

No. 25818 -- *Hancock County Board of Education v. Charles Hawken and Wilmon B. Culley, II v. Charles Hawken*

McGraw, J., dissenting:

Though I am by no means a strict constructionist in all cases, I feel that the majority opinion fails to follow the explicit directive of the Legislature in this case. Even a cursory examination of W. Va. Code § 18A-4-8 (1996) reveals that our Legislature took great care in crafting very specific rules for the hiring of school service personnel. Exactly what each job is, and exactly what the salary ranges are, is laid out in page after page of detailed instructions. They did this for an obvious reason, to prevent boards of education from “pre-ordaining” a favored friend or relative for a particular job. The Code states very clearly:

The purpose of these tests shall be to provide county boards of education a uniform means of determining whether school service personnel employees who do not hold a classification title in a particular category of employment can meet the definition of the classification title in another category of employment as defined in section eight of this article

\* \* \*

Achieving a passing score *shall conclusively demonstrate the qualification of an applicant* for a classification title.

W. Va. Code § 18-4-8e (1996)(emphasis added).

The board of education is the source of many good jobs in a given county, and in some of our poorer counties, it may offer some of the best work available. For some West Virginians, getting a job through the board of education for themselves or their spouse is the only way that they can raise a family in the community where they grew up. Losing that job, or being forever stuck in a low-paying position despite years of seniority, can mean economic devastation for a family.

Historically, boards of education have often been guilty of “home cookin’” by hiring friends or members of an extended family. As is the case in much of our State, you often have to “know” someone in order to be hired at all. That is why the Legislature was so specific, both in the creation of finely delineated categories, and by establishing tests. The purpose is to level the playing field for all applicants, and to ensure a measure of predictability and fairness in the hiring process.

I do not mean to suggest that our boards of education cannot be trusted to discharge their duties in a fair and just manner; however, I feel that much mischief may result by granting the board members *carte blanche* to tinker with the job classifications laid out so meticulously by our Legislature, and I, therefore, respectfully dissent.

I am authorized to state that Chief Justice Starcher joins in this dissent.