberts stressed that no one aspect of the applicants' qualifications was given any particular weight and Ms. Williams' more recent experience with the program and as a principal were just two of many considerations, including her recent loss of a principal's position in a RIF.¹ Grievant

¹At Level II Mr. Roberts responded in the negative when specifically asked if a State Superintendent of Schools' opinion which stated RIF'd school principals should be
(Footnote Continued)

concedes he has completed less training in ESM than Ms. Williams and that his experience with its implementation was limited to the teaching level but contends he has achieved such training and experience as his past schedules and positions would permit.

In addition to the foregoing, the following findings of fact and conclusions of law are made.

FINDINGS OF FACT

1. Grievant, a teacher employed by the McDowell County Board of Education, was one of seven persons applying for the posted position of principal at Panther Elementary School.

2. Mr. Kenneth Roberts, Superintendent of Schools, conducted interviews of all applicants, reviewed personnel files and, after a comparative assessment of said applicants' qualifications and responses to questions posed during the interviews, concluded Ms. Betty Williams was the most qualified. The Board subsequently accepted Mr. Roberts' recommendation that Ms. Williams be awarded the position.

(Footnote Continued)

placed on preferred recall lists and given preference in hiring for administrative positions, was the determining factor in his decision. The Board has made no contention that it was required to grant Ms. Williams the position in question according to law applicable to RIF's of principals and grievant has made no allegation Mr. Roberts' considerations in this regard were improper. No information was offered concerning the actual circumstances of the RIF except that it was due to a school closing. Accordingly, the question of whether the Board had any obligations to Ms. Williams regarding the position is not addressed herein.

3. Grievant is more senior than Ms. Williams but not the most senior of the applicants.

4. Grievant offered no evidence of the qualifications or seniority of the remaining five (5) applicants.

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 County Board of Education, Docket No. 33-88-130 (August 19, 1988); Andrews v. Putnam County Board of Education, Docket No. 40-87-330-1 (June 7, 1988).

2. W.Va. Code §18A-4-8b(a) requires that decisions of a county board of education affecting the filling of vacant professional positions 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. Dillon v. Board of Education of the County of Wyoming, 351 S.E.2d 58 (W.Va. 1986).

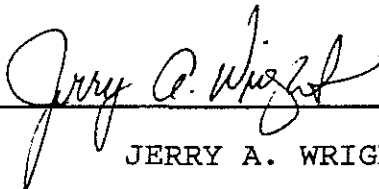
3. County boards of education have substantial discretion in matters relating to the hiring and assignment of school personnel but the discretion must be exercised reasonably, in the

best interests of the school system and not in an arbitrary or capricious manner. State ex rel. Hawkins v. Tyler County Board of Education, 275 S.E.2d 908, 911 (W.Va. 1980); Dillon.

4. While grievant has established that he has served as principal for more years than the successful applicant, he has not proven that such experience alone makes his overall qualifications equal to those of Ms. Williams or that Mr. Roberts did not conduct a fair and equitable assessment of the qualifications of all applicants before reaching his conclusion that Ms. Williams should be awarded said position.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of McDowell County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of said 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.


JERRY A. WRIGHT

Chief Hearing Examiner

Dated: July 5, 1989