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

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ALAN ALBERCHINSKI

v.

Docket No. 89-27-579

**MASON COUNTY
BOARD OF EDUCATION**

D E C I S I O N

Grievant, a professional employee of Respondent Mason County Board of Education, filed a grievance July 13, 1989, alleging, "Another applicant was approved as principal of Point Pleasant Junior High School [Point Pleasant]. I meet the posted qualifications and am the most seniored applicant[,] and requesting instatement to the position. The grievance was denied at Levels II and III, and the claim was advanced to Level IV September 29, 1989, where hearing was held November 13, 1989. With receipt of proposed findings of fact and conclusions of law from both parties on and before December 12, 1989, along with a brief from Respondent, this matter may be decided.

The April 1989 posting for the position required as "qualifications" that the applicant be "Certified in administration by the State of West Virginia as a Principal, Elementary/Jr High 1-9 or Principal, Jr/Sr High 7-12." Grievant began his employment with Respondent in 1969 as an

elementary teacher, teaching on permit the first two years since his undergraduate degree was in accounting, with a minor in economics. He became a teaching principal at Beale Elementary School in 1971 and in 1974 Principal at North Point Elementary School, where he remained at the time of the posting of the Point Pleasant principalship.¹ In 1974 he attained a master's degree and administrative certification, Elementary/Junior High 1-9.² While the record is not as complete about Mr. Richard Haycraft, who was selected for the position, it establishes that he was first employed by Respondent as a teacher in 1967 at Hannan High School, where he became Principal in 1974, after receiving administrative certification for Junior/Senior High School 7-12 in 1973. Rick P. Powell, Superintendent of Mason County Schools, who recommended to Respondent that Mr. Haycraft be given the position, testified without contradiction that at the time of the posting Mr. Haycraft was Co-Principal of Point Pleasant and also had been "chief administrator of the vocational center" and had been Special Education P.A.C. Coordinator/Administrator during the 1987-88 school year.

Throughout these proceedings Grievant has contended that he was the more senior applicant for the position and

¹Since August 1989 he has been Assistant Principal at Point Pleasant.

²Prior to passage of W.Va. Code §18A-2-9 in 1975 principals were not required to have administrative certification.

that he was therefore entitled to it since he was qualified.³ Respondent contends that, whether or not Grievant was more senior than Mr. Haycraft,⁴ Grievant is not entitled

³In Grievant's proposed conclusions of law is the further contention that "the Mason County Board of Education was required to make the decision 'on the basis of seniority, qualifications and evaluations of past service[,]'" citing W.Va. Code §18A-4-8b, and also that that provision "defines qualifications for the purposes of making decisions on personnel positions as: 'that the applicant holds a classification title in his category of employment as provided in this section and must be given first opportunity for promotion in filling vacancies.'" Grievant is quoting from W.Va. Code §18A-4-8b(b), which relates only to the filling of service positions, not professional positions such as involved here. The complete sentence Grievant partially quotes is as follows:

A county board of education shall make decisions affecting promotion and filling of any service personnel positions of employment or jobs occurring throughout the school year that are to be performed by service personnel ... on the basis of seniority, qualifications and evaluation of past service.

The pertinent provision is W.Va. Code §18A-4-8b(a), which provides in pertinent part, "A county board of education shall make decisions affecting promotion and filling of any classroom teacher's position occurring on the basis of qualifications." It should also be noted that the only classification titles provided by the statute are for service positions.

⁴Counsel for Respondent explained that it felt compelled to consider Grievant the more senior applicant under Martin v. Mason Co. Bd. of Educ., C.A. No. 87-C-245 (Mason Co. Cir. Ct. May 11, 1989), which held that, if an individual became an administrator prior to being administratively certified, his seniority thereas accrues from when he became an administrator. Counsel explained that Respondent had appealed Martin, however, and its view otherwise is that seniority as an administrator begins with receipt of administrative certification. While the outcome of this matter is not affected by whether Grievant or Mr. Haycraft had greater seniority, this Grievance Board has held that the seniority pertinent to filling vacant

(Footnote Continued)

to the position because Mr. Haycraft was more qualified. Both parties rely on Dillon v. Bd. of Educ. of the Co. of Wyoming, 351 S.E.2d 58 (W.Va. 1986). Grievant correctly quotes from Dillon,

[W]here several applicants have the same or similar qualifications, there is no rational basis for selecting one applicant over the others except seniority. In such circumstances, the statute, in effect, establishes a presumption that the applicant with the most seniority is more qualified,

351 S.E.2d at 62, but misconstrues it when arguing that Grievant was the "most senior applicant and therefore ... the more qualified applicant." Grievant fails to recognize that the "presumption" arises and seniority is the determinative factor only

when the applicants for a promotion or a vacant teaching position are otherwise so similarly qualified as to make a rational choice among the candidates impossible. ... [T]he statute clearly contemplates that if one candidate for a teaching position is clearly more qualified, the seniority of another applicant will not be sufficient to justify denying the position to the more qualified applicant.

Id. Grievant's contention that he was entitled to the position on the basis of seniority is accordingly rejected.

(Footnote Continued)

professional positions accrues from the initial date of hiring as a professional, Worley v. Wyoming Co. Bd. of Educ., Docket No. 55-88-035-4 (July 13, 1988), see also Proctor v. Putnam Co. Bd. of Educ., Docket No. 40-88-182 (Feb. 1, 1989). Recently the West Virginia Supreme Court of Appeals, in Johnson v. Cassell, No. 18993 (Dec. 5, 1989), has clarified in dictum that seniority "as an in-county employee" is the proper consideration for professional personnel. Under that standard Mr. Haycraft had greater seniority than Grievant since he was hired as a teacher two years earlier.

Mr. Powell testified that his primary reasons for finding Mr. Haycraft the more qualified candidate were that he had extensive graduate work relative to the assignment, having 30 hours of graduate work beyond a masters degree, while Grievant only had a masters, and that Mr. Haycraft's administrative experience was greater. He also noted that Mr. Haycraft was already Co-Principal of the school and that his National Teachers Examination scores were higher than Grievant's. Regarding Mr. Powell's consideration of the applicants' qualifications, Grievant argues as follows:

When reviewing applicants' qualifications for an opening under §18A-4-8b, a Board of Education may only consider those qualifications of the applicants that are delineated by the position announcement. Thus, in Dillon, the Supreme Court concluded that it was inappropriate for the Board of Education to consider "qualifications" other than those contained in the job posting. "If there were additional qualifications necessary for the vacant position, they should have been posted in the position announcement. ... The addition of requirements, not specified in the notice of a vacant position, after all the applications have been received is unfair to those who have applied in reliance upon the criteria described in the notice." Dillon, 351 S.E.2d at 62-62 fn.6.

Grievant argues that, since he and Mr. Haycraft both met the certification qualification, they were similarly qualified, and he was entitled to the job on the basis of seniority. He also asserts that the qualifications considered were "largely irrelevant to being a principal of a junior high school."

Again Grievant misconstrues Dillon. The Court was simply stating that, if a certain qualification was "necessary for the vacant position," i.e., if an applicant who

lacked the same was not at all suited for the position, such criteria should be on the posting. It certainly did not prohibit consideration of qualifications other than those listed on the notice;⁵ indeed, it castigated the members of the board of education in that case for failing to "investigate and evaluate the qualifications, credentials, education and experience of the respective candidates for the vacant position before rendering their decision." 351 S.E.2d at 63.⁶ Grievant also failed to establish any abuse of discretion in Mr. Powell's consideration of the candidates' qualifications.

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

Conclusions of Law

1. It is incumbent upon a grievant to prove the allegations of his or her complaint by a preponderance of the evidence. Hanshaw v. McDowell Co. Bd. of Educ., Docket

⁵The court states, "The notice specified that to be eligible for the position, applicants were required to possess a valid West Virginia teaching certificate in the language arts area." 351 S.E.2d at 59.

⁶In a later decision, State ex. rel. Oser v. Haskins, 374 S.E.2d 184 (W.Va. 1988), the Court found it arbitrary and capricious for a board of education to fail to compare applicants' qualifications, including their experience.

No. 33-88-130 (Aug. 19, 1988); Andrews v. Putnam Co. Bd. of Educ., Docket No. 40-87-330-1 (June 7, 1988).

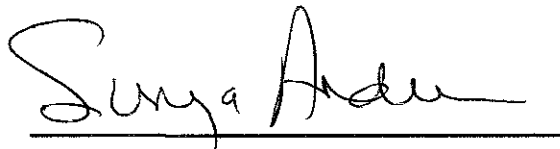
2. Grievant's contention that, because he was more senior and was qualified for the position of Principal of Point Pleasant Junior High School, he was entitled to the position, is rejected. "Under W.Va. Code, 18A-4-8b(a) (1983), decisions of a county board of education affecting teacher promotions and 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." Dillon v. Bd. of Educ. of the Co. of Wyoming, Syl. Pt. 1, 351 S.E.2d 58 (W.Va. 1986). "A county board of education in West Virginia is obligated to hire the most qualified candidate for a professional position." Kizer v. Roane Co. Bd. of Educ., Docket No. 44-88-143 (Jan. 12, 1989).

2. It was not contrary to Dillon for the superintendent to consider qualifications other than the administrative certification required by the posting when determining that Mr. Haycraft was the most qualified applicant for the principalship of Pt. Pleasant Jr. High School and so recommending to Respondent. "County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel.

..." Dillon, Syl. Pt. 2. Grievant did not establish any abuse of discretion in the selection of Mr. Haycraft as Principal of Point Pleasant Junior High School.

Accordingly, the grievance is **DENIED**.

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

A handwritten signature in cursive script, reading "Sunya Anderson", is written over a horizontal line.

**SUNYA ANDERSON
HEARING EXAMINER**

Dated: January 18, 1990