BILLY J. KEATLEY,

Grievant,

v. DOCKET NO. 94-27-641

MERCER COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Billy J. Keatley, filed this grievance on or about August 23, 1994, protesting his non-selection for an Assistant Principal position. Following adverse decisions at the lower grievance levels, Grievant appealed to Level IV on November 2, 1994. Hearing was originally scheduled for January 12, 1995, but following several requests for continuances, the parties agreed to submit the case on the record developed below. Proposed findings of fact and conclusions of law were received from the parties on or about March 31, 1995, at which time this case became mature for decision.

The facts are not in dispute and are set forth in the following findings.

Findings of Fact

1. Grievant has been employed by Respondent Mercer County Board of Education for approximately 26 years, with approximately 13 of those spent in administrative positions.

2. By Administrative Memorandum dated June 9, 1994, Respondent posted various job openings, including Assistant Principal of PikeView High School. Board Exhibit 1.

3. Ten applicants, including Grievant, were interviewed for the Assistant Principal position.

4. The Interview Committee included Dan Zirkle, Principal, PikeView High School; Elizabeth Henry, Assistant Principal, PikeView High School; Ann Clemons, teacher, PikeView High School; and Roger Daniels, Administrative Assistant/Director of Human Resources.

5. The first set of factors in W. Va. Code § 18A-4-7a were utilized in the selection process. A total of 5 points were allowable for the first six legislative criteria: appropriate certification, experience

relevant to the position, course work and/or degree level in the relevant field, academic achievement, relevant specialized training, and past performance evaluations. 6. Dan Zirkle testified that each of the first six criteria was weighted equally, on an all-or-none basis. Therefore, if a candidate had what the criteria asked for, he or she received the maximum 5 points. If he did not, he received 0 points. Grievant received the maximum allowable 5 points for each criteria.

7. The interview also consisted of 10 oral interview questions, which were asked of each candidate. A maximum of 5 points could be awarded for each interview question for a total possible 50 points. Grievant received 33 points on the oral portion of the interview. Board Exhibit 3.

8. Finally, the candidates were each given three written questions, worth 5 points each, and were given an unlimited amount of time to answer the questions. Grievant received 14 of a total possible 15 points on the written portion of the interview. Board Exhibit 3.

9. After each committee member individually scored the candidates, Principal Zirkle and Assistant Principal Henry tallied the scores for each candidate, averaged the scores and came up with a ranking of the candidates. Grievant ranked 7th out of the 10 candidates, with a total of 77 out of a possible 95 points. Board Exhibit 3.

10. Mr. David Harvey scored the highest of all the candidates. However, Mr. Harvey had already accepted another position, and the Superintendent recommended that the Assistant Principal of PikeView High School be awarded to the next highest ranking candidate, Mr. Ben DiSibbio. Mr. DiSibbio received the maximum of 5 points each for the six criteria, 38 points for the oral portion of the interview, and 15 for the written portion, for a total of 83 out of a possible 95 points.

11. The Board accepted the Superintendent's recommendation and voted to award the Assistant Principal position to Mr. DiSibbio on July 26, 1994. Board Exhibit 2.

Discussion

Grievant alleges that he is more qualified and has more seniority than the successful applicant, Mr. DiSibbio, and asks that he be placed in the Assistant Principal position at PikeView High School. Grievant relies on Shewbridge v. Mercer County Bd. of Educ., Docket No. 94-27-094 (Sept. 28, 1994), for the argument that Mr. DiSibbio did not have the "appropriate certification and/or licensure" for the Assistant Principal position at PikeView High School, thus making his selection arbitrary and capricious, and the selection process flawed. Grievant also argues that Mr. DiSibbio should not have

been awarded any credit for administrative experience based on the outcome of the Shewbridge decision. Finally, Grievant suggests that the members of the Interview Committee were biased in favor of Mr. DiSibbio, because they worked at one time at Bluefield High School, where Mr. DiSibbio had been Assistant Principal. Grievant asks that he be placed in the Assistant Principal position, or in the alternative, that the selection process be overturned and a re-evaluation of the candidates be conducted based upon their qualifications at the time the position was posted and filled.

Respondent argues that it followed the proper procedure outlined in W. Va. Code § 18A-4-7a, for filling administrative positions, that Grievant failed to show that the procedure wasflawed in any way, and that Grievant has failed to show that Respondent's decision was arbitrary and capricious.

Grievant relies on Shewbridge, supra, stating that the facts in the instant case are "extremely similar" to those in Shewbridge. In Shewbridge, the selection process for the administrative position in question took place in October, 1993. Mr. DiSibbio was the successful applicant for the position. At the time of the selection, Mr. DiSibbio possessed an Internship License-Administrative certificate. The undersigned held in that case that an Internship License-Administrative is not the equivalent of a professional administrative certification for the purposes of analyzing the minimum qualifications of a job posting requiring certification under W. Va. Code § 18A-4-7a. Consequently, the Grievant in that case prevailed and Mr. DiSibbio was removed from the position.

Important to that decision was the understanding that no showing had been made that Mr. DiSibbio would have a professional administrative certificate by the time he assumed his duties as Assistant Principal. The undersigned clearly stated that:

> Consequently, had Mr. DiSibbio completed all of the requirements necessary to obtain his Provisional Professional Administrative certificate in October, 1993, under Code § 18A-3-2, he could have been properly employed as an Assistant Principal even though he had not yet actually received the certificate.

Shewbridge, supra., p. 6.

As noted in that decision, Mr. DiSibbio had obtained a Provisional Professional Administrative Certificate, effective September 1, 1994, so he did possess the appropriate administrativecertificate at the time he assumed his duties as Assistant Principal at PikeView at the beginning of the 1994-1995 school year. No evidence in the form of testimony or documentation was presented regarding when Mr. DiSibbio completed the requirements necessary to obtain the Provisional Professional

Administrative Certificate, but presumably it must have been sometime prior to his receiving the actual certificate.

Grievant also argues that, because Mr. DiSibbio did not possess the appropriate certification in Shewbridge, that he should not have received credit for administrative experience for the approximately one year he served as Assistant Principal at Bluefield High School before he was bumped by Ms. Shewbridge. The applicable criterion in W. Va. Code § 18A-4-7a to this issue is "experience relevant to the position". It is important to note that in selection of professional administrative positions, seniority is not one of the listed criteria and is not the equivalent of experience. Mr. DiSibbio performed the duties of Assistant Principal at Bluefield High School for one year. Ideally, it is expected that one performing administrative duties would possess the appropriate certification. However, the fact that Mr. DiSibbio did not possess the appropriate certification during the time he served as Assistant Principal at Bluefield, does not negate the fact that he performed those duties and gained "experience relevant to the position". Mr. DiSibbio has been the innocent victim of Respondent's action once. He should not be penalized for Respondent's error yet a second time.

Therefore, the undersigned holds that the experience Mr. DiSibbio gained while performing the duties of Assistant Principal at Bluefield High School was properly credited by the Interview Committee in the selection process in the instant case.

After a careful review of the parties' positions, the applicable statute and the foregoing findings of fact, the undersigned makes the following conclusions of law.

Conclusions of Law

1. In order to prevail, a grievant must establish the truth of his allegations by a preponderance of the evidence. Black v. Cabell County Bd. of Educ., Docket No. 06-88-238 (Jan. 31, 1989).

2. County boards of education have substantial discretion in matters relating to the hiring of school personnel and they must exercise that discretion only in the best interests of the schools and in a manner which is neither arbitrary nor capricious. See, Hyre v. Upshur County Bd. of Educ., 412 S.E.2d 265 (W. Va. 1991).

3. With regard to the hiring of professional personnel, boards of education must exercise their discretionary authority by reviewing the candidates' qualifications under the first set of factors

contained in W. Va. Code § 18A-4-7a (1992). Boards of education are free to determine the weight which is to be applied to each of the first set of factors listed in section 7a in assessing candidates' qualifications. See, Blair v. Lincoln County Bd. of Educ., Docket No. 92-22-009 (Apr. 10, 1992). Seniority isnot a factor in such selections. Jones v. Monroe County Bd. of Educ., 441 S.E.2d 367 (W. Va. 1994).

4. Grievant has failed to establish that the successful applicant, Mr. Ben DiSibbio, did not possess the appropriate certification and/or licensure, or had not completed all of the requirements necessary to obtain such certification, at the time the subject position was filled.

5. It was not error for Respondent to consider the administrative experience Mr. DiSibbio gained while serving as the Assistant Principal at Bluefield High School.

6. Grievant has failed to establish that he was more qualified than the successful applicant for the position in issue or otherwise demonstrate that Respondent did not comply with the statutory mandates of W. Va. Code § 18A-4-7a.

7. Grievant has failed to establish bias in the selection process, or that the decision to award the position to the successful candidate was arbitrary and capricious.

Accordingly, this Grievance is **DENIED**.

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 intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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MARY JO SWARTZ

Administrative Law Judge

Dated: April 26, 1995