



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

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

REPLY TO:
407 Neville Street, Suite 120
Beckley, WV 25801
Telephone: 256-6855
ON NET: 557-6855

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

GLEN TYREE

v.

Docket No. 89-45-516

NICHOLAS COUNTY BOARD OF EDUCATION

DECISION

Grievant, Glen Tyree, is employed by the Nicholas County Board of Education (Board) as principal of Craigsville Elementary School (CES). He initiated a grievance at Level I May 23, 1989, protesting his non-selection for the position of principal at Summersville Elementary School (SES). Grievant's supervisor was without authority to grant relief and, upon appeal to Level II, the grievance was denied following hearing held July 13, 1989. The Board waived Level III proceedings August 17, 1989, and appeal to Level IV was made August 31, 1989, where hearing was held October 6, 1989. The parties submitted proposed findings of fact and conclusions of law by October 30, 1989.

The principalships at SES and CES became vacant at the end of the 1988-89 school term and grievant made applications for both, noting that SES was his preference. He was aware of the impending vacancy at SES prior to the posting of the position and expressed his desire in the job to both Mr. James Marsh,

Assistant Superintendent of Schools, and Superintendent of Schools Robert Bailey. Grievant was afforded an interview with both after he made application. The position was ultimately awarded to Mr. Terry Lewis. Grievant was awarded his current position at CES, his second preference. He requested and was furnished a statement of reasons why he was not selected, in which Mr. Bailey noted that it was the opinion of Mr. Marsh and himself that Mr. Lewis was the more qualified applicant for a number of listed reasons. Grievant was advised to work on advanced certification and be more innovative in his efforts to improve his instructional programs.

Grievant contends he was more qualified than Mr. Lewis and the Board's decision was, therefore, violative of W.Va. Code §18A-4-8b(a) and the holdings in Dillon v. Board of Education of the County of Wyoming, 351 S.E.2d 58 (W.Va. 1986). Alternatively he asserts he was at least as equally qualified as Mr. Lewis and the Board erred in not granting him the position on the basis of his greater seniority.¹ Id.

The Board maintains the decision to award Mr. Lewis the position was the result of a fair and unbiased assessment of qualifications. The Board also asserts that its action should not be disturbed in the absence of any evidence that it was arbitrary or capricious, citing Hawkins v. Tyler County Board of

¹This assertion was first raised in grievant's post-Level IV hearing submissions. Due to the outcome herein, it is not necessary to address the question of whether the issue can be raised in such a manner.

Education, 275 S.E.2d 908 (W.Va. 1980) and Tenney v. Barbour County Board of Education, Docket No. 01-87-166-2 (November 13, 1987). The record as a whole supports the Board's position.

Grievant has achieved an impressive employment history with the Board. He began as a teacher at Zela Grade School (ZGS) in 1969 and became principal at Fleger Ridge Grade School (FRGS) in 1970. From 1971 to 1973, he was principal at Mt. Nebo Grade School. From 1973 to 1975, he served as principal at both Canvas and Mt. Lookout Grade Schools (MLGS). From 1975 until his reassignment to CES, he was principal at Birch River Grade School. Grievant holds a Bachelor of Arts degree and professional teaching certificates in elementary education, grades 1-8, social studies, grades 1-9, and health and physical education, grades 1-9. He was awarded a Masters degree in elementary administration in 1974 and has achieved fifteen additional college hours.

Mr. Lewis has similarly acquired a notable record. He was a classroom teacher at MLGS from 1973 to 1975 and teaching principal at FRGS from 1975 to 1976. He served in that same capacity at Canvas Grade School from 1976 to 1978. From 1978 until he was awarded the position in question, Mr. Lewis served as principal at ZGS. He also holds a Masters degree but has achieved an additional thirty college hours. Mr. Lewis holds the same teaching certificates as grievant.

The primary focus in a case in which one applicant alleges his or her qualifications are greater than those of the successful applicant for a position, is upon the process used to make

the selection. Harrison v. Wyoming County Board of Education, Docket No. 89-55-500 (December 29, 1989); Stover v. Kanawha County Board of Education, Docket No. 89-20-75 (June 26, 1989). A comparison of credentials is relevant to the extent that it may reveal wide disparities which might be indicative of an inadequate or biased assessment on the part of school officials. Harrison; Surber v. Greenbrier County Board of Education, Docket No. 89-13-233 (November 20, 1989). A review of the backgrounds of grievant and Mr. Lewis leads to no such inference. Both are comparable in terms of academic and work-related achievements. The evidence also does not reveal significant flaws in the process utilized to fill the position.

In this regard, grievant specifically alleges the Superintendent placed an inordinate amount of emphasis on Mr. Lewis' greater number of college hours above his Masters degree and afforded insufficient weight to his, grievant's, greater number of years as a principal. The testimony of Mr. Bailey and that of Mr. Marsh, at both Levels II and IV, however, reveals this was not the case. Both testified that evaluations,² administrative

²There was considerable discussion at Level IV over Mr. Bailey's assertion in his May 18, 1989 letter to grievant that Mr. Lewis' evaluations were higher. Mr. Marsh testified that principals submitted self-evaluations to his office on a yearly basis which he reviewed and either upgraded or downgraded their assessments in particular categories. Neither grievant's or Mr. Lewis' evaluations were downgraded during the past several years and, while Mr. Lewis tended to be somewhat more critical of himself, it could reasonably be concluded that he had achieved slightly higher ratings from Mr. Marsh. Moreover, there was no

(Footnote Continued)

experience, impressions gained through the interviews and personal knowledge of the achievements of the applicants were all considered before the recommendation of Mr. Lewis was made. There was some indication that the fact that grievant had not sought additional college hours since 1974 was held to be of some significance but that it was only one of several factors. Grievant essentially cited no other flaw in the selection process and it can only be concluded from the evidence that the selection was, as both Mr. Marsh and Mr. Bailey asserted, a most difficult one but one which was accomplished after an extensive and unbiased assessment of credentials.

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

FINDINGS OF FACT

1. Grievant applied for principal positions at Summersville Elementary School and Craigsville Elementary School on or about April 6, 1989, indicating the Summersville position to be his preference.

2. After conducting interviews of the applicants and reviewing pertinent personnel information, Mr. James Marsh, Assistant Superintendent of Schools, and Mr. Robert Bailey,

(Footnote Continued)

evidence presented to show that this conclusion was afforded more weight than other facts of the applicants' backgrounds and was one of three reasons given by Mr. Bailey for recommending Mr. Lewis.

Superintendent of Schools, concluded that grievant and Mr. Terry Lewis were the two top candidates and that Mr. Lewis was the more qualified of the two. The Board accepted Mr. Bailey's recommendation that Mr. Lewis be awarded the position.

CONCLUSIONS OF LAW

1. A county board of education is obligated to fill a vacant professional position with the most qualified applicant therefor. Dillon v. Board of Education of the County of Wyoming, 351 S.E.2d 58 (W.Va. 1986); Surber v. Greenbrier County Board of Education, Docket No. 89-13-233 (November 20, 1989).

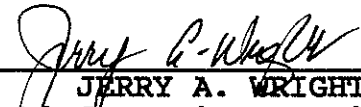
2. The grievance procedure, Code §§18-29-1, et seq., is not intended to be a "super-interview" for unsuccessful job applicants; rather, in this context, it allows analysis of the legal sufficiency of the selection process at the time it occurred. If the decision was properly based on the information then available to the board of education, and the process was not flawed to the point that the outcome might reasonably have been different otherwise, the hiring will be upheld. Harrison v. Wyoming County Board of Education, Docket No. 89-55-500 (December 29, 1989); Stover v. Kanawha County Board of Education, Docket No. 89-20-75 (June 26, 1989).

3. Grievant has not proven, by a preponderance of the evidence, Lockhart v. McDowell County Board of Education, Docket No. 89-33-362 (December 14, 1989), that the Board erred in its

determination that Mr. Terry Lewis was the more qualified applicant for the position in question. Nor has he established any significant other flaw in the selection process. The recommendation of Mr. Bailey was a well-reasoned decision based on an extensive review of the qualifications of all applicants.

Accordingly, the grievance is **DENIED**.

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


JERRY A. WRIGHT
Chief Hearing Examiner

Dated: November 29, 1989