No. 24968 -- Mingo County Board of Education v. Frank Jones

Workman, J., dissenting:

The Mingo County Superintendent of Schools, Mr. Everett Conn, and the Mingo County Board of Education chose the applicant they deemed best qualified to serve as the principal of Matewan High School. The Board violated no statute, and it had good and sound reasons for its decision.[1] Yet the majority now removes this principal from her job and requires the Mingo County Board of Education to pay years of back wages. Thus, I must vociferously dissent.

West Virginia Code § 18A-4-7a neither explicitly authorizes nor explicitly precludes re-posting of job openings. The majority's interpretation of the statute is

[1]The administrative law judge, awarding the position to Mr. Jones, noted that "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. . . ." In a footnote, the administrative law judge explained that 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."

overreaching. The statute, as the legislature drafted it, simply requires a school board to post a notice, wait at least five days, and then fill the vacancy within thirty days after the end of the posting period. The statute does not specify a maximum posting period, nor does it specify the number of times a notice may be posted within the posting period chosen by the school board.

The majority, in applying the statutory language, imposes terms upon school boards not dictated by the legislature. The majority, in essence, fills in a perceived gap in the legislative edict. The majority seizes upon the language, "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. . . " and concludes that only one posting is statutorily permitted. I agree that the language is not conclusive and therefore requires interpretation. Yet, the augmentation conducted by the majority runs afoul of our accepted means of construing legislative proclamations. As we explained in syllabus point seven of Ewing v. Board of Education of County of Summers, ___ W. Va. ___, 503 S.E.2d 541 (1998),

> " ' " 'A statute should be so read and applied as to make it accord with the spirit, purposes and objects of the general system of law of which it is intended to form a part; it being presumed that the legislators who drafted and passed it were familiar with all existing law, applicable to the subject matter, whether constitutional, statutory or common, and intended the statute to harmonize completely with the same and aid in the effectuation of the general purpose and design thereof, if it terms are consistent therewith.' Syllabus Point 5, State v.

> Snyder, 64 W. Va. 659, 63 S.E. 385 (1908)." Syl. Pt. 1, State ex rel. Simpkins v. Harvey, [172] W. Va. [312], 305 S.E.2d 268 (1983).' Syl. Pt. 3, Shell v. Bechtold, 175 W. Va. 792, 338 S.E.2d 393 (1985) [(per curiam)]." Syllabus point 1, State v. White, 188 W. Va. 534, 425 S.E.2d 210 (1992).

The "spirit, purposes and objects of the general system of law of which [the statute] is intended to form a part" encompasses much broader considerations than acknowledged by the majority. In attempting to implement other mandates of this statute in Ewing, this Court explained the purposes of the statute and the delicate balance between the discretion of the county school boards and the necessity for interpretation of statutory language through judicial avenues. We stated:

> To more effectively understand the import of W. Va.Code § 18A-4-7a, it is necessary to examine the policies underlying the law of educational employment decisions. This State has firmly resolved to provide our schoolchildren with the best possible educational opportunities. Specifically, the West Virginia Constitution mandates that "[t]he legislature shall provide, by general law, for a thorough and efficient system of free schools." W. Va. Const. art. XII, § 1. This Court likewise has recognized that
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> > [p]ublic education is a fundamental constitutional right in this State, and a prime function of the State government is to develop a high quality educational system, an integral part of which is qualified instructional personnel.... "[T]he State has a legitimate interest in the quality, integrity and efficiency of its public schools in furtherance of which it is not only the responsibility but also the duty of school administrators to screen those [in] ... the teaching profession to see that they meet this

> standard." James v. West Virginia Board of Regents, 322 F.Supp. 217, 229 (S.D.W.Va.), aff'd, 448 F.2d 785 (4th Cir.1971) [(per curiam)]. The county boards of education perform these functions on behalf of the State in the hiring and placement of teachers.

Dillon v. Board of Educ. of County of Wyoming, 177 W. Va. at 148, 351 S.E.2d at 61 (additional citations omitted).

In order to ensure the highest possible quality of education in West Virginia, those charged with hiring our State's educators, county boards of education, are allowed broad discretion in employing the most qualified individuals to teach our young people. "County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel." Syl. pt. 3, in part, Dillon, 177 W. Va. 145, 351 S.E.2d 58. Accord Syl. pt. 2, Cowen v. Harrison County Bd. of Educ., 195 W. Va. 377, 465 S.E.2d 648 (1995). See also State ex rel. Monk v. Knight, --- W. Va. ----, ----, --- S.E.2d ----, ----, slip op. at 8-9 (No. 24366 Nov. 24, 1997) ("County boards of education are statutorily directed to make ... [educational employment] decisions.... This selection of candidates puts boards of education in a position where they must use their discretion in rating the qualifications of the applicants. " (footnote omitted)); Mason County Bd. of Educ. v. State Superintendent of Sch., 160 W. Va. at 351, 234 S.E.2d at 323 ("We recognize that considerable authority is vested in a county board of education to operate its public schools." (citation omitted)).

For this reason, while "[t]his Court has a duty to oversee that the objective of filling this State's schools with 'qualified instructional personnel' is met," State ex rel. Melchiori v. Board of Educ.. of County of Marshall, 188 W. Va. at 581, 425 S.E.2d at 257 (citation omitted), **the judiciary is nonetheless reluctant to find fault with such hiring decisions unless the scheme employed clearly does not comport with the statutory guidelines for such decisions or is, in other respects, inappropriate**.

___ W. Va. at ___, 503 S.E.2d at 555 (emphasis supplied).

Having so thoroughly acknowledged the critical role of the local school boards in employment decisions, it is alarming that the majority would now retreat from that position by imposing a limitation upon the school boards not explicitly dictated by the legislature. While I share the majority's dedication to the premise that the broad discretion granted to the school boards must certainly yield to clear legislative mandates, where the legislature did not speak to a particular issue, the discretionary determinations of the school boards must respected.

In Keatley v. Mercer County Board of Education, 200 W. Va. 487, 490 S.E.2d 306 (1997), we encountered a similar absence of precise legislative guidance, and we observed as follows:

> The provision cited from W.Va.Code § 18A-4-7a does not establish the deadline by which an applicant must possess the appropriate certification. The absence of such a reference clearly indicates legislative intent for county boards of education to exercise discretion on this issue. "[I]f the statute is silent ... with respect to the specific issue, the question for the court is whether the [Board's] answer is based on a permissible construction of the statute." Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 843, 104 S.Ct. 2778, 2782, 81 L.Ed.2d 694, 703 (1984). See Pauley v. BethEnergy Mines, Inc., 501 U.S. 680, 696-98, 111 S.Ct. 2524, 2534, 115 L.Ed.2d 604, 623-25

> (1991). Therefore, we review the Board's decision, only to determine if the Board's statutory construction is one the legislature would have sanctioned. See United States v. Shimer, 367 U.S. 374, 383, 81 S.Ct. 1554, 1560-61, 6 L.Ed.2d 908, 915 (1961).

200 W. Va. at 491-92, 490 S.E.2d at 310-11 (footnote omitted).

The selection committee in this matter interviewed Mr. Jones and reported to the Superintendent of Schools as follows:

> 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.
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> 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.
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> 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 need of our school.

While the committee did not identify any precise reservation concerning Mr. Jones, it is obvious that they had some reservation. This is precisely the type of situation where local school boards should have as much freedom as the statute permits in selecting the best applicant. Despite the fact that statutes must be complied with, we must not forget that the

educational system is designed to serve the best interests of the students in the individual

communities, as administered through the local school boards.

I also differ with the majority on the issue of retroactive compensation. In State ex rel. Serdich v. Preston County Board of Education, 200 W. Va. 34, 488 S.E.2d 34 (1997), we explained that back pay is not appropriate where the statute underlying the decision was not clear, as follows:

> The Court notes that what constitutes an "opening" within the statutory language was unclear at the time the circuit court rendered its ruling in this case, as well as at the time the board of education failed to send the appropriate notice to the appellant. Under such circumstances the Court believes that it would be inappropriate to award the appellant back pay, other benefits, and other legal expenses connected with the bringing of this action.

200 W. Va. at 38, 488 S.E.2d at 38.

Based upon the foregoing, I respectfully dissent.