

FRANK JONES

v. Docket No. 96-29-042

MINGO COUNTY BOARD OF EDUCATION

DECISION

The grievant, Frank Jones, is employed by the Mingo County Board of Education (Board) as a guidance counselor assigned to Matewan High School (MHS). He filed at Level I on or about December 10, 1995, protesting the Board's decision to repost the vacant position of MHS Principal. His supervisor was without authority to grant relief, and the grievance was denied at Level II following a January 18, 1996 hearing. The Board, at Level III, declined to address the matter, and appeal to Level IV was made January 30, 1996. A hearing was held April 2, 1996, and the parties submitted proposed findings of fact and conclusions of law by May 2, 1996.

Background

Much of what precipitated the complaint is not in dispute. The position in issue was posted on November 22, 1995, and while the announcement did not specify minimum qualifications, the Board concedes that an administrative certificate for secondary education was the only "threshold" requirement. The grievant was the only applicant.

A selection committee consisting of the MHS Dean of Students, the President of the MHS Faculty Senate, a representative of the Mingo County School Service Employees Association, and parent members of the MHS School Improvement Council and the MHS Parent Advisory Committee interviewed the grievant and reviewed his qualifications for the post. The members subsequently submitted the following request to Superintendent of Schools Everett Conn.

We feel that Matewan High School is on its way toward being a school of excellence.
We are a school with high expectations and our morale is very high.

Since we are on our way to becoming a school of excellence, the Matewan High School interview committee would like to suggest that the job of principal be reposted.

There was only one qualified applicant that was interviewed. We recommend that we be able to interview additional qualified applicants. We can then consider the one applicant we have interviewed plus any other applicants. This way we can make a more professional recommendation on who best meets the needs of our school.

It does not appear that the committee ever identified any weaknesses in the grievant's credentials or otherwise communicated to the Superintendent any reason for not appointing him to the position.

Superintendent Conn granted the request and reannounced the position as vacant on or about December 8, 1995. This announcement was identical to the first and was posted in the same locations.

Williamson Middle School Principal Jada Hunter was the only additional applicant. The committee interviewed Ms. Hunter and compared her qualifications with the grievant's. Ultimately, the committee reported to the superintendent that "both applicants could benefit [MHS]," and recommended that the Board "consider the other criteria in selecting the individual best suited for the job." The committee made no other recommendations and apparently did not complete any written assessment of the candidates.

Eventually, Superintendent Conn determined that Ms. Hunter was the most qualified applicant and the Board accepted his recommendation that she be awarded the job. Mr. Conn's decision was predicated on his personal knowledge of the backgrounds of the two applicants; his determination that Ms. Hunter had "earned" her administrative certificate via completion of a Master's Degree program in Education Administration and the grievant had obtained his certificate through a regulation of the West Virginia Department of Education (DOE) which did not require an Administration degree; [\(See footnote 1\)](#) and his conclusion that Ms. Hunter had served admirably during her brief tenure as Principal of Williamson Middle School. Mr. Conn did not conduct interviews of the candidates or prepare a written comparison of their credentials.

Argument

The parties agree that a county board of education's duty to post vacant positions is a statutory one. W.Va. Code §18A-4-7a, ¶10 provides,

Boards shall be required to post and date notices of all openings in established, existing or newly created positions in conspicuous working places for all professional personnel to observe for at least five working days. The notice shall be posted within twenty working days of such position openings and shall include the job description . . . No vacancy shall be filled until after the five-day minimum posting period. If one or more applicants meets the qualifications listed in the job posting, the successful applicant to fill the vacancy shall be selected by the board within thirty working days of the end of the posting period.

The grievant asserts that since he was the only applicant on the original posting, and he met its minimum requirements, the statute mandated his appointment to the position. [\(See footnote 2\)](#) The grievant finds the language, "[i]f one or more applicants meets the qualifications listed in the job posting" to be clear and unambiguous and urges that it be given effect.

The Board maintains that the grievant's characterization of the pertinent language is too "literal" and does not afford it the broad discretion in personnel matters recognized in Dillon v. Wyoming County Bd. of Educ., 351 S.E.2d 58 (W.Va. 1986). Along the same line of reasoning, the Board further contends that to interpret the statute to require the appointment of a single, minimally qualified applicant would be to reach an absurd result. [\(See footnote 3\)](#) **Analysis**

The undersigned finds little ambiguity in W.Va. Code §18A-4- 7a, ¶10. It is clear from the rather precise language of the statute that a single application which meets the announced requirements for a professional post triggers a duty to fill that position within thirty days of the close of the posting period. While the statute does not explicitly allocate the post to the sole candidate at the end of the posting period, logic dictates that he or she must be the "successful applicant to fill the vacancy." In any event, to the extent that the language is unclear, Morgan v. Pizzino, 256 S.E.2d 592 (W.Va. 1979) mandates that the ambiguities be resolved in favor of the employee.

Further, the holdings in Dillon regarding a county board's discretion in personnel matters are not implicated. Clearly, the Legislature can statutorily restrict that discretion and has done so with regard to the manner in which vacancies in professional positions are posted and filled. By clearly prescribing a board's options when only one applicant meets the announced minimum requirements for a post, the Legislature has necessarily limited the standard of review in the case to one of statutory compliance.

The Board's assertion that the above reasoning reaches an absurd result is also without merit. Except for the duty to list "[a]ny special criteria or skills that are required by the position" in the announcement, W.Va. Code §18A-4-7a does not restrict a county board's discretion to establish the requirements for a particular post. Jones v. Summers County Bd. of Educ., Docket No. 94-45-153

(Nov. 16, 1994). It is not illogical, at least from the standpoint of applying the statute, to hold that a sole applicant for a professional position must be appointed when he or she meets the expectations established and announced by the board.

Moreover, to the extent that the statute could be interpreted as permitting a board to seek a "broader" field of applicants for a post, the evidence in the case would not support that the Board acted reasonably in that regard. As noted, the record reflects that the second announcement was identical to the first and was posted in the same locations. It seems that any attempt to draw new applicants should have included, at a minimum, a different and/or wider circulation of the posting.

Accordingly, the grievance is **GRANTED**, and the Mingo County Board of Education is hereby **ORDERED** to place the grievant in the position of Principal of Matewan High School and compensate him for any loss of wages or benefits he may have incurred as the result of the Board's failure to appoint him to the position subsequent to the original vacancy announcement, less any appropriate set-off.

Any party may appeal this decision to the Circuit Court of Kanawha County or the Circuit Court of Mingo 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 Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

JERRY A. WRIGHT
ADMINISTRATIVE LAW JUDGE

Dated: May 30, 1996

[Footnote: 1](#)

The grievant's administrative licensure was referred to by the parties as a "Taco Bell" certificate. Notice is taken that the certificate was so designated because management of a fast food restaurant would meet the minimal supervisory experience requirement under the applicable DOE regulation.

[Footnote: 2](#)

The record is unclear on when Ms. Hunter was appointed to the position. Ultimately, it is of little if any relevance whether

the appointment complied with the thirty-day timeline in the statute.

[Footnote: 3](#)

It is noted that it was revealed at the Level IV hearing that the grievant did not reapply after the first posting. Counsel for the Board asserted then and in post-hearing submissions that the grievant, therefore, had not proven that he was "harmed." The argument is specious. Superintendent Conn's testimony reflects that he, at all times pertinent herein, considered the grievant to be a viable candidate for the position; the selection committee's request for reposting clearly indicates that it also considered his application active; and, in any event, the grievant is protesting the Board's decision to repost.