



REPLY TO:
111 - 19th Street
Wheeling, WV 26003
Telephone: 238-1040

Members
James Paul Geary
Chairman
Orton A. Jones
David L. White

**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**
GASTON CAPERTON
Governor

Offices
240 Capitol Street
Suite 515
Charleston, WV 25301
Telephone 348-3361

JAMES RUSSELL

v.

Docket No. 89-09-297

DODDRIDGE COUNTY BOARD OF EDUCATION

DECISION

Grievant James Russell has been employed by respondent Doddridge County Board of Education (DCBE) as a senior high school guidance counselor for approximately nineteen years. On May 22, 1989 he filed this grievance:

I was the most senior and most qualified applicant for the position "Coordinator of Supportive Services." I was not selected for the position. Remedy: Vacate the position and name me The employment term begins July 1, 1989; should this not be resolved by then, award me back pay and benefits from that date.

The record does not indicate a level one response, but grievant did not prevail at levels two and three¹ and advanced his complaint to level four in July 1989. After continuances for cause

¹Two hearings of record were conducted, a level two hearing, T2., and a level three hearing, T3., on June 2 and 15, 1989, respectively.

shown of several scheduled hearings, the matter was heard September 6, 1989. Submissions of fact-law proposals were completed by the parties on October 31, 1989.

The 261-day professional Coordinator of Support Services position² was posted in early April 1989. According to the posting, salary determinations would be based on the successful applicant's certification and experience. A bachelor's degree

²The parties did not contend or argue that the position, as posted, was anything but a professional position, and the undersigned has no reason to believe otherwise. W.Va. Code §18A-1-1 includes the following definitions:

(a) "School personnel" shall mean all personnel employed by a county board of education School personnel shall be comprised of two categories: professional personnel and service personnel.

(b) "Professional personnel" shall mean persons who meet the certification and/or licensing requirements of the State, and shall include the professional educator and other professional employees.

(c) "Professional educator" shall be synonymous with and shall have the same meaning as "teacher" Professional educators shall be classified as:
. . . .

(3) "Supervisor": The professional educator who, whether by this or other appropriate title, is responsible for working primarily in the field with professional and/or other personnel in instructional and other school improvement.

(4) "Central office administrator": The superintendent, associate superintendent, assistant superintendent, and other professional educators, whether by these or other appropriate titles, who are charged with the administering and supervising of the whole or some assigned part of the total program of the county-wide school system.
. . . .

(Footnote Continued)

and "demonstrated aptitude of assigned performance responsibilities" were required and enumerated:

1. Transportation
2. Attendance (must be certified or agree to become certified)
3. Textbook inventory, distribution and collection
4. County inventory of school property
5. Asbestos Manager - (if not certified must agree to attend training sessions and become certified)
6. Such other responsibilities as the Superintendent and/or Board may find appropriate and acceptable

Grievant was a twenty-one and one-half year professional employee when he applied for the position. DCBE selected Roger Bell, a twenty-year professional employee, instead.

According to the record, grievant has an A. B. degree in English and social studies and M. A. degrees in counseling and guidance and education administration. He holds certification, 7-12, in the two subject-matter areas, counseling and guidance and as a secondary school principal. Prior to his counseling assignment, grievant was a secondary classroom teacher for two years. He has also acted as a part-time curriculum coordinator

(Footnote Continued)

(e) "Service personnel" shall mean those who serve the school or schools as a whole, in a nonprofessional capacity, including such areas as secretarial, custodial, maintenance, transportation, school lunch, and as aides.

Some service positions appear to entail managerial or supervisory responsibility, e.g., Code §18A-4-8 describes "Director or Coordinator of Services" to be "personnel not defined as professional personnel or professional educators . . . who are assigned to direct a department or division." In this case it is determined that DCBE defined the Coordinator of Supportive Services position at issue as a central office administrative position per Code §18A-1-1(4). See T2.9 and T3.8,9 (applicants questioned at interview about serving on the "administrative team").

For the Upward Bound program at Salem College since 1979. Additionally, during the 1970s he taught remedial reading in an Upward Bound project and instructed psychology classes off-campus at Parkersburg Community College. Grievant belongs to a number of professional and civic organizations and has maintained a high level of participation in professional activities such as committee-work and the like. In 1989 he had a counseling article published in an educational journal.

Roger Bell has a B. S. + 15 and is certified in secondary health, safety studies and physical education and 7-9 certification in social studies. Mr. Bell belongs to a few organizations and has served on committees over the years. He initially served two years as teaching principal and two as principal at two elementary schools where he supervised a staff of seven and fifteen, respectively. In 1973, he joined the staff at Doddridge County High School and taught in his disciplines, instructed evening adult drivers' education for several years, and coached boys' basketball and football. During this time he attended a bus driver training session. In 1988-89 he was employed as Athletic Director and Attendance Monitor but retained three safety-drivers education classes at the high school. He supervised eight coaches, managed all athletic programs and worked with the boosters club. As attendance monitor he kept pertinent records and worked with various relevant persons to encourage school attendance.

Grievant claimed that his counseling and education administration courses and supervisory experiences with Salem's

Upward Bound program, among other things, are superior to Mr. Bell's supervisory training and experiences and better enable him to perform the responsibilities of Coordinator. Conversely, DCBE urged that Mr. Bell's training, background and experiences as principal, drivers' education teacher for both youth and adults, bus drivers' trainer, coach, athletic director and attendance monitor are more specific to the responsibilities of the posted position.

There is no evidence in this record that DCBE has acted improperly or abused its discretion to select the most qualified candidate for the professional position of Coordinator of Supportive Services.³ While grievant may hold advanced degrees, none was required. Neither candidate met the Asbestos Manager certification, but Mr. Bell had more experiences in the safety and driving areas relevant to the transportation duties and moreover had acted as high school attendance monitor for a year.

Grievant's related issue, that he was the most senior applicant and did not receive a letter stating how he could improve his qualifications, has merit. W.Va. Code §18A-4-8b(a)

³While neither party claimed the position was not a professional position, and in fact grievant urged that it was such, DCBE's counsel pursued a new post-hearing theory. In a rebuttal brief, DCBE's counsel inexplicably argued that, even if grievant and Mr. Bell were equally qualified, DCBE would not have to hire the most senior professional employee for "extracurricular jobs." Nothing in the record indicates that the coordinator's position was an extracurricular assignment as contemplated by the parties or Code §18A-4-16; therefore, counsel's statement on that matter has not been regarded or addressed herein.

which mandates that boards of education employ the most qualified applicant for professional positions also provides in pertinent part:

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.

DCBE did not deny that grievant was the most senior applicant. While DCBE sent him a statement of reasons why he was not employed, it erred when it did not provide him with suggestions for improving his qualifications as per the statute.

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

FINDINGS OF FACT

1. Grievant applied for but was not selected as DCBE's Coordinator of Supportive Services, an administrative, professional position, according to the evidence of record.

2. The posting clearly indicated the necessary job qualifications and position responsibilities including transportation, inventory and distribution, attendance and asbestos management, all of which DCBE considered in filling the position.

3. Grievant had attained excellent academic credentials and other non-public school educational experiences but had never served in DCBE's schools in any administrative capacity.

4. Roger Bell, the successful candidate, had taught student and adult driving, served as an administrator in DCBE's schools and attained relevant experiences closely aligned to the responsibilities of the coordinator position.

CONCLUSIONS OF LAW

1. It is incumbent upon the grievant to prove the allegations of the complaint by a preponderance of the evidence. Payne v. W.Va. Department of Energy, Docket No. ENGY-88--15 (Nov. 2, 1988).

2. A county board of education is obligated to fill a vacant professional position with the most qualified applicant therefor. W.Va. Code §18A-4-8b(a); Dillon v. Bd. of Educ. of the Co. of Wyoming, 351 S.E.2d 58 (W.Va. 1986). The statute also provides that the most senior applicant not selected must be given a written statement of reasons with suggestions for improvement.

3. Grievant has not proven by a preponderance of the evidence that DCBE erred in its determination that Roger Bell was the most qualified applicant for Coordinator of Supportive Services. Nor has grievant established any other flaw in the selection process.

Accordingly, the grievance is **DENIED** as to the position grievant seeks. However, the Doddridge County Board of Education is **ORDERED** to furnish grievant a written statement with suggestions for improving his qualifications for Coordinator of Supportive Services.

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

DATED: December 8, 1989


NEDRA KOVAL
Hearing Examiner