NORM ALLISON

v. Docket No. 94-15-1090

HANCOCK COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant Norm Allison, a teacher, complains because he was not selected for an extracurricular position at his school. He alleges the "position was given to a less qualified applicant under the criteria established in W.Va. Code 18A-4-7a." Respondent Hancock County Board of Education (HCBE) denies wrongdoing and counters that a meaningful selection process was employed to select the most qualified applicant for the position in question. The parties agreed that a level four decision could be based upon the record adduced below. The case became mature for decision on June 14, 1995, the final day for the submission of fact/law proposals.1

1Adverse decisions on this grievance were rendered at levels one and two on October 17, 1994, and November 21, 1994, respectively. The record contains the transcript/exhibits of the November 14, 1994, level two hearing.

The issue in this case is whether HCBE violated the hiring requirements of W.Va. Code 18A-4-7a or otherwise abused its discretion when it determined that George Danford was more qualified for the position of "Curricular and Instructional Team Leader for Life Skills" at Oak Glen High School (OGH) than Grievant. Grievant contends he was well-qualified for the position, indeed, more qualified than the successful applicant, and requests instatement.

HCBE correctly argues that no violation of Code 18A-4-7a occurred because the statute applies to professional positions such as classroom teaching jobs but not to extracurricular positions like the one in question. See McCoy v. Kanawha County Bd. of Educ., Docket No. 94-20-141 (Oct. 10, 1994); Chaffin v. Wayne County Bd. of Educ., Docket No. 92-50-419 (Aug. 20, 1993). Additionally, HCBE contends it properly filled the job after a selection team not only used the criteria in the statute as a guideline, but also considered other selection criteria consis tent with the requirements for the job. HCBE agrees that Grievant was qualified for the position, but disagrees that he was the most qualified applicant.

Grievant has the burden of proving his case by a preponder ance of the evidence. Rupich v. Ohio County Bd. of Educ., Docket No. 89-35-719 (June 29, 1990); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). Based on the record as a whole, it is determined that Grievant failed to establish his claim that he was the most qualified applicant for the extracurricular position, or that HCBE erred when it selected Mr. Danford based on criteria other than the factors set forth in Code 18A-4-7a for determining who was the most qualified applicant.

Based on all matters of record, the following formal findings of fact and conclusions of law are made.2

Findings of Fact

1. In Fall 1994, HCBE posted a notice for three 200-day extracurricular Curriculum and Instructional Team Leader (CITL) positions at OGH, in the specific areas of Humanities, Math/Science/Technology, and Life Skills. These positions pay $1000.00 for the year-long work.

2. Grievant and George Danford responded to the posting for CITL in Life Skills. Both applicants met the minimum requirements for the CITL/Life Skills job.

3. OGH's head principal and two assistant principals reviewed the candidates' applications and resumes, and briefly interviewed each candidate for about ten or fifteen minutes.

4. Grievant's experiences include self-employment in several business enterprises, extensive computer training and expertise, teaching at a nearby technical school, ten years' coaching in the county, involvement with the development of a physical education program in another county approximately

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2Fact findings were based on the record as a whole, and more specifically, upon the November 21, 1994, level two decision, primarily because Grievant did not refute any of the findings in said decision.

thirty years ago, and an extensive background in construction, estimating and contract work.

5. After due consideration of the applicants' qualifica tions, relative to the requirements set forth in the posting, the team of administrators determined that Mr. Danford was the most qualified applicant.

6. The team's unanimous decision to recommend Mr. Danford for the CITL/Life Skills job was based on Danford's extensive extracurricular work with OGH's students, leadership roles within the school system as faculty senate president and member of the staff development committee, working knowledge of comput ers, experience with the master schedule and scheduling of classes for special education students, use of several success

ful teaching strategies, expertise with students' test scores, service as president of a Child Welfare Council for Exceptional Children in his home town, and knowledge and experience relative to outside business interests, among other things.

Conclusions of Law

1. W.Va. Code 18A-4-7a does not apply to professional extracurricular positions. See McCoy v. Kanawha County Bd. of Educ., Docket No. 94-20-141 (Oct. 10, 1994); Ramey v. Mingo County Bd. of Educ., Docket No. 93-29-470 (May 12, 1994); Anderson v. Gilmer County Bd. of Educ., Docket No. 93-11-385 (Mar. 29, 1994); Chaffin v. Wayne County Bd. of Educ., Docket No. 92-50-419 (Aug. 20, 1993).

2. As long as a consistent evaluation process is fol lowed, some or all of the factors in Code 18A-4-7a can be used, along with other relevant criteria in a selection process to determine the most qualified person for an extracurricular position.

3. Grievant failed to prove that HCBE violated Code 18A-4-7a, or that HCBE otherwise abused its discretion when it selected Mr. Danford for the extracurricular assignment at issue.

Accordingly, this grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Hancock 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 appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate Court.

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NEDRA KOVAL

Administrative Law Judge

Date: June 15, 1995