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**ROSEMARIE BAYZA**

**v.**

**Docket No. 89-25-538**

**MARSHALL COUNTY BOARD OF EDUCATION**

**D E C I S I O N**

Grievant Rosemarie Bayza filed the following grievance at level four in late September 1989 when she was not selected by respondent Marshall County Board of Education (MCBE) for a full-time teaching position:

The Marshall County School Board, upon the recommendation of Cameron High School Principal, Mr. Ronald Trowbridge, hired Mr. William Dudas to fill the English vacancy at Cameron High School. Mr. Dudas, a substitute, has only 1½-2 years of experience in the county, whereas, the grievant, Rosemarie K. Bayza, has fourteen years of substitute teaching experience in the county. Because of my past teaching experience within Marshall County, I feel that I am the more qualified person for this position.

A hearing set for October 10, 1989, was cancelled at the grievant's request that the matter be decided on the record developed below and supplemental evidence gathered in

preparation for the hearing, and MCBE agreed to the arrangement.<sup>1</sup> The parties' submissions of fact-law proposals were completed by November 8, 1989.

There is no dispute about the underlying facts in this grievance. Eileen Carey, the incumbent 12th-grade English teacher at Cameron High School (CHS) retired effective the end of the 1988-89 school year, and the vacancy was posted late Spring 1989. Grievant and Mr. Dudas were the only applicants. Mr. Dudas' subsequent employment was effected on Principal Trowbridge's sole recommendation to MCBE's superintendent following interviews of the candidates.

Grievant has a twenty-three-year teaching history and currently possesses a permanent West Virginia teaching certificate in secondary English. Prior to her marriage and relocation to Cameron, West Virginia, in the early 1970s, she taught for nine years in Pennsylvania secondary schools on a regular full-time basis. Due to family commitments grievant sought only substitute teaching in the Cameron area when she initiated her teaching tenure with MCBE in the 1974-75 school year. Over a fifteen-year span grievant taught in excess of 980 days which, according to her, equals 4.9 years seniority based on a 200-day school year. Grievant taught in her subject area and various

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<sup>1</sup>The record consists of grievant's pleadings and MCBE's adverse decisions at levels one through three, July 11, August 14 and August 22, 1989, respectively, transcript of the August 3, 1989, level two hearing and grievant's supplementary evidence.

other out-of-field classes at CHS<sup>2</sup> and also frequently substituted at Cameron Elementary School.

There is scant information to be found about Mr. Dudas. According to the record, he has a background in hospital work in Pennsylvania, where he currently resides, and he possesses a West Virginia teaching certificate "Issued Provisionally" for a "Substantial Equivalence" specialization in English, 7-12, effective November 14, 1986, according to the certification document. MCBE employed Mr. Dudas for substitute teaching beginning the 1987-88 school year. He concurrently was employed as an extracurricular junior high football and wrestling coach and a junior/senior high "strength" coach.<sup>3</sup> His MCBE substitute teaching totaled 232 days by the end of 1988-89.

Among other things, grievant contends that she was not fairly considered for the position at issue because MCBE had no documentation of negative factors of consequence about her substitute teaching, and complaints of her by a few teachers for whom she substituted over the years were not brought to her attention. She urges that her numerous positive evaluations vastly outweigh the few negative ones on file. No evaluations were recorded for Mr. Dudas although he had substituted over 200

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<sup>2</sup>It appears from the record that CHS may be a joint junior-senior high school facility.

<sup>3</sup>According to Mr. Trowbridge, coaches cannot be hired in West Virginia unless they are professionally employed by a board of education.

days and held various extracurricular coaching positions for two school years.

Brushing aside grievant's contentions to the contrary, MCBE argues at level four that grievant did not meet her burden of proof that MCBE engaged in prohibited practices or otherwise erred in its selection of Mr. Dudas as the most qualified candidate. It argues that in the case of Dillon v. Bd. of Ed. of Wyoming County, 351 S.E.2d 58 (W.Va. 1986),

the appellate court criticized the board of education for considering only the educational level of the candidates. In the case at bar, the principal considered not only the educational level, but the vast disparity in teaching ability, disciplinary ability, evaluations of past performance, leadership and frequency of requests for the two candidates as substitutes by regular teachers.

. . .

The comparative qualifications of the candidates are shown by the evidence to clearly preponderate in favor of [Mr.] Dudas.

MCBE's Proposals at 4 (document unnumbered).

The evidence herein does not support a finding that Mr. Dudas was the most qualified candidate. The record, in fact, reveals little objective support that his teaching performance exceeded that of grievant's. Conversely, numerous positive evaluations document grievant's many years' teaching, and only scant criticisms document a problem or two as discerned by only three of some twenty-odd teachers for whom grievant substituted. The evidence in this grievance preponderates that the selection process to employ an English teacher at CHS did not include a valid comparison of the two candidates and was, indeed, flawed

to the extent that the outcome may have been different had a fair assessment of grievant's qualifications been made.

The parties are not in agreement about many matters in this case. Mr. Trowbridge's response to the grievance at level one via a letter-decision to grievant stated, in part,

Mr. Dudas is well qualified for the position. He has a record of having discipline in his classes, excellent knowledge of his subject matter and in other fields, had demonstrated a well organized classroom, has utilized several methods of instructional skills, displayed above average work habits, has a fine rapport among the faculty and student body and can work with or without close supervision.

On the other hand Mrs. Bayza, I have had several negative experiences [sic] with you during your substituting at Cameron High School. I have been called on different occasions to come to your classroom and get control of the students. You have left the classroom, and in fact left the building with your students unsupervised. And finally you have had emotional outbreaks of anger at the students which resulted in using profanity and name calling.

Grievant testified, in essence, that the half-hour interview Mr. Trowbridge conducted had not provided a valid means for him to assess her skills. She sensed that he deemed it unnecessary to "go through anything involved" since they already knew one another and she was familiar with the school. She said that Mr. Trowbridge did not appear to have any of her files or evaluations in hand, that he asked nothing of her philosophy of English teaching or her job expectations, and that, as far as she could recall, he asked no questions which were pertinent to the job. She did recall telling him of her interest in the job and that her qualifications were in order. She said she asked and was told by him that there were no athletics-related responsibilities connected with the position.

She also expressed a belief that Mr. Trowbridge was unable to render a valid judgment of her teaching abilities because she had never been formally evaluated. She said that while Mr. Trowbridge had visited her classroom on occasion, his usual purpose was to inquire about whether she wanted another teaching assignment and not to formally observe her teaching skills.<sup>4</sup>

Ultimately, grievant discussed Mr. Trowbridge's level one decision-letter. She said she could not recall any negative statements from him about her substitute assignments at CHS, as were stated in the letter, and that she had never been "called on the carpet," or chastised about any specific incident with respect to her substitute teaching. She did recall Mr. Trowbridge's coming to her classroom at her request on several occasions when some unruly students did not respond to her implementation of the absent teacher's assertive discipline plan, a final step she understood was part of all discipline plans when all else failed. A substitute teacher is in an extremely difficult situation, she explained, especially when the regular teacher may not be a good disciplinarian. She also

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<sup>4</sup>Grievant also spoke of her impression of Mr. Dudas. She said she did not know him, but he visited her classroom once and chatted while her students were working quietly. She said that she appreciated his friendliness but felt her time while in the classroom was for her students.

Grievant added that her call-outs for work at CHS declined sharply after Mr. Dudas began substituting, a reversal of past years when she substituted at the high school much more often than at the elementary school.

said she knew of no time when her classroom was in a state such as Mr. Trowbridge implied in his letter.

Grievant denied knowledge of leaving the school grounds and unattended students. She said she recalled an instance when she left her classroom to deliver an unruly student to the principal's office, but that another teacher or a good student covered the class for the few minutes she was gone. She stated that she could not recall any time that Mr. Trowbridge called her to his office to speak to her about her teaching, discipline or her having left the school or a classroom. Grievant also testified that he had not called her in or charged her with the specific incidents of emotional outbreaks of anger and using profanity which he described in his letter. She said she inspected her school records and also found no mention of those things. She commented, "[I]t was such a shock to receive this letter and to read about these negative comments." T.31.

MCBE's Superintendent Nicholas Zervos found and determined in his level two grievance response that,

the following factors were considered in comparing the qualifications of the two candidates for hiring purposes: interview performance, education level, teaching experience, teaching ability, student disciplinary ability, leadership ability, job performance as substitute teacher and evaluations of past performance.

Superintendent Zervos further determined that grievant only surpassed Mr. Dudas in the length of teaching experience, and "with regard to all other categories, [he] was comparatively more qualified . . . as to the teaching position at issue . . . [and] the . . . more qualified candidate overall." The record

is woefully inadequate to uphold the level two determinations of Mr. Dudas' superiority.

Mr. Trowbridge was MCBE's only witness at level two. He made absolutely no mention of his having considered the applicants' "interview performance" as was stated in the level two decision. He testified that he had been principal at CHS for twelve years, and during that time he had hired "maybe six" new teachers. Further inquiries put to him during direct examination about his selection of Mr. Dudas, e.g., the interview process and his impressions of the applicants, were leading questions to which he simply replied, "Yes." For example, MCBE's counsel queried:

Q: Did you have an occasion to learn the credit hour and the education level of the candidates?

A: Yes.

Q: [Grievant] has testified about hers; correct?

A: Yes.

Q: And did you have occasion to review records and determine the education level and the number of credit hours of the other applicant?

A: Yes.

Q: Do you know what that is?

A: I have, according to that record, 173 hours.

Q: So [Grievant] testified hers was either 159 or 165; is that correct?

A: Yes.

Q: So Mr. Dudas, in that category, would be superior; is that correct?

A: That is correct.

T.54. This testimony suggests that Mr. Trowbridge may have had knowledge of Mr. Dudas' credit hours prior to his decision to recommend him, but had not explored grievant's credentials in



that vein, and his knowledge of her academics was gleaned only as the result of his having heard her testimony. In cross-examination, Mr. Trowbridge corroborated grievant's testimony and impression that he did not have her pertinent documents before him during her interview and had not secured information about all of her qualifications before selecting Mr. Dudas for the position, T.65,66.

Moreover, a review of this record fails to disclose precisely how Mr. Trowbridge made valid determinations about the candidates' respective abilities and sheds little light on Mr. Dudas' teaching and disciplinary abilities in the classroom. On only one occasion under direct examination did Mr. Trowbridge speak candidly and spontaneously about his choice of Mr. Dudas. He first agreed with MCBE's counsel that he became familiar with Mr. Dudas' capabilities from observing him as a substitute teacher and coach. When asked about what specific abilities he considered,<sup>5</sup> Mr. Trowbridge testified that he was initially impressed when he reviewed Mr. Dudas' application and learned that he had been captain of a high school football team and, if he remembered correctly, vice-president of the student council:

It looked like a profile there that he indicated by that that he performed leadership abilities, and from that I can see being a coach, associated with the extracurricular activities, especially strength coach,

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<sup>5</sup>Mr. Trowbridge's testimony suggested that Mr. Dudas had acquired substitute teaching experience in Greene County, Pennsylvania, for a time. However, Mr. Dudas attested to 232 days' substitute teaching experience but only for MCBE during the 1987-88 and 1988-89 school years, on a form signed and submitted to MCBE by him.

because this was where -- you know, with the probabilities of injuries, we needed to have someone that had complete control of students and who wouldn't put up with any nonsense.

I supervised him in the weight room, at practice sessions, game situations. He seems to have the respect of the students, basically, and as far as discipline, he has no problem with them in any of the extracurricular activities.

T.56,57.<sup>6</sup> Under cross-examination, Mr. Trowbridge stated to grievant's representative that he was able to see instances, none articulated, where Mr. Dudas' abilities as a disciplinarian in the athletic department carried over into the classroom, but he was vague as to how he measured Mr. Dudas' ability to teach except to say, "I observed Mr. Dudas in the classroom in different situations." T.66,67. Mr. Trowbridge would not concur with the notion that controlling students voluntarily attending a chosen extracurricular athletic endeavor might be different than controlling students involuntarily attending a required English class.<sup>7</sup> It is difficult to consider this evidence and not conclude that Mr. Trowbridge placed inordinate weight upon

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<sup>6</sup>Mr. Trowbridge's response of "No" to counsel's next query, "[W]as there an occasion where it became necessary for Mr. Dudas to call the principal to come down and control unruly students?" was quite believable. That a "strength" coach would have few discipline problems in the weight room or playing arena is not hard to imagine.

<sup>7</sup>Interestingly, Mr. Trowbridge pointed out that the strength coach position perhaps needed a strict disciplinarian for the safety of the students in the weight room. No similar need was identified by him for the upper-level English position at issue, nor did he cite any particular behavior problems with the group of students who would populate those classes.

his subjective impressions of Mr. Dudas' coaching abilities, as grievant's representative intimated at hearing.

Mr. Trowbridge was also asked under cross-examination to explain how he was able to measure the applicants' relative teaching abilities without formal classroom evaluation. He stated that he could discern "indicators" of classroom performance when he visited a substitute's class at the start of the day to assure all was ready for the substitute to get started. Mr. Trowbridge's testimony was not convincing. The requirements of State Board of Education Policy No. 5300 that employees be openly and meaningfully evaluated cannot be satisfied with brief forays into a classroom such as Mr. Trowbridge described.

Mr. Trowbridge's specific evidence of grievant's alleged classroom deficiencies also left much to be desired. He testified about three instances when she sent for him and related that the classroom situation was beyond noise. He stated that once in a technology class three youths were starting to scuffle and he had to get control of that situation before someone got hurt. He said another time he found students out of their seats and rowdy in an art class, and he feared the students would throw their art materials and get injured. He said that on one occasion he believed grievant was about to leave the building and a class of art students unsupervised had he not intervened when he saw her walk by his office, T.62. Yet another time, he stated, students in a junior high lab were disregarding all she told them to do and not responding to her efforts "to quiet them

down to get them to understand, get them to have their books out and these kinds of things."

I have talked with [grievant] about those situations. I talked to her on the telephone about those when I've called her. And she has indicated to me on the telephone that she didn't believe she wanted to come in and work for this particular teacher because of the particular class, the age group and those kind of situations. So I got someone else. But I did give her the opportunity . . . to accept that position for the day . . . .

. . . .

Q: And did you weigh these factors into evaluating her qualifications for this job?

A: Yes.

T.58,59. Mr. Trowbridge did not explain why he offered grievant further substitute work in the cited troublesome areas if he was so concerned about her alleged lack of control, but nonetheless considered those factors negatively in determinations of her qualifications.

Moreover, under cross-examination Mr. Trowbridge admitted that he could not remember when the incidents he described occurred, but more importantly, that he had not documented<sup>8</sup> any

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<sup>8</sup>Mr. Trowbridge also spoke of the incident, referenced in his level one decision, in which grievant allegedly abandoned a health class toward the end of the school day. He said a student reported to him that grievant had been crying and had departed from the cafeteria where the class was conducted. He said that before he reached the cafeteria the bell rang signaling the end of school and when he arrived he could not locate either the students or grievant. According to Mr. Trowbridge, later that night a parent called and repeated to him her daughter's account about grievant cursing at the students. He said grievant called him that evening about how upset she had become at the students, and that he admonished her about the incident because parents and students were likely to follow up with visits to his office with complaints. He said his fear in

(Footnote Continued)

of them. His lack of preciseness, about when the events occurred and about his "discussions" with grievant thereafter, adversely affects the weight which can be accorded his testimony of those undocumented<sup>9</sup> events, especially in light of grievant's conflicting evidence that she could not recall his having made her aware at any time of serious deficiencies in her substitute teaching performance. See n. 9. It is especially interesting that he had no personal comments or even complaints of grievant's substitute teaching in her English certification area. Mr. Trowbridge's credibility is in question as to just how he viewed grievant's classroom abilities.

Finally, MCBE's assertion that the candidates' evaluations of past performance were compared and that Mr. Dudas exceeded grievant in that regard is not supported by the evidence of

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(Footnote Continued)

this regard did not, however, materialize. T.63, 64.

This is one more incident that Mr. Trowbridge could not place in time and which he did not document. Nevertheless, his account of the matter is disturbing. Grievant's representative did not recall her to expressly refute Mr. Trowbridge's testimony that she admitted to him of calling some female students "bitches," and not "brats" as she intended, when their misbehavior left her out-of-control and in tears.

<sup>9</sup>The facts in this case are somewhat reminiscent of the circumstances detailed in State ex rel. Oser v. Haskins, 374 S.E.2d. 184 (W.Va. 1988). In Oser the West Virginia Supreme Court of Appeals found, among other things, that Marshall County school officials had not fairly compared the applicants' qualifications and teaching experiences in filling a teaching vacancy. Mr. Oser, the unsuccessful candidate, had prior experience as a regular teacher while the successful applicant had only served as a substitute for a short while. The Court moreover determined that, while then-Superintendent Haskins considered negative facts about Mr. Oser, his personnel file contained no documentation of the enumerated concerns.

record. Moreover, no testimony was adduced at level two that Mr. Dudas "has a record of having" any of the stellar qualities related in Mr. Trowbridge's level one decision-letter. Conversely, CHS teachers Borsuk, Rogers, S. Kennedy, Losh, Sarkis, Jenree, Witzberger, Fisher, Hartley, Jackson, L. Kennedy, McIlvain, Potts, Coen, Turk, Swiger and Weese submitted one or more post-substitute teaching evaluations assessing grievant's skills<sup>10</sup> when she substituted in their respective classes on thirty separate occasions from approximately 1981 or 1984 through at least 1987.<sup>11</sup> Almost all denoted satisfactory performance and favorable written comment was added to the

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<sup>10</sup>MCBE's brief evaluation form allows for the returning regular teacher to check "Yes" or "No" to the following:

1. Lesson plans were followed as directed.
2. Procedures for correcting papers were followed.
3. Adequate information was left for me by substitute regarding day's work.
4. Classroom, desk, books, papers, etc., were left in order.
5. Assertive Discipline procedures were followed.

Space is provided for remarks and signatures from both the evaluating teacher and the school principal.

It is noted that this post-teaching assessment of the substitute provider's classroom abilities has limited value and cannot be accorded the same weight as an objective, in-depth analysis of those skills via a properly administered evaluation. However, Mr. Trowbridge signed each and every one of the evaluations rendered for grievant and did not add comment to any. His failure to avail himself of the ample opportunity to memorialize his "negative experiences" with grievant, see level one decision, undermines the probative value of the anecdotal accounts of those alleged experiences.

<sup>11</sup>The dates on many of the xeroxed copies of the documents were indistinguishable.

check-list of factors to be considered<sup>12</sup> on at least eleven separate evaluations.

Three of the thirty evaluations did contain written criticisms from two separate teachers. Grievant's testimony that she had never been made aware of any negative written evaluations and only discovered them in her files when she began the grievance action was not refuted by Mr. Trowbridge.<sup>13</sup> However grievant did address the matter at hearing.

In 1984, one teacher, Ms. Losh, expressed a sentiment that, based on information from students in one 7th grade class, grievant needed to control the class better. Ms. Losh's three other evaluations of grievant, one rendered in 1985, indicated satisfactory performance. Grievant explained that at one time

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<sup>12</sup>Also of record, Gr. Subm., Nov. 8, 1989, are eleven 1988 or 1989 evaluations signed by Cameron Elementary School staff members Jackson, Clark, Leary, Coe, Boyd, and Jones. Those teachers all completed one or more evaluation indicating satisfaction with grievant's substitute performance, and on all but two instances, they added comments which commended her work.

However, at level two, purportedly as evidence of grievant's deficiency as a substitute teacher, MCBE produced only a February 19, 1984, evaluation signed by an elementary teacher, Ms. Black, who wrote "Didn't seem to understand teacher's guide in reading." Grievant explained that on that occasion there may have been different reading groups involved and admitted that she may have failed in that respect to discern "which particular book was supposed to be used for which particular group." Her explanation of the difficulty of coming in "high and dry" and working with unfamiliar materials was believable, especially since she was working out-of-field. As she noted, all other written comments from the elementary teachers were praiseworthy and highly complimentary.

<sup>13</sup>Grievant explained that the substitute teaching evaluations were generally placed in school mailboxes or given to her.

Ms. Losh had repeatedly complained of her own problems with a particular seventh grade class, comparing the class to a "zoo" and admitting that she too had to consult with the principal about the situation. Grievant's explanation about L. Kennedy's two negative remarks in 1984 possibly resulting from bad-will on Ms. Kennedy's part was plausible, see T.35-36, 50-51.

Grievant requested copies of Mr. Dudas' evaluations to prepare for the level four hearing. Mr. Zervos advised that none were on file for Mr. Dudas' substitute teaching nor were formal evaluations on file for his concurrent extracurricular coaching assignments in three different sports.<sup>14</sup>

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

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<sup>14</sup>Grievant appeared to be concerned by an idea, although never explicitly stated, that favoritism played a part in Mr. Trowbridge's decision to select Mr. Dudas. While first denying during cross-examination that a special social interest existed between Mr. Dudas and himself, Mr. Trowbridge did admit that Mr. Dudas' two children attended CHS and that his son dated Mr. Dudas' daughter.

On redirect, however, Mr. Trowbridge assured MCBE's counsel that his determinations of the candidates' qualifications were not influenced "in any way, shape or form," T.79, by the children's relationship. While no evidence conclusively substantiates Mr. Trowbridge's showing favoritism, the record as a whole does suggest a bias for Mr. Dudas not supported by any substantial evidence. These factors at the very least create an appearance of impropriety on Mr. Trowbridge's part especially since MCBE effectively delegated sole discretion to him in the selection of Mr. Dudas.



## FINDINGS OF FACT

1. MCBE substitute teachers William Dudas and grievant applied for an English teaching vacancy at CHS. Following his interview of the candidates, CHS Principal Ronald Trowbridge selected and recommended Mr. Dudas for the position.

2. The candidates meet minimum qualifications, and their academic achievements are comparable.

3. Grievant has twenty-three years teaching experience, nine years full-time secondary English teaching in Pennsylvania and fourteen years substituting in various in- and out-of-field subject areas and grade levels for a total of 980 days for MCBE. Mr. Dudas was employed by MCBE as a substitute teacher and concurrently as coach at CHS beginning the 1987-88 school year, and he acquired 232 days' substitute teaching through the end of the 1988-89 school year.<sup>15</sup>

4. Mr. Trowbridge's interview criteria for the candidates was not revealed except that each interview lasted approximately thirty minutes; the applicants' "performance" therein also was

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<sup>15</sup>The particulars of Mr. Dudas' coaching employment were not made part of the record; thus, it is not known if his obligations for the various assignments encompassed the entire school year, whether he worked at CHS on a daily basis or exactly what hours he reported for duties. While Mr. Trowbridge testified that Dudas was "the number one requested substitute on my list by all the teachers in my building," Mr. Dudas' popularity does not necessarily reflect his teaching abilities. It is possible that Mr. Dudas' coaching simply advantaged him by bringing him in closer proximity with CHS's staff than that realized by other available substitutes.

not disclosed. The record does not support a finding that the interview process was used to elicit significant information on the interviewees' potential for the job.

5. Thirty-odd post-teaching evaluations of grievant's substitute work at CHS over the years, signed by relevant staff including Mr. Trowbridge were either satisfactory or included commendations except for three rendered by two separate teachers. For undisclosed reasons the negative evaluations were not shared with grievant or brought to her attention, although the forms indicate that the substitute was to receive a copy. No documented in-class observations or evaluations were conducted over the years to assess grievant's teaching abilities.

6. Mr. Trowbridge's determination that Mr. Dudas had a "record" of outstanding service during a two-year tenure of substitute teaching and coaching was not supported by the evidence. No evaluations of any type were on file for Mr. Dudas' substitute teaching or for his extracurricular coaching, and it appears from the record that Mr. Trowbridge accorded inordinate weight to his undocumented, subjective, and favorable impressions of Mr. Dudas' coaching performance.

7. Prior to his decision to recommend Mr. Dudas, Mr. Trowbridge had not availed himself of readily available information of grievant's academic credentials; gave apparently no weight to her years of teaching experience, both regular and substitute, or to her numerous positive evaluations to which he affixed his signature; and seemingly considered only negative aspects of her substitute performance including a few

undocumented examples of problems he alleged but could not place in time, none of which he brought to her attention during the interview, and at least in some cases, had not shared with her at any time.

8. In the instant case it is reasonable that, based on grievant's years of teaching experience and numerous favorable evaluations, she may have been the successful candidate for the English teaching vacancy at CHS had she been fairly compared with the successful applicant.

#### CONCLUSIONS OF LAW

1. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. Nevertheless, this discretion must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious. Dillon v. Bd. of Educ. of the Co. of Wyoming, 351 S.E.2d 58 (W.Va. 1986).

2. A county board of education in West Virginia is obligated to hire the most qualified applicant for professional positions. W.Va. Code §18A-4-8b(a); Dillon; Stowers v. Putnam County Board of Education, Docket No. 89-40-510 (November 8, 1989).

3. An employing board of education must review and consider all relevant and reasonably known qualifications of the applicants in a fair and complete fashion. State ex rel. Oser

v. Haskins 374 S.E.2d 184 (W.Va. 1988); Cusick v. Hancock Co. Bd. of Educ. Docket No. 89-15-179 (Oct. 31, 1989); Farmer v. Logan Co. Bd. of Educ. Docket No. 23-88-207 (Sept. 22, 1989).

4. Reliance by an employing board of education on accounts of a candidate's deficient performance and other negative factors either undocumented or not fairly made known to the applicant without good cause can fatally flaw the selection process when those factors primarily resulted in the candidate's non-selection. See Wall v. Putnam Co. Bd. of Educ. Docket No. 89-40-561 (Nov. 22, 1989); Oser.

5. A grievant challenging the selection process upon which she was denied employment will prevail when she proves the selection process was flawed to the extent that the outcome may have been otherwise different. See Cusick v. Hancock Co. Bd. of Educ., supra; McCool v. Hancock Co. Bd. of Educ., Docket No. 15-89-018 (Aug. 25, 1989); Harrison v. Wyoming Co. Bd. of Educ., Docket No. 55-88-211 (Feb. 15, 1988).

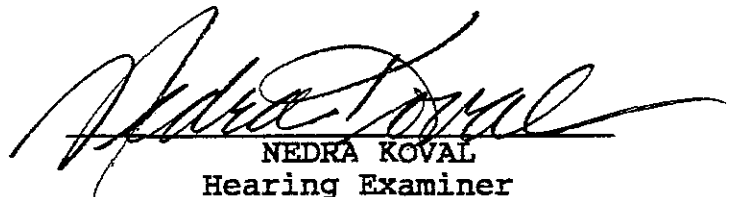
6. Mr. Trowbridge's consideration of aspects of grievant's performance not documented via formal evaluation or fairly made known to her and his lack of consideration of her teaching experience and positive evaluations flawed the selection process in which Mr. Dudas was hired.

7. The record establishes that the process of selecting Mr. Dudas was arbitrary and capricious, and the record does not establish as a matter of law which applicant was the most qualified; therefore, the selection process must be repeated. Stowers.

Accordingly, this grievance is **GRANTED** to the extent that grievant is entitled to a fresh review of her qualifications, and the Marshall County Board of Education is **ORDERED** to re-evaluate the two candidates' relative qualifications as they existed at the time of the original posting, preferably by a committee of appropriate teachers and administrators. If it is determined that grievant is the most qualified applicant, she is entitled to instatement to the position with appropriate back wages and benefits thereto.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Marshall 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: February 26, 1990

  
NEDRA KOVAL  
Hearing Examiner