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

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CRAIG MANKIN

v.

Docket No. 89-23-548

**LOGAN COUNTY
BOARD OF EDUCATION**

D E C I S I O N

Grievant Craig Mankin, employed by Respondent Logan County Board of Education as Assistant Principal at Man Senior High School (Man), filed a grievance May 26, 1989, alleging that Respondent violated W.Va. Code §18A-4-8b(a) in appointing John Burks rather than him Principal of Man.¹ The Level I evaluator found no authority to decide the grievance, it was denied at Level II, consideration was waived at Level III, and appeal was taken to Level IV, where a de novo hearing was held.²

¹While Grievant also initially alleged favoritism in the selection of Mr. Burks, no evidence was submitted on that charge and it was not addressed in Grievant's post-hearing submissions. It is therefore considered abandoned.

²Grievant appealed to Level IV September 15, 1989. A hearing scheduled for October 13 was continued at the request of Respondent and hearing was held November 3 in Logan. The record was received December 6 and proposed
(Footnote Continued)

Grievant was initially employed by Respondent in 1963 to teach at Man, having been a teacher for one year in Mingo County. He became Assistant Principal in 1968. He has a masters degree plus thirty and became administratively certified in 1971. He also served two years as Principal of the Logan County summer school program.³ Mr. Burks has been employed since 1967 and was a teacher for Respondent from that date until 1987, when he became Principal at Man Junior High School. He also has a masters plus thirty, and has been administratively certified since 1987.

The candidates were interviewed by a panel composed of the Associate Superintendent of Logan County Schools, Jack Garrett, and two Assistant Superintendents, George Klipa and Willie Akers. Each interviewer independently rated each candidate from a low of 1 to a high of 10 in five categories. Then the three total scores given by the interviewers were tallied for a final score for each candidate and those scores were provided Respondent. Grievant's final score was 131 and Mr. Burks' was 132.⁴

(Footnote Continued)
findings of fact and conclusions of law, with briefing, were received from the parties on January 16, 1990.

³The record does not establish when Grievant was Principal of the summer school.

⁴A third applicant, who scored 134, withdrew his candidacy before Respondent made its selection.

Mr. Garrett, who gave scores of 45 to both Grievant and Mr. Burks,⁵ testified that he found them equal because, while Grievant had been an assistant principal for a long time, he had not, like Mr. Burks, been a principal. He commented that he has been happily surprised by Mr. Burks' accomplishments in having "brought a school having problems out of gate." Tr. 44. Mr. Klipa, who also rated the two applicants equally at 44 points, testified that being a junior high school principal was better training for a high school principalship than being an assistant principal at a high school, for the principal "run[s] across all of the things that are involved in the running of the school. A junior high principalship is darn near being a principal at a high school," TR. 77, while an assistant principal at a high school is not involved with certain administrative duties.

You're not involved with finances. You're not involved in the responsibility of attending basketball, football games, making sure the buses are there for extracurricular activities as well as curricular activities, going places with the team and so forth. When the band goes to Huntington and tears up eight rooms in the Frederick Hotel, to try to work out problems such as that. Raise money for new football uniforms, and you have to do it pretty well on your own. Someone has to take the initiative. It's a great variety of things.

Tr. 77. Mr. Akers, who rated Mr. Burks at 43 a point higher than Grievant, while not certain which position is a better

⁵The record indicates that Mr. Garrett mistakenly tallied Mr. Burks' total score as one-half point too high.

training ground, stated that he had given Mr. Burks a higher score because of his skills in community relationships. He testified,

The main thing about Mr. Burks was that when he became principal of Man Junior High School, I felt like he did a great job with the community. We had a lot of problems there. Dealing with transportation, dealing with the parents, I felt like he just did an excellent job in that area,...

Tr. 96.

Grievant properly states,

This case is largely controlled by the decision of the West Virginia Supreme Court in Dillon v. Board of Education [of the County of Wyoming], 351 S.E.2d 58 (W.Va. 1986), in which the court held that vacant positions must be filled primarily on the basis of qualifications, and where the qualifications of the candidates are so close that there can be no rational method of choosing between them, the vacancy must be awarded to the applicant with the most seniority.

Grievant alleges that his "objective qualifications," particularly his administrative experience and certification, were superior to Mr. Burks'. Grievant further urges,

The only reasons given by the board for selecting Mr. Burks over Mr. Mankin for the position were (1) that Mr. Burks received 1 more point in the interviewing committee's evaluation of the three candidates, and (2) the perception that Mr. Burks had done a good job at Man Junior High School. Neither reason outweighs the clear preponderance of objective qualifications in favor of the grievant.

Grievant contends that his administrative certification bests Mr. Burks' because his has been permanent since 1974 while Mr. Burks', issued in 1987, is provisional. However, there is no difference in the quality of the certifications. A provisional certificate is issued to an individual

fulfilling all requirements for administrative certification;⁶ he simply is not entitled to permanent certification until he has served three years as an administrator.⁷ The difference in Grievant's and Mr. Burks' administrative certification results solely from the fact that Grievant has been an administrator longer than three years while Mr. Burks has not. Since no other "objective" qualifications differ in any significant regard, the crux of this case therefore is whether Respondent was entitled to consider Mr. Burks' two years of experience as a Principal as superior to Grievant's administrative experience as Assistant Principal at Man, for that difference in experience was the basis for Mr. Burks' higher score and Respondent's choice of Mr. Burks for the position.

Grievant testified at length regarding his 22 years as Assistant Principal⁸ under Bob Kerley, who was Principal at Man throughout Grievant's tenure there until Mr. Burks was

⁶W.Va. Code §18A-3-2(2) provides in pertinent part that a administrative certificate is issued provisionally for a period of three years and "may be converted to a professional administrative certificate valid for five years or renewed, subject to the regulations of the state board."

⁷Mr. Garrett so testified in this case. Moreover, it is officially noticed that such is the case.

⁸Grievant testified that from 1968 to 1971 he taught half-time. He was the only assistant principal at Man until four or five years ago, when a second assistant principal was added. The evidence did not establish what changes in Grievant's duties resulted from the addition of that administrator.

put in the position. Grievant generally described his duties as dealing with discipline problems and absenteeism; and general administration, such as being in charge of the lockers, textbook distribution, parking permits, and the hot lunch program. He supervised the maintenance staff and at times evaluated the teachers. He worked on reports required for continuing accreditation of the school and on getting a federal grant. He stated that he was in charge of the building whenever Mr. Kerley was gone and served in his stead at least two times when the principal was absent for several weeks. He stated in conclusion, "I've touched on or done everything Bob Kerley has done while he's been there." Tr. 143. He also testified regarding the two years he was in charge of the summer school for the whole county, with approximately 250 students enrolled, that as the only administrator he did everything: "grades, paperwork, assigning classes, taking money for tuition from the students, organizing the classes and textbooks. Everything involved with it, I handled it." Tr. 141.

Grievant's testimony does not establish that he has had the level of responsibility that a principal of a school in the long term bears nor does the evidence establish as a matter of law that Grievant's experience was equal or superior training for the principalship than Mr. Burks' experience as the principal at Man Junior High. While Grievant's chagrin at not being chosen for the position after many years of service as an assistant principal is

understandable, the evidence does not establish any abuse of Respondent's discretion in determining that Mr. Burks' two-year service as a principal, during which he proved himself capable, better qualified him for the principalship at Man.

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

Findings of Fact

1. Grievant has been employed by Respondent for 26 years and John Burks for 22.
2. Grievant has been Assistant Principal at Man Senior High School since 1968. John Burks has been Principal at Man Junior High School since 1987.
3. Respondent determined that John Burks' effective experience as Principal of Man Junior High School better qualified him for the Man Senior High School principalship and therefore appointed him to the position.

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

2. "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).

3. "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 school, and in a manner which is not arbitrary and capricious." Dillon, Syl. Pt. 3.

4. Grievant did not establish any abuse in Respondent's discretion in determining that Mr. Burks' experience of 2 years as Principal of Man Junior High School, during which he had proven himself a capable administrator, better qualified him for the position of Principal at Man Senior High School. Compare State ex rel. Oser v. Haskins, 374 S.E.2d 184 (W.Va. 1988).

Accordingly, the grievance is **DENIED**.

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



SUNYA ANDERSON
HEARING EXAMINER

DATED: February 6, 1990