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

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RICHARD A. BRODE

v.

Docket No. 89-02-577

BERKELEY COUNTY BOARD OF EDUCATION

DECISION

Richard A. Brode, a classroom teacher employed by Respondent Berkeley County Board of Education, filed the following grievance on June 24, 1989:

Grievant, Richard A. Brode, applied for and did not receive a summer central office teaching position. Grievant asserts that he is equally or better qualified than the successful applicants. To resolve this grievance, Grievant desires to be named to the position and to receive any and all back pay denied him during the employment period.

After denial at Levels I and II¹ and W.Va. Code §18-29-4(c) waiver at Level III, Grievant advanced his claim to Level IV on September 29, 1989. The parties concurred that the matter was appropriate for disposition on the record and with the submission of fact-law proposals from the parties the case is mature.

¹ The Level II transcript and exhibits are a part of the record herein.

Richard A. Brode is employed by Respondent as an instructor of Business Computer Education at the James Rumsey Vocational Technical Center. He has worked for Respondent as a professional educator for twenty-five years, seventeen of which have been at the Rumsey facility.

On April 10, 1989, Respondent posted a notice of vacancy for two teachers to work in the Personnel Office during the summer months to assist in recruiting new teachers. The duties of these positions included locating housing, escorting applicants to schools for interviews and showing the community. The qualifications were listed as follows:

Teachers seeking employment must possess exemplary interpersonal [sic] skills and must have been employed with Berkeley County for a minimum of five (5) years. In addition, must be knowledgeable of all school locations, community demographics and attractions.

Grievant applied and was notified that an interview was scheduled for May 23, 1989. Due to the large number of applications, each applicant was mailed an "Interview Data" packet as well as an "Interview R.S.V.P."² The purpose of the requested material was to provide background information and a "point of departure" (T.25) for the interviews, which

² The "Interview Data" packet consisted of five questions regarding the applicant's community and professional involvement as well as educational achievement. Additionally, a writing sample was requested. The "Interview R.S.V.P." simply confirmed that the applicant would appear for the scheduled interview.

were conducted by Dr. Alan Canonico, Assistant Superintendent of Personnel for Respondent. Grievant completed the information requested and also returned the R.S.V.P.

Following Grievant's interview with Dr. Canonico, he received a letter dated June 6, 1989, notifying him that he was not one of the successful candidates. Grievant requested reasons for his non-selection by letter dated June 12, 1989, and was advised by Dr. Canonico that he was "not employed on the basis of qualifications. Qualifications were determined from reaction to a prepared set of interview questions asked of each candidate." Grievant's Exhibit 8. This grievance followed.

Initially, it is noted that the positions in question are extracurricular as defined in W.Va. Code §18A-4-16. As such, the filling of these positions is not exempt from the procedural requirements mandated under W.Va. Code §18A-4-8b(a) 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 when 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). However, it is also significant that the positions are not classroom teaching posts. Rather, they require specialized knowledge

and skills which were clearly set forth in the job posting. The primary role of those serving in these capacities was to assist Respondent in recruiting quality teaching applicants to Berkeley County. In that regard, it would be helpful to explore the background of the two positions before addressing the merits of this grievance.

During the summer of 1988, Respondent experienced the departure of a large number of teachers. Additionally several teachers resigned their positions due to the inability to find adequate housing. In addition to his other duties in preparation for the fall school term, Dr. Canonico spent a considerable amount of time recruiting and meeting with prospective teachers, assisting them in locating housing and delivering them to schools for interviews. These additional duties had an adverse effect on Dr. Canonico's health and, as a result, he approached Respondent's Superintendent to request permission for assistance in performing these recruiting tasks during Summer 1989. Permission was granted and the positions in question were created. According to Dr. Canonico, the specific job duties were to "help me find apartments for teachers, getting teachers to schools to interview with principals, to make phone calls for me, to actually interview some of the teachers for me, and give me their comments and opinions." (T.9).

After the time had expired for the filing of applications, Dr. Canonico discovered that he was familiar with

only three or four of the thirty-five applicants. As a result, he developed the "Interview Packet" as a means of gathering information on the teachers that he would be interviewing. The packet itself was given no weight in the subsequent selection process.

A structured interview was conducted by Dr. Canonico during which all applicants were asked the same ten questions and the answers were rated. The questions were formulated by Dr. Canonico and were designed to indicate an applicant's "knowledge with questions that would be normally asked by teachers." (T. 18). All answers, including those to follow-up questions, was rated on a scale from one to ten. At the conclusion of the interviews, the scores for each question were totalled and the two applicants with the highest scores were selected for the positions. The basis for rating the answers was both the substantive knowledge of the applicant and the manner in which the answer was presented.

Grievant contends that his past experience with Respondent should carry more weight in the selection process than his interview with Dr. Canonico. He further argues that there were no specific questions concerning the qualifications listed in the job description and that the interview itself was an additional qualification from those listed in the job description.

While interviews may be conducted as part of the job selection process, they are not a requirement of that

process. The interview itself cannot be considered a qualification; rather it is simply a means of assessing qualifications. The mere fact that all job applicants are required to participate in an interview does not render it a qualification for the job. Respondent in this case was within its discretion in utilizing the interview method as a means of assessing qualifications.

Grievant also argues that his past experience with Respondent should have been given more weight in the selection process than the interview.³ Specifically, he contends that his evaluations as a teacher, two masters degrees, experience in taking field trips, involvement in student organizations and experience as a landlord should outweigh the interview. However, as stated earlier, Grievant was not under consideration for a classroom teaching position; he was, in fact, to be a recruiter for Respondent. One of the primary qualifications for the job was exemplary interpersonal skills. Given the nature of these positions, possession of knowledge alone concerning Berkeley County schools and the surrounding community was simply not enough. One must be able to communicate that knowledge in a manner which would hopefully cause prospective teachers to want to work in Berkeley County. Indeed, Dr. Canonico designed the

³ This past experience included the teacher evaluations in Grievant's personnel file, his two masters degrees, his experience in taking students on field trips and his involvement with student organizations.

interview questions to give him a perspective "not only of what they knew about the county, but how they would present this information to the county, the comfortableness with relating to them the way they would state these benefits to the candidates." (T. 14). Dr. Canonico further stated that he did not examine the teaching evaluations of any of the applicants because he was not attempting to fill a classroom teaching job. While past evaluations would certainly be appropriate for consideration in evaluating candidates for a teaching position, given the specialized nature of the jobs in questions, it cannot be held that Respondent abused its discretion in not examining the past teacher evaluations.⁴

Finally, Grievant contends that the manner in which the interview was conducted was arbitrary in that there were no specific questions regarding the areas set out in the job description. Respondent countered that the ten basic interview questions were open-ended and gave the candidates the opportunity to express their knowledge of the specific areas of concern. Further, the interview score was based upon the ten basic questions together with any follow-up questions. Grievant cites as an example the area dealing with housing. He testified in considerable detail about his knowledge of housing and the housing market based upon his

⁴ While Grievant submitted his own evaluations for consideration, there was no evidence of the past evaluations of the successful applicants; thus a comparison in that regard is impossible.

experience as a landlord and his relationship with local realtors. However, when asked about the exploration of this area during the interview he stated that he "did not relate this information to Dr. Canonico. He did not specifically ask what my background was in the way of housing." (T. 30). Certainly, while job screeners have certain facilitative responsibility, applicants have a like obligation to submit pertinent information to them. Stover v. Kanawha County Board of Education, Docket No. 89-20-75 (June 26, 1989). It is significant that Dr. Canonico testified, without contradiction, that the two successful applicants were asked the same questions as Grievant and provided information regarding their housing knowledge.

Grievant also took exception with interview questions dealing with benefits and programs available to new teachers in Berkeley County, stating "[M]any of the questions related were found in the Berkeley County Handbook. One of the qualifications of the job was not a thorough knowledge of the Berkeley County Handbook. Obviously, a handbook is to be used to find information if, indeed, it is to be found." (T. 38). Dr. Canonico responded that while anyone could read the handbook, he "wanted to see how they would present that to a teacher, how sincere they would be, how excited they would be, how comfortable they would be; that was my purpose." (T. 45). It is also significant that Dr. Canonico testified, again without contradiction, that Grievant's presentation at Level II bore little resemblance

to his performance during the interview. The grievance procedure 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. Stover v. Kanawha County Board of Education, Docket No. 89-20-79 (June 26, 1989). This is not to say that the respective qualifications of candidates are not relevant for review but that such review should generally be made for the purpose of detecting wide disparities in credentials which may, in themselves, reveal improper considerations in the process. Harrison v. Wyoming County Board of Education, Docket No. 55-88-211 (February 15, 1989).

In the present case, the difference in the applicants is not such that any such inference can be drawn. Neither can it be concluded that the selection process itself was "flawed to the point that the outcome might reasonably have been different otherwise." Stover. Moreover, "[c]ounty boards of education have substantial discretion in matters relating to the hiring, assignment, transfer and promotion of school personnel." Syl. pt. 3, Dillon v. Board of Educ. of County of Wyoming, 351 S.E.2d 58 (W.Va. 1986). No evidence establishing or even suggesting abuse of that discretion has been presented in this case.

Finally, in cases such as the present, where there is substantial evidence that subjective criteria may have been the deciding factor in the selection process, the grievant

has the burden to show such criteria was not reasonably associated with the requirements of the position. Higgins v. Randolph, 286 S.E.2d 682 (W.Va. 1981). Grievant has made no showing that Dr. Canonico's concerns during his interview were not rationally connected to the expectations for the positions in question.

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

Findings of Fact

1. Grievant, Richard A. Brode, has been employed by Respondent Berkeley County Board of Education as a professional educator for twenty-five years.

2. On April 10, 1989, Respondent posted a notice of vacancy for two teachers to work in the Personnel Office during the Summer months to assist in recruiting new teachers. The listed qualifications emphasized the need for extraordinary interpersonal skills.

3. All applicants were interviewed by Dr. Alan Canonico, Respondent's Director of Personnel. Dr. Canonico asked all applicants the same ten questions.

4. Based upon the interview, Dr. Canonico selected two other applicants to fill the positions. The decision was based upon the candidates' substantive response to the interview questions as well as the manner in which the answer was presented.

5. Grievant's testimony at Level II bore little resemblance to his performance during the interview with Dr. Canonico.

6. Grievant contended that his past experience with Respondent, together with his experience as a landlord, should have been given more weight in the selection process than the interview.

Conclusions of Law

1. 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. for the Co. of Wyoming, 351 S.E.2d 58 (W.Va. 1986). This requirement applies fully to an extracurricular assignment. Wamsley v. Doddridge County Board of Education, Docket No. 09-88-914 (January 31, 1989); Randolph v. Harrison County Board of Education, Docket No. 17-88-001-2 (June 30, 1988).

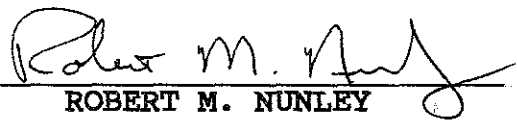
2. The grievance procedure is not intended to be a "super interview" for unsuccessful job applicants; rather, in this context, it allows analysis of the legal sufficiency of the selection process at the time it occurred. If the decision was proper based on the information then available to the board 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. Stover v.

Kanawha County Board of Education, Docket No. 89-20-79
(June 26, 1989).

3. Grievant has not proven, by a preponderance of the evidence, see Black v. Cabell Co. Bd. of Educ., Docket No. 06-88-238 (Jan. 31, 1989), that Respondent erred in its determination that he was less qualified than the successful applicants. Nor has he established any significant other flaw in the selection process, see Conclusion of Law 2. Respondent made a reasoned decision based on the information presented to it.

Accordingly, this grievance is **DENIED**.

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



ROBERT M. NUNLEY
HEARING EXAMINER

Dated: February 27, 1990