



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

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

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

VERNA MCCALLISTER

v.

Docket No. 89-23-617

LOGAN COUNTY BOARD OF EDUCATION

D E C I S I O N

On June 22, 1989, Verna McCallister, a teacher employed by Respondent Logan County Board of Education,¹ filed the following grievance complaint at Level I:

Filling of principal's position in violation of. .
.[W.Va. Code §] 18A-4-8b[(a)]. Grievant was more
qualified than successful applicant. Resolve:
award grievant position and compensate according-
ly.

After denials there and at Level II and Code §18-29-4(c) waiver at Level III, Grievant advanced her claim to Level IV on October 19, where it was the subject of a January 5, 1990, hearing.² The parties agreed to file post-hearing

¹ Grievant has thirteen and one-half years' employment with Respondent. During 1988-89 she served at Stirrat Grade School and the six years previous thereto at Omar Douglas Center. For 1989-90, she is assigned to Holden Elementary School.

² An earlier-scheduled hearing was continued upon Respondent's motion, for good cause shown, to which Grievant did not object.

submissions, if at all, by January 12, and that date having passed the matter is mature for disposition.³

The job in question is "the dual principalship of Stirrat Grade and Omar Douglas Special Education Center." Level II Decision. "The interviewing committee felt that both. . .[Grievant] and the successful candidate [Mr. Garland Elmore] met or would meet all of the qualifications required for this position but. . .[he] scored higher in the responses he gave in answering questions presented by the panel." Id. This committee recommended Mr. Elmore's nomination to Logan County Superintendent Wesley Martin, who approved of and passed along the same to Respondent for action. Respondent, in turn, hired Mr. Elmore at its regular June 1989 meeting.

One of Grievant's primary theories, "the person selected. . .[did] not have a principal's certificate at the time of hiring," may be disposed of handily. The record reflects that she has held such a certificate since August 19, 1988, but also reveals that Mr. Elmore attained like qualification on July 1, 1989. It is well-settled in the law that a county board of education may consider job applicants who, while not certified at the time of hiring, are reasonably expected to become so prior to their first day of

³ Grievant's presentation was timely made; Respondent's was not and so has not been considered.

service.⁴ See, e.g., Code §18A-3-1⁵; see also Ginn v. Hardy Co. Bd. of Educ., Docket No. 16-88-185 (Dec. 9, 1988), Conc. Law 8.⁶

All members of the interview committee, namely, Mr. Jack Garrett, Mr. George Klipa and Mr. Willie Akers,⁷ presented testimony at Level IV. The general consensus of

⁴ W.Va. Board of Education Policy 5113, cited by Grievant for the proposition, "County superintendents are obligated to utilize fully-certified individuals when they are available," does not mandate pre-hiring certification.

⁵ In pertinent part, with emphasis supplied: "Any professional educator. . .employed within the public school system of the State shall hold a valid teaching certificate licensing him to teach. . .in the specializations and grade levels as shown on his certificate for the period of his employment. If a teacher is employed in good faith on the anticipation that he is eligible for a certificate. . ." The terms "teaching," "teach" and "teacher" as used here must be understood to also include and relate to the duties of a principal, Code §§18A-1-1(c), 18-1-1(g), and the clear implication is thus that a person may be hired as a principal "on the anticipation that he is eligible for a certificate" and that such certificate shall be attained prior to his service thereas.

⁶ "A teacher need not be certified in a given subject to be found qualified to work in that area, so long as that certification is obtained prior to entry onto duty."

While Grievant's earlier certification was a factor in analysis of the relative qualification levels, Gr. Ex. 1, 3, 5, and this was quite appropriate, see Proctor v. Putnam Co. Bd. of Educ., Docket No. 40-88-182 (Feb. 1, 1989), Conc. Law 4, it was also correctly not considered a per se indicator of greater or lesser suitability for the given job.

⁷ Mr. Garrett is an Associate Superintendent and the other two men are Assistant Superintendents, Logan County Schools. It was established and not controverted that these three are well-qualified to participate in the process of hiring educational professionals.

the three was that Grievant was well-qualified and, at least in the areas of education and teaching experience, equally qualified to Mr. Elmore. They noted neither Grievant nor Mr. Elmore had formal administrative background but that Mr. Elmore had "filled in" on several occasions for former Stirrat/Omar Douglas Principal Randolph Gilbert.⁸ All three rated Mr. Elmore higher than her during the interview, and each indicated his impression that Mr. Elmore demonstrated himself to be more well-suited for the vacancy than Grievant.

Grievant testified she did not consider the interview process itself to be unfair until after the choice of Mr. Elmore was announced. At that point, she determined that he had been the beneficiary and she the victim of favoritism.⁹ However, her only articulated basis for this conclusion related to the facts that Mr. Elmore, due to his friendship with Mr. Gilbert, had over the years been the recipient of professional benefits unavailable to her or others,¹⁰ and

⁸ It is assumed Mr. Gilbert was Principal of both institutions. He clearly was in charge of at least the Omar Douglas facility.

⁹ Favoritism is a prohibited practice in education personnel matters. W.Va. Code §18-29-2(o).

¹⁰ Grievant stated that it was "well known" that Mr. Gilbert was "grooming" Mr. Elmore to be his replacement. However, Respondent presented uncontroverted evidence that another person had been principal some period of years between Mr. Gilbert's departure and Mr. Elmore's selection.

Grievant also said Mr. Elmore had told her, before the
(Footnote Continued)

that the "resume' value" of those benefits had been significant to Messrs. Garrett, Klipa and Akers as demonstrated by interview question "four."¹¹ All principal candidates were asked five standard questions, see Resp. Ex. 1, 3, 5, with question four being as follows:

What is [sic] your thoughts on the following subjects?

- A. Effective Schools
- B. Principals Academy
- C. Teachers Academy
- D. Leaders of Learning

The record suggests that "Effective Schools" and "Leaders of Learning" are seminars available to most or all instructors in Logan County, and that the Academies are annual summer programs offered by the West Virginia Department of Education at a given location in the State, open only to a limited number.

Grievant, during her interview, expressed support for all four opportunities, but reported she had participated in

(Footnote Continued)

interview, that he had been promised the position in question. Significantly, Mr. Elmore was not offered as a witness at Level IV, as was apparently also true at the lower administrative planes. And, as confirmed by Mr. Klipa, "it is recognized that there is often conjecture about which individual will fill a vacancy, particularly when candidates have not kept their interest secret." Farmer v. Logan Co. Bd. of Educ., Docket No. 23-88-207 (Sept. 22, 1989), p. 6.

Messrs. Garrett, Klipa and Akers testified convincingly they knew of no such promise and did not consider Mr. Elmore to have any sort of unfair "in" for the job at any time.

¹¹ The interview team members were the composers of the questions.

none of them.¹² Mr. Elmore, on the other hand, had a background of involvement in each. Mr. Klipa admitted only a few instructors had been selected to attend the recently-started Teachers Academy, and that it was fair to surmise most staff, including Grievant, may not realistically have had an opportunity to so attend.¹³ Further, as characterized by Mr. Klipa, it is highly unusual that a teacher would have the credential of Principals Academy participation. He added that Mr. Elmore had attended this program as a personal guest of Mr. Gilbert and that he saw no impropriety in this invitation or its acceptance.

While the chagrin of Grievant and perhaps others over Mr. Elmore's possible "special" treatment by Mr. Gilbert is understandable, it does not provide her with a basis for recovery herein. Neither Mr. Elmore's inclusion in the Academies nor his selection as "substitute principal" are the subject of her grievance; rather, her non-selection for the Stirrat/Omar Douglas principalship is. The manner in which Mr. Elmore obtained his credentials was quite properly not considered by Respondent;¹⁴ rather, those credentials

¹² Mr. Akers, on his interview sheet, noted, "[She] doesn't know anything about some." Resp. Ex. 1.

¹³ He explained the county's allowance of slots for the Teachers Academy had just lately been increased from two to four.

¹⁴ This is not to say a county board of education should not take into account a job applicant's questionable
(Footnote Continued)

were compared with Grievant's¹⁵ and the other applicants' in making a hiring decision. In this regard, it is significant that Grievant had not participated in Effective Schools or Leaders of Learning training, despite apparent unfettered opportunity to do so. Certainly, Grievant did not present any evidence of exclusivity of those programs, or of any reason why she could not be involved in them.¹⁶ Furthermore, it is significant, as pointed out by Respondent, that even if question "four" were excluded from consideration, Mr. Elmore's interview score, as indicated by notations on Resp. Ex. 1, 3, 5, would still have been higher than Grievant's for each of Messrs. Garrett, Klipa and Akers.

Grievant suggested subjectivity in some way inappropriately flavored the interview and selection process. It is well-established that properly-conducted interviews are an appropriate tool in hiring, see, e.g., Shaver v. Jackson Co. Bd. of Educ., Docket No. 18-88-107 (Nov. 7, 1988); in this

(Footnote Continued)

conduct in achieving qualifications; however, there is no appearance of impropriety on Mr. Elmore's part on the record of this case.

¹⁵ Among the specific qualifications that were compared were Grievant's thirteen and Mr. Elmore's ten years in Respondent's service; their teaching fields during those years; and their professional certifications. See Resp. Ex. 1, 3, 5.

¹⁶ It is noted that Grievant attributed the fact that Mr. Elmore "got to be appointed" to the Leaders of Learning program to his relationship with Mr. Gilbert. However, Mr. Klipa stated that several Logan County teachers had participated in Leaders of Learning and suggested Grievant could perhaps have done so.

regard, while objectivity remains preeminent, some degree of subjectivity must be considered allowable of professional reviewers, see n. 7, in their evaluation of candidates.¹⁷ In this case, Messrs. Akers, Garrett and Klipa each opined that, during the interviews, Mr. Elmore demonstrated himself to be a better-suited candidate for the vacancy and thus "more qualified" therefor. In a grievance of this nature, the duty of the West Virginia Education and State Employees Grievance Board is to review the selection decision as of the time it was made. Stover v. Kanawha Co. Bd. of Educ., Docket No. 89-20-75 (June 26, 1989).¹⁸ If a flaw in the process is detected such that if the flaw had not been present, the outcome might reasonably have been different, then an unsuccessful applicant-grievant will generally be entitled to relief. See id. Such a flaw has not been established by Grievant and is not otherwise apparent herein.¹⁹

¹⁷ A county board of education should review all relevant material before it, and that of which it is aware and which is reasonably obtainable, in making professional hiring decisions. See State ex rel. Oser v. Haskins, 374 S.E.2d 184 (W.Va. 1988).

Also, see Oser for an example of inappropriate injection of subjectivity into the job selection process.

¹⁸ Stover instructs that the grievance procedure, in and of itself, is not designed to be a "super-interview."

¹⁹ One point that should be mentioned is Mr. Akers' consideration of Mr. Elmore's residence in the immediate Stirrat/Omar Douglas area. Familiarity with a community and its resources, as opposed to "community acceptance," has been recognized as a valid factor in determining qualifications for a principalship. Ramsey v. Mineral Co. Bd. of

(Footnote Continued)

The remainder of this Decision will be presented as formal findings of fact and conclusions of law.

FINDINGS OF FACT

1. Grievant was an unsuccessful applicant for Respondent's vacancy in the dual principalship of Stirrat Grade School and Omar Douglas Special Education Center.

2. She has been employed as a teacher for thirteen-plus years by the county, and the successful applicant, Mr. Garland Elmore, has worked for Respondent in a like capacity for ten-plus years.

3. Mr. Elmore has certain credentials, e.g., Principals Academy, which Grievant has had no opportunity to obtain.

4. Mr. Elmore has other credentials, e.g., Effective Schools training, which Grievant has had opportunity to obtain which she has not taken advantage of.

(Footnote Continued)

Educ., Docket No. 28-88-234 (Aug. 29, 1989); see also Farmer at n. 10. However, it was not reasonable for Mr. Akers to assume Mr. Elmore to be more familiar, in a pertinent sense, with the community simply because of the location of his home; further, Grievant worked at Stirrat and/or Omar Douglas for several years and in that sense was a member of the schools' "community." However, Mr. Akers said his note of Mr. Elmore's home area did "not necessarily mean[] I'd give him extra points" in comparison to Grievant. Even if Mr. Akers did allow "extra points" for Mr. Elmore on this ground, the evidence certainly does not indicate it was anything beyond a minor particular or that it "made the difference" between Grievant and Mr. Elmore in his mind.

5. Mr. Elmore was not certified as a principal at the time of his selection; however, he achieved this qualification prior to his entry onto duty in this job. Grievant has been certified in principalship since 1988.

6. Based on interviews which included a comparative assessment of credentials, Respondent determined Mr. Elmore to be more qualified than Grievant for the Stirrat/Omar Douglas principalship.²⁰

CONCLUSIONS OF LAW

1. Professional positions must be filled on the basis of qualifications, with seniority having a bearing only if the top applicants are equally qualified or essentially so. W.Va. Code §18A-4-8b(a); 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 has substantial discretion in matters relating to the [selection and] promotion of school personnel, but must exercise the

20

It is important to clarify that while Respondent found Grievant and Mr. Elmore at least equally qualified in the areas of education and work history, it did deem Mr. Elmore more qualified overall for the job in question. If this had not been true, and Grievant had been held more or equally qualified, she would have been entitled to the job due to her greater seniority. Dillon v. Bd. of Educ. of the Co. of Wyoming, 351 S.E.2d 58; Worley v. Wyoming Co. Bd. of Educ., Docket No. 55-88-035-4 (July 13, 1988); see also Johnson v. Cassell, #18993 (S.Ct.App.W.Va. Dec. 5, 1989).

3. "The exercise of judgment as to which candidate is most qualified by individuals who are trained to make such decisions will be upheld unless shown to be arbitrary and capricious or clearly wrong." Skinner v. Harrison Co. Bd. of Educ., Docket No. 17-88-114 (Sept. 30, 1988).

4. "A teacher need not be certified in a given subject to be found qualified to work in that area, so long as that certification is obtained prior to entry onto duty." Ginn v. Hardy Co. Bd. of Educ., Docket No. 16-88-185 (Dec. 9, 1988).

5. "Interviews, when conducted fairly, are relevant to making a determination as to applicants' qualifications for professional positions." Shaver v. Jackson Co. Bd. of Educ., Docket No. 18-88-107 (Nov. 7, 1988); see also Ely v. Cabell Co. Bd. of Educ., Docket No. 89-06-602 (Jan. 22, 1990).

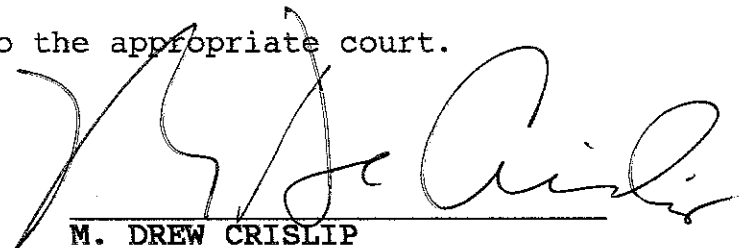
6. In order to prevail, a grievant must prove the allegations of her complaint by a preponderance of the evidence. Black v. Cabell Co. Bd. of Educ., Docket No. 06-88-238 (Jan. 31, 1989).

7. The grievance procedure, Code §§18-29-1 et seq., "allows analysis of the legal sufficiency of the selection process at the time it occurred. If the decision was properly based on 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 Co. Bd. of Educ., Docket No. 89-20-75 (June 26, 1989).

8. Grievant has failed to establish that Respondent erred in its finding that Mr. Elmore was more qualified than she for the Stirrat/Omar Douglas principalship, or that the selection process was otherwise flawed such that, if the flaw had not been present, she might reasonably have been chosen.

Accordingly, this 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. This office should be advised of any intent to appeal so that the record can be prepared and transmitted to the appropriate court.



M. DREW CRISLIP
Hearing Examiner

DATE: January 22, 1990