

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

September 1998 Term

No. 24968

MINGO COUNTY BOARD OF EDUCATION,
Respondent below/Petitioner below,
JADA HUNTER, Intervenor below,
Appellees,

v.

FRANK JONES, Grievant below/Respondent below,
Appellant.

Appeal from the Circuit Court of Mingo County
Hon. Michael Thornsburg, Judge
Case No. 96-CAP-21

REVERSED AND REMANDED

Submitted: September 16, 1998
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JUSTICE STARCHER delivered the Opinion of the Court and was joined by CHIEF

JUSTICE DAVIS, JUSTICE McCUSKEY, and JUDGE PANCAKE, sitting by special assignment.

JUSTICE MAYNARD, deeming himself disqualified, did not participate in the decision of this case.

JUSTICE WORKMAN dissents and reserves the right to file a dissenting opinion.

JUSTICE MCGRAW did not participate in the decision of this case.

SYLLABUS BY THE COURT

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.” Syllabus Point 3, *Dillon v. Wyoming County Board of Education*, 177 W.Va. 145, 351 S.E.2d 58 (1986).

2. When a school board posts a notice of vacancy pursuant to *W.Va. Code*, 18A-4-7a [1993], and one or more qualified applicants apply for the position within the posting period, the school board must select a qualified applicant from those who applied during the posting period.

3. “County boards of education are bound by procedures they properly establish to conduct their affairs.” Syllabus Point 2, *Dillon v. Wyoming County Board of Education*, 177 W.Va. 145, 351 S.E.2d 58 (1986).

Starcher, Justice:

Frank Jones (“Jones”) appeals a June 30, 1997, order of the Circuit Court of Mingo County that reversed an administrative law judge’s decision granting Jones’ grievance against the Mingo County Board of Education (“Board”). Jones contends that the circuit court erred in reversing the administrative law judge and in sustaining the Board’s awarding the position of principal of Matewan High School to Jada Hunter (“Hunter”). After reviewing the record and briefs, we agree with Jones and reverse the circuit court’s decision.

I.
Factual Background

The facts in this matter are essentially uncontroverted. On November 22, 1995, the Board posted notice of a vacancy in a principal’s position at Matewan High School. This notice was posted pursuant to *W.Va. Code*, 18A-4-7a [1993].¹ The notice

¹*W.Va. Code*, 18A-4-7a [1993] states, in part:

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. Any special criteria or skills that are required by the position shall be specifically stated in the job description and directly related to the performance of the job. No vacancy shall be filled until after the five-day minimum posting period. If one or more

stated that the deadline for applications was November 30, 1995. Jones was the only person who submitted an application during the specified time period.

Following the submission of Jones' application, a selection committee consisting of teachers, parents and service personnel reviewed Jones' application and interviewed him. The committee reported to the superintendent of schools that Jones met the basic qualifications for the job. However, the committee requested that the position nevertheless be re-posted, to enable the committee to evaluate other applicants for the job.

The superintendent complied with this request and re-posted the position on December 8, 1995. This second posting was identical to the first, except it set the cut-off date for submitting applications as December 14, 1995. Hunter was the only person to submit an application pursuant to the second posting. The selection committee reviewed Hunter's qualifications and interviewed her.

The selection committee subsequently reported to the superintendent that both Jones and Hunter were qualified, and that either applicant would be a benefit to the school. The superintendent eventually recommended to the Board that Hunter fill the position. This recommendation was stated to be based on the superintendent's knowledge of the backgrounds of the two applicants.

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[.]

Jones filed a grievance, and on May 30, 1996, the West Virginia Education and State Employees Grievance Board granted the grievance, ordering the Board to place Jones in the position of principal at Matewan High School.

The Board appealed the decision of the Grievance Board to the Circuit Court of Mingo County, and Hunter intervened in the appeal. Subsequently, the circuit court reversed the decision of the Grievance Board. Jones appealed the circuit court's order to this Court.

II. *Standard of Review*

All parties agree that the issue in this matter is one of statutory interpretation and as such is subject to our *de novo* review. *Martin v. Randolph County Board of Education*, 195 W.Va. 297, 304, 465 S.E.2d 399, 406 (1995).

III. *Decision*

Jones contends that the circuit court erred in reversing the holding of the administrative law judge of the West Virginia Education and State Employees Grievance Board, and in holding that *W.Va. Code*, 18A-4-7a [1993] permits multiple postings of a job vacancy, as long as the vacancy is filled within the 30-day time limit in which the

vacancy must be filled.² Jones argues that because he was the only applicant under the original posting, and because he met the requirements for the position, the statute imposed a duty on the Board to appoint him to the position.

The Board and Hunter argue that school boards are granted broad discretion in personnel matters and should be permitted the opportunity to have multiple postings of job vacancies, so long as a vacancy is filled 30 days after the first posting.

We agree that school boards are afforded discretion in personnel matters.

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.

Syllabus Point 3, *Dillon v. Wyoming County Board of Education*, 177 W.Va. 145, 351 S.E.2d 58 (1986).

But while school boards are granted this discretion, they must comply with procedures prescribed in the relevant statutes -- in this instant case, *W.Va. Code*, 18A-4-7a [1993].

We have stated:

Effect should be given to the spirit, purpose and intent of the lawmakers without limiting the interpretation in such a manner as to defeat the underlying purpose of the statute. Each word of a statute should be given some effect and a statute must be construed in accordance with the import of its

² See note 1, *supra*.

language. Undefined words and terms used in a legislative enactment will be given their common, ordinary and accepted meaning.

Syllabus Point 6, in part, *State ex rel. Cohen v. Manchin*, 175 W.Va. 525, 336 S.E.2d 171 (1984).

W.Va. Code, 18A-4-7a [1993]³ provides that “[i]f one or more applicants meets the qualifications listed in *the* job posting, the successful applicant . . . *shall* be selected by the board” (Emphasis added.) In its use of the words “*the* posting,” the statute does not address multiple postings. We must assume that the Legislature recognized that there would be situations where there would be only one qualified applicant. In such a case, the statute uses the word “shall” to mandate that the position be filled by the qualified applicant.

The Board and Hunter point out that the statute also mandates that the vacant position be filled within 30 days of the posting, but only requires a minimum posting of 5 days. Appellees argue that so long as these restrictions are adhered to, school boards should be permitted to post and re-post the position as many times as they believe to be necessary. We agree that *W.Va. Code*, 18A-4-7a [1993] requires only a minimum posting period of 5 days, and that school boards are permitted to post vacancies for longer periods of time. However, “[c]ounty boards of education are bound by procedures they properly establish to conduct their affairs.” Syllabus Point 3, *Dillon*

³See note 1, *supra*.

v. Wyoming County Board of Education, 177 W.Va. 145, 351 S.E.2d 58 (1986).

In this case, the original posting specifically stated that the deadline for applications would be November 30, 1994 at 4:00 p.m. Had the Board decided not to establish this deadline, but to set the application period for a longer amount of time to try to obtain a larger pool of candidates, the Board would have been acting within the power granted to them in the statutes. However, once the Board established the November 30, 1995 deadline, it was bound to adhere to the deadline, and to hire the single qualified applicant who had filed during that application period.

When a school board posts a notice of vacancy pursuant to *W.Va. Code*, 18A-4-7a [1993], and one or more qualified applicants apply for the position within the posting period, the school board must select a qualified applicant from those who applied during the posting period.

IV. *Conclusion*

Accordingly, the order of the Circuit Court of Mingo County is reversed, and the instant case is remanded with directions to enter an order directing the Mingo County Board of Education to place Jones in the position of Principal of Matewan High School, and to compensate him for any loss of wages or benefits he may have accrued, less any appropriate set-off.

Reversed and Remanded.