BILLY J. KEATLEY

v. Docket No. 94-27-1098

MERCER COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, professionally employed by Respondent Mercer County Board of Education (MCBE), grieves his non-selection for the position of assistant principal at Bluefield High School (BHS) and states that MCBE violated W.Va. Code 18A-4-7a when it "appointed a less senior, less qualified applicant." Grievant seeks instatement to the position in question or other relief. MCBE denies it violated any statute, acted arbitrarily or abused its discretion in this matter. The parties agreed that a decision could be based on the record below. Thereafter, the case became mature for judgement on December 30, 1994, upon receipt of MCBE's fact/law proposals.1

1The record consists of the lower-level decisions and the transcript and exhibits of the level two hearing, heard October 26 and November 3, 1994. Grievant apparently waived his right to submit written argument at level four.

Based on all matters of record, the following findings of fact are made.

Findings of Fact

1. Grievant is currently serving as a "Vice Principal" at Montcalm High School. He has been employed by MCBE for approximately twenty-five years and has thirteen-plus years' administrative experience.

2. On June 9, 1994, MCBE posted the following "Minimum

Qualifications" for the assistant principalship at BHS:
A valid West Virginia Administrative Certificate.
Candidate should have records of excellent work
attendance, outstanding evaluations; evidence of
performing extracurricular duties, positive
attitude, concrete personal contributions and/or
desire in addressing academic goals; excellent
oral and written communication skills and demon
strates concern for addressing community con
cerns; candidate should have experience or
knowledge in student scheduling.

3. Grievant and five other persons applied. T.6. All
met the certification requirement.
4. In order to comparatively assess the applicants'
qualifications relative to the first set of seven factors found
in W.Va. Code 18A-4-7a, BHS Principal John Disibbio utilized a
matrix with all the candidates' names and the seven areas of
review. Each area or factor was worth twenty points. Based on
his independent review of the applicants' credentials, Mr.
Disibbio then issued each candidate points for the first six
factors (all of the candidates received twenty points for the
factors of certification and evaluation).
5. The candidates were also interviewed by a five-member
committee which included Mr. Disibbio, MCBE Personnel Director
Roger Daniels, Director of Special Education Margaret Pace, BHS
guidance counselor Carole Dodson and BHS English Department
Chair Doug Bourne. T.13.
6. Following the interviews, Mr. Disibbio and the rest of
the committee, by consensus, rank-ordered the candidates for
factor seven, from first through sixth place, based on informa

tion gleaned at their interviews. Mr. Disibbio then issued each candidate points for the seventh factor, "other factors." The candidate ranked first by the interview committee received twenty points, the candidate ranked second received nineteen points, and so on. T.21. Finally, the scores attained for all of the seven factors were totalled.

7. Grievant was ranked overall third highest, and Tom Chaffins, the successful applicant, was ranked second highest.

8. Since Grievant had been the candidate with the most administrative seniority, he was rated highest for relevant experience, twenty points. He and Mr. Chaffins also received twenty points each for academic achievement, in light of their 4.0 GPAs. Two factors or areas where Grievant scored lowest (sixteen points each) were relevant course work (Grievant was listed at MA+30 while all but one other candidate was listed at MA+45) and "other factors," factor seven, where data from the interview process was assessed and rated.

8. After Mr. Disibbio learned that the applicant ranked overall highest had already accepted a position at another school, he recommended to MCBE's superintendent that the appli cant who had been ranked second highest, Mr. Chaffins, be hired.

9. MCBE ultimately acted upon the superintendent's recommendation that Mr. Chaffins be hired.

10. As evidence that he was more qualified overall than the successful applicant, Grievant focused solely on his admin istrative seniority and varied experiences as a school adminis trator, a factor for which he received the highest rating of all of the other candidates.

Discussion

The relevant law in this case is clear. County boards of

education have substantial discretion in matters relating to the hiring and assignment of school personnel, and they must exer cise that discretion reasonably, in the best interests of the school system, and not in an arbitrary or capricious manner. See State ex rel. Hawkins v. Tyler County Bd. of Educ., 275 S.E.2d 908, 911 (W.Va. 1980). Moreover, W.Va. Code 18A-4-7a requires that a county board of education select the most qualified candidate for an administrative position:

A county board of education shall make decisions affecting the hiring of professional personnel other than classroom teachers on the basis of the applicant with the highest qualifications. . . . In judging qualifications, consideration shall be given to each of the following: Appropriate certification and/or licensure; amount of experience relevant to the position or, . . ., the amount of course work and/or degree level in the relevant field and degree level generally; academic achievement; relevant specialized training; past performance evaluations conducted pursuant to . . . [18A-2-12] . . .; and other measures or indicators upon which the relative quali fications of the applicant may fairly be judged.

Finally, an employee who challenges a board of education's hiring decision via the grievance procedure must prove all the allegations of his complaint by a preponderance of the evidence. See 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).

Grievant failed to meet his burden of proof in this griev ance. In closing statements at level two, Grievant's represen

tative stated that he found no fault with the selection crite ria. However, he questioned the selection process. Among other things, he opined that Mr. Disibbio acted arbitrarily and capriciously, ostensibly because the principal independently assessed the points for each of the seven factors and failed to give each committee member an opportunity to form his or her own judgment as to the overall ratings. He also requested that the selection process be repeated and that all of the candidates be reevaluated by each committee member. T.44.

The record does not support a finding that Mr. Disibbio acted improperly in the selection process. As MCBE correctly states, Code 18A-4-7a does not require the use of a committee to select professional personnel. Moreover, there is no basis upon which to conclude that MCBE's use of a committee "to provide input in an area where subjectivity might come into play," as MCBE contends it did here, was violative of 18A-4-7a. Grievant was rated quite high in several of the factors and was ranked third highest of six candidates overall. He simply failed to demonstrate that he or anybody else had been improper ly rated in any individual area or unjustly ranked for the overall standings. Hence, Grievant failed to prove that the selection process itself was fatally flawed so as to deprive him of a meaningful review of his credentials and qualifications.2

Most importantly, Grievant failed to demonstrate that he was more qualified than the successful applicant. Grievant admitted that he had never taken any multicultural training. When asked by his representative to elaborate on any "relevant specialized training" he may have attained which would render him "more qualified" than the other candidates, Grievant re sponded by citing the many administrative duties he had per

formed over fourteen-plus years.

However, during cross-examination Grievant admitted he had not informed the committee as to these varied administrative experiences at the interview nor supplied the information via a resume. He also agreed that during the past three to five years he had not taken any type of non-mandatory, relevant profession al training, and conceded that, while he had some involvement with student scheduling, he had never been responsible for setting up a "Master Schedule" in a school. See T.29, 36-39.

2Tellingly, Grievant at no time asserted or demonstrated that he should have received more than eighteen points for "Relevant specialized training" or twenty points (maximum points possible) for relevant experience. Neither did Grievant ever challenge or otherwise present evidence as to the propriety of the scores received by the other candidates.

Conclusions of Law

1. In non-disciplinary matters, the grievant has the burden of proving all of the allegations relating to his griev ance by a preponderance 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).

2. County boards of education have substantial discretion in matters relating to the hiring and assignment of school personnel, and they must exercise that discretion reasonably, in the best interests of the school system and not in an arbitrary or capricious manner. See State ex rel. Hawkins v. Tyler County Bd. of Educ., 275 S.E.2d 908, 911 (W.Va. 1980).

3. W.Va. Code 18A-4-7a requires that a county board of education select the most qualified candidate when an adminis trative position is to be filled:

A county board of education shall make decisions affecting the hiring of professional personnel other than classroom teachers on the basis of the applicant with the highest qualifications. . . . In judging qualifications, consideration shall be given to each of the following: Appropriate certification and/or licensure; amount of experience relevant to the position or, . . ., the amount of course work and/or degree level in the relevant field and degree level generally; academic achievement; relevant specialized training; past performance evaluations conducted pursuant to . . . [18A-2-12] . . .; and other measures or indicators upon which the relative quali fications of the applicant may fairly be judged.

4. A candidate for a principal's job with the most administrative experience is not necessarily more qualified than other applicants with less such experience. See Keatley v. Mercer County Bd. of Educ., Docket No. 93-27-203 (Aug. 10, 1994).

5. Grievant established that he had more administrative experience and seniority than all of the applicants; however, he failed to prove that he was more qualified than the successful applicant.

6. Grievant failed to establish that the assessments made by BHS Principal John Disibbio, with the assistance of an interview committee, were arbitrary or capricious or in any other manner improper so as to fatally flaw the selection

process.

7. Grievant has failed to prove that MCBE abused its discretion or acted arbitrarily or capriciously in this matter.

8. Grievant has failed to establish that MCBE violated Code 18A-4-7a when it selected the most qualified applicant for the job opening in question.

Accordingly, the grievance is DENIED in its entirety.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mercer 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: February 24, 1995