JOHN L. BAIRD, .

JOHN W. HAWLEY, .

Grievants, .

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v. . DOCKET NUMBER: 95-20-445

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KANAWHA COUNTY BOARD OF EDUCATION, .

Employer. .

DECISION

John Baird and John Hawley, employed as teachers by the Kanawha County Board of Education (Board), challenge the selection of Glenda Washington for the position of Assistant Principal at Roosevelt Junior High School (RJHS). The grievances were consolidated at the lower levels and denied on the merits. Appeal to level four was made October 5, 1995, and evidentiary hearings were held on January 1, and January 26, 1996. The parties declined to submit written legal argument.

There is little if any dispute over the facts of the case. The position in question was posted on May 1, 1995. The announcement specified the following minimum qualifications:

1. Master's degree;

2. West Virginia **EARNED** Administrative (Principal's) certificate of eligibility at the time of application through an approved college program of studies;

3. Minimum of three years teaching experience;

4. Strong commitment to professional growth as evidenced by recent

course work, staff development activities, and attendance at seminars or conferences;

5. Must have an in depth knowledge of the Effective School Research and the School Improvement Process;

6. Must have a strong understanding and belief in the importance of community and parent involvement and have knowledge of strategies to insure such involvement;

7. Must have training or experience in Curricular Development.

(bold in original)

Grievants, Ms. Washington and four other candidates submitted applications by the May 11, 1995 closing date. All applicants were interviewed by a six-person committee; members used a numerical ranking process to assess the applicants' responses to eight standard questions and assign total interview scores. The final interview rankings were forwarded to Superintendent of Schools Jorea Marple.

Superintendent Marple was also furnished information on the candidates' certifications, the extent of their administrative experience, and their college degree levels. The data regarding administrative experience was incomplete and/or inaccurate; the Superintendent was aware that Ms. Washington had served in the position in a substitute capacity during the 1994-95 school year. Superintendent Marple relied on documents from the Board's personnel files to determine whether the applicants had completed specialized training relevant to the duties of the position; the records reflected little if any such training for any candidate. It appears that she assumed all applicants had received satisfactory or better evaluations during the preceding school years.

Ultimately, Ms. Marple concluded that Ms. Washington was the most qualified applicant. On June 29, 1995, the Board accepted the recommendation that she be appointed to the post; she began her duties at the start of the 1995-96 school year.

When she made application for the post, Ms. Washington had only been employed by the Board for approximately one year as a substitute teacher and/or substitute Vice-Principal; she had been regularly employed as a teacher in New York for several years. She possessed a temporary administrative certificate issued by the West Virginia Department of Education (DOE) which was to expire June 30, 1995.

Ms. Washington had not taken a “content specialization” test (See footnote 1) or completed DOE

instruction on personnel evaluations required for the more permanent “Professional Administrative Certificate Issued Provisionally.” She was issued that licensure on July 1, 1995, after passing the test and completing the instruction on or aboutJune 23, 1995. The grievants have had the certificate for several years.

The reference in the posting to an “earned” administrative certificate is an apparent reference to a license which has been awarded on the basis of the applicant's completion of an approved Masters Degree program in education administration. Notice is taken that for a period, DOE granted administrative certification to persons with graduate degrees in other fields, and that some education professionals consider or at least refer to those licenses as “unearned.” There does not appear to be any dispute that Ms. Washington and the grievants had completed graduate level programs in education administration.

Argument

The grievants take issue with several aspects of the assessment process and Ms. Washington's appointment. First, each asserts generally that the selection process was flawed and that he was the most qualified applicant for the post in issue. Second, they allege that the Board failed to fill the position within thirty days in violation of W.Va. Code §18A-4-7a. Finally, the grievants contend that Ms. Washington did not meet the certification specifications of the posting; they concede that she met the remaining requirements. The Board does not address the grievants' claim that the position was not timely filled, but avers generally that the selection of Ms. Washington was in compliance with the law applicable to the appointment of administrative personnel.

Findings and Conclusions

W.Va. Code §18A-4-7a, provides,

> 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; the amount of experience relevant to the position . . .; 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 section twelve [§ 18A-2-12]. article two of this chapter, and other measures or indicators upon which the relative qualifications of the applicant may be fairly judged.

Unlike those portions of the statute governing the selection of classroom teachers, (See footnote 2) these provisions afford county boards of education considerable latitude in determining the weight to be given a particular aspect of the applicants' credentials. Blair v. Lincoln County Bd. of Educ., Docket No. 92-22-009 (July 31, 1991). Provided that the board accurately and fairly assesses the criteria listed, its selection decision is generally reviewed under the “arbitrary and capricious” standard discussed in Dillon v. Bd. of Educ. of the County of Wyoming, 351 S.E.2d 599 (W.Va. 1986). See, Hoffman v. Mingo County Bd. of Educ., Docket No. 96-29-021 (June 28, 1996).

The standard entails a searching and careful inquiry into the evidence on the various facets of the selection process but, ultimately, it also requires that considerable deference beafforded the judgment of those conducting it. Harper v. Mingo County Bd. of Educ., Docket No. 93-29-064 (Sept. 27, 1993). An unsuccessful applicant who demonstrates significant flaws in the process and shows that the outcome might reasonably have been different, is minimally entitled to a reassessment of the applicants. Stover v. Kanawha Co. Bd. of Educ., Docket No. 89-20- 75 (June 26, 1989).

The evidence in the present case reflects rather clearly that Superintendent Marple did not conduct an adequate review of at least two aspects of the applicants' qualifications. As noted, the information she used in assessing this criteria was incomplete or inaccurate. Further, it appears that her personal knowledge of the candidates' administrative experience was limited. This is a particularly important factor in determining an applicant's fitness to serve in an administrative post, see, Hoffman, and it seems that verification of the length of the applicants' experience would have been a fairly simple task.

The record also reflects that, at best, there was only a cursory review of the amount of specialized training the candidates may have completed. The testimony at Level IV establishes that although the interview committee may have explored this area with the applicants and identified relevant training, Superintendent Marple relied only on central office documents which included little if any of the information provided to the committee. The failure to adequately assess the experience and training criteria constituted a significant flaw in the selection process. Since, per the holdings in Stover, supra, the grievants are entitled to a reassessment of credentials, an extensive analysis of the claims regarding Ms. Washington's certification and the failure to fill the position timely is not necessary. To a large extent, the foregoing conclusions render those issues moot.

Certification is essentially DOE's confirmation that an applicant has completed the educational

requirements to hold a professional post in a county school system. Prior Level IV decisions have recognized that it is the training behind the licensure which is the more important indicator of a candidate's ability to hold a teaching or administrative post. See, e.g., Shrewbridge v. Mercer County Bd. of Educ., Docket No. 94-27-094 (Sept. 28, 1994). Those decisions generally hold that an unlicensed applicant for a professional post who has completed the coursework necessary for a particular certification should be afforded consideration in the selection process if it appears that DOE will issue the certificate shortly. Hansbury v. McDowell County Bd. of Educ., Docket No. 92-33-218 (March 18, 1993); Davidson v. Wyoming County Bd. of Educ., Docket No. 92-55-402 (Feb. 23, 1993).

The inference to be drawn from the wording of the announcement in the present case is that the Board was seeking applicants with a graduate level degree in education administration as opposed to applicants who had obtained administrative certification through degrees in other fields. The reference to an “earned” certificate was more of reference to the administration degree than to thelicense itself. The record as a whole supports that at the time Ms. Washington applied for the post, it was very likely that if appointed, she would have full administrative certification prior to entering into her duties. It was, therefore, within the Board's discretion to consider her a viable, qualified candidate. The grievants failed to show that they were otherwise more qualified than Ms. Washington.

The record suggests that the Board delayed the appointment beyond the thirty working days allowed by Code §18A-4-7a because of concerns over Ms. Washington's temporary certificate; for the reasons discussed, the delay was unnecessary. Further, it appears that the grievants do not seek additional relief on the failure to fill the position timely, and the undersigned finds that none is warranted.

Accordingly, the grievance is **GRANTED** to the extent that the Kanawha County Board of Education is hereby **ORDERED** to reassess the applicants for the post of Roosevelt Junior High School Assistant Principal consistent with the holdings herein. If either grievant is determined to be the most qualified applicant, he is to be instated to the position and awarded any loss of compensation or benefits he may have incurred.

Any party may appeal this decision to the Circuit Court of Kanawha 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 andshould 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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JERRY A. WRIGHT

ADMINISTRATIVE LAW JUDGE

Dated: September 16, 1996

Footnote: 1

The record contains little information on the nature of this test.

Footnote: 2

When selecting classroom teachers, the statute mandates consideration of slightly different criteria, "with each criterion being given equal weight."