JAMES E. AMICK and FLOYD FRIEND

v. Docket Nos. 96-34-354

96-34-357

NICHOLAS COUNTY BOARD OF EDUCATION

DECISION

Grievant James E. Amick is employed by the Nicholas County Board of Education (Board) as teacher at Principal of Panther Creek Elementary School. Grievant Floyd Friend is employed as a teacher assigned to Summersville Elementary School. They filed separate grievances at Level I, on or about June 18, 1996, protesting the appointment of David Hypes to the position of Teacher/Vice-Principal of Richwood High School (RHS), a facility serving students in the tenth, eleventh and twelfth grades. The grievants' supervisors were without authority to grant relief, and the grievances were denied at Level II following hearings on July 24, 1996 and. The Board, at Level III, declined to consider the cases, and appeals to Level IV were filed on or about August 15, 1996. Grievant Amick elected to submit his case for decision on the record developed at Level II. A hearing was held in Grievant Friend's case on November 6, 1996. Proposed findings of fact and conclusions of law were received by November 26, 1996. With the parties' agreement, the cases were consolidated for decision.

Background

Much of the background in the case is not in dispute. The position in issue was posted on May 7, 1996, as “Vice-Principal--50% and Teacher--50%.” The only minimum requirements listed in the posting were “Masters Degree, Secondary Principal's Certificate and Teaching Degree.” While an attached job description contained a detailed list of both administrative and teaching duties, it appears that the job entailed little, if any, teaching responsibilities. (See footnote 1) The posting specifically directed all applicants to submit their applications to RHS Principal Dennis Bennett by

May 16, 1996.

Four or five persons, including Grievant Amick and Mr. Hypes, sent applications and resumes to Mr. Bennett's office and provided “courtesy” copies of the application letters to Superintendent of Schools William Grizzell. (See footnote 2) On May 9, 1996, the second day of the posting, Grievant Friend submitted his application, which noted only his interest in the post, directly to Superintendent Grizzell at the Board's central office, and at least assumed that the application and a copy of his resume on file at the Board's office would be forwarded to Mr. Bennett. Apparently believing that the grievant was merely providing him a copy of an application sent to Mr. Bennett, Superintendent Grizzell did not immediately act on it. On or about May 20, after learning that Mr. Bennett had not received an application for Grievant Friend, the superintendent advised the Principal that he had applied, and should be interviewed. The superintendent sent a facsimile of the grievant's application letter to Mr. Bennet but, for reasons unknown, he did not receive it. It appears that Mr.Bennett received strong reference letters for all applicants except Grievant Friend. Many of the applicants sent college transcripts. Grievant Friend may have taken a resume with him to the interview, but he did not furnish it to Mr. Bennett. The grievant's wife accompanied him on his interview.

Consistent with his past practice during his three-year tenure, Superintendent Grizzell delegated much, if not all, of the responsibility for determining which applicant was the most qualified to Mr. Bennett. He has never rejected a principal's recommendation on who should receive a particular post at his or her school.

After interviewing all applicants and reviewing their resumes and reference letters, Principal Bennett concluded that Mr. Hypes was the most qualified applicant. Since he did not receive an application or reference letters for Grievant Friend, and was of the opinion that he had not presented himself well in the interview process, Principal Bennett discounted his application to some extent. It is likely that he considered Grievant Amick and Mr. Hypes the only viable applicants for the post.

Superintendent Grizzell, who had observed interviews of the applicants the previous year with regard to an administrative post at Summersville Junior High School, was familiar with their qualifications. After conducting a brief review of Mr. Hypes' credentials, and contacting several of his references, and/or co-workers, Superintendent Grizzell concurred with Mr. Bennett's assessment. The Board ultimately accepted his recommendation that Mr. Hypes be awarded the position.

After learning that he did not get the job, Grievant Friend called the Superintendent and several

Board members, and expressed his displeasure with their decision. Acting on complaints from the Board members, and perhaps his own annoyance over the calls, Superintendent Grizzell subsequently met with Mr. Friend and his supervisor, Summersville Elementary School Principal Terry Lewis. During the meeting, Superintendent Grizzell made several frank comments about Mr.Friend's appearance, attitude, and/or demeanor. The superintendent may have referred to him as “Joe Cool.”

The two may have had prior meetings which could be considered confrontational. Upon Mr. Grizzell's appointment to the superintendent post, Grievant Friend approached him and, during a conversation regarding the grievant's recent ejection from a sporting event, the superintendent remarked that had he been in the post at the time, he would have recommended that he be fired him from the coaching position. The superintendent may have, at times, commented on the grievant's dress at staff meetings or seminars.

The Superintendent recommended Grievant Friend for at least two of the coaching position s he how holds and a teaching position at Panther Creek Elementary School. After the Board accepted the recommendation on the Panther Creek position, the grievant withdrew his application, which required his resignation, a new selection process, and Board action on a new candidate. The superintendent apparently used harsh words or tone in expressing his displeasure to the grievant for the late withdrawal.

All three applicants met the posting requirements. Their undergraduate and Masters work was in various fields, but all held essentially the same licensure for secondary teaching and administration.

At the time his application, Grievant Amick had been employed by the Board for approximately twenty five years, twenty of which were served as either Principal or Teacher/Principal of Nettie, Levisay, and Fleger Ridge Elementary Schools. He apparently lost the Nettie position in 1993, in a reduction-in-force of administrators, and was then placed in his current teaching position. For a brief period during his fourteen-year tenure at Nettie, the school wasconfigured grades 1 through 8. It appears that this was his only teaching or administrative experience with students in the seventh and eighth grades.

Grievant Friend has never served as an administrator. He has been a classroom teacher for approximately nineteen years, mostly on the elementary level. He last taught eighth grade students in 1977. He has served for nearly eight years as a coach of various sports on the junior high and high

school levels. Grievant Friend holds Masters Degrees in education administration and vocational administration. For five or six years, he has also provided approximately eight hours per week of homebound instruction to students on the junior high or high school level. His graduate grade point average was 3.0 to 3.5, and his undergraduate average was approximately 2.5.

Mr. Hypes, the successful applicant, had been a teacher, apparently on the ninth grade level, at Summersville Junior High School for approximately eleven years. Just prior to the posting for the position in issue, he had completed a newly-required administrative internship at the school which necessitated that he essentially assume the duties of an Assistant Principal. (See footnote 3) There is no dispute that his supervisors were admirably impressed with his performance during this period, and that his apparent aptitude for school administration revealed itself in his interview with Mr. Bennett.

Mr. Hypes holds Masters Degrees in Educational Leadership and Communications. He had a 3.8 graduate level grade point average, had coached different sports on different levels, and had experience with the West Virginia Education Information System (WVEIS), a network computer program designed to track a variety of information on students. Mr. Hypes received particularlystrong reference letters from former Summersville Junior High School Principal Gus Penix and several other administrators and/or co-workers at the school.

Argument

Grievant Amick generally avers that he was most qualified applicant. More particularly, he asserts that Mr. Bennett did not conduct an adequate review of the applicant's credentials, and was mistaken on certain aspects of their qualifications. He essentially contends that Principal Bennett did not afford proper weight to his considerable administrative experience.

Grievant Friend also claims that he was the most qualified applicant. He alleges that his qualifications were ignored as the result of some ill-will Superintendent Grizzell has toward him. He blames this ill-will and/or inaction on the Board's central office for the failure to see that Mr. Bennett had his resume and letter of application.

Findings and Conclusions

The grievants' arguments misconstrue the standard of review in the case to the extent that they imply

that it is the undersigned's role to assess the applicants' credentials and reach an independent determination that one or both were more qualified than Mr. Hypes. The review in the case is limited to whether the criteria listed in W.Va. Code §18A-4-7a, for the selection of administrators was accurately assessed, and whether favoritism, discrimination or other improper motive played a role in the selection process. Oxley v. Summers County Bd. of Educ., Docket No. 96-45-001(Apr. 30, 1997). The subjective analysis of the applicants' qualifications and the weight afforded to certain aspects of their credentials, if based on valid information, are the province of the Board. Id.

It is clear that there is a certain amount of animosity between Grievant Friend and Superintendent Grizzell. If it is necessary, the evidence establishes that more of the blame for the friction lies with the grievant. His own testimony confirms that he would rather dress very casually and even sloppilyfor events which call for more formal dress if he has some sports activity which follows the event. It appears that the Superintendent favors proper dress at certain functions, and views the grievant's failure to wear the appropriate clothing as an indication of carelessness and perhaps even arrogance. Since the Superintendent has recommended Grievant Friend for several positions, and the evidence is otherwise conflicting, it is difficult to say to what extent the Superintendent's conclusions regarding the grievant's attitude have caused him to provide malicious rather than constructive criticism.

What is also clear, however, that if Grievant Friend was not given proper consideration for the post, it was due to some failure on his or Mr. Bennett's part, and not the Superintendent's. As noted, Principal Bennett was given most, if not full, control over the assessment of candidates. There is no evidence of record whatsoever, to indicate that Superintendent Grizzell gave Mr. Bennett any information on Mr. Friend except verification of his administrative and teaching certificates. The grievant has failed to show that any conduct or comments toward him by the Superintendent which arguably could be construed as harassment or even retaliatory, had a bearing on Mr. Bennett's determination that Mr. Hype was the more qualified applicant.

The evidence will also not support that Grievant Friend made an adequate effort to comply with the requirements of the posting, and ensure that Mr. Bennett had sufficient information on his credentials. His explanation was that he took his application to the board's central office, and asked that it and his resume be forwarded to Mr. Bennett because he was required to leave town suddenly due to the unexpected death of a brother. His testimony on this point, however, was vague, and he never asserted outright that he asked that the materials be forwarded to Mr. Bennett. It appears more likely

than not that, despite that he knew of the terms of the posting, he believed that the Board had some duty to forward his application and resume to Mr. Bennett Moreover, Grievant Friend never explained why mailing the application and resume per the posting's requirements was more difficult than making a trip to the Board's central office. Even accepting that the bereavement over is brother had some bearing on the matter, the record as a whole supports that he approached the application process rather nonchalantly. The grievant had the duty and opportunity to comply with the requirements of the posting, and otherwise see that Mr. Bennett has ample opportunity to review his credentials. See, Vonkallist v. Mercer County Bd. of Educ., Docket No. 94-27-073 (Aug. 8, 1994). Grievant Friend did not establish fault on the Board's part that Mr. Bennett did not have his resume prior to and, apparently, during, or after his interview.

Mr. Bennett's testimony reflects that he nevertheless assumed that Grievant Friend had made a timely application for the job, and did consider his qualifications as they were gleaned during the interview. To the extent that he disapproved of the grievant' failure to provide the same materials as the other applicants, concluded that his interview was unfavorable, and found his reference letters less supportive than those for other applicants, the record reflects that Mr. Bennett was justified in doing so. Grievant Friend has shown no violation of W.Va. Code §18A-4-7a, or abuse of discretion on the Board's part with respect to his application.

Grievant Amick established that Mr. Bennett was less than complete in the review of his credentials, and even mistakenly assumed that he was not certified to teach on the secondary level and had no experience above the elementary level. The record, however, otherwise reveals that Mr. Bennett considered him a viable candidate for the post.

While Mr. Bennett's testimony reflects that he should have reviewed, at least more carefully, the requirements of W.Va. Code §18A-4-7a, with regard to the selection of administrators, and his errors with regard to Grievant Amick's qualifications reflected a disregard for several of thoserequirements, it cannot be said that, but for, his shortcomings, the outcome of the selection process would have been different.

Overall, Principal Bennett's testimony establishes that he chose Mr. Hypes' because of his success during the administrative internship at Summersville Junior High School, his junior high teaching and administrative experience were more relevant to the post of Assistant Principal at a High School, his graduate grade point average was high, he had knowledge of WVEIS system, he

had strong references and presented himself well in his interview. He also articulated, although to a less clearer degree, that Richwood High School had traditionally been viewed as an “old” school whose staff was generally reluctant and even adverse to adapt and/or change to new educational philosophies. He explained that he believed that Mr. Hypes recent completion of the internship program and the ideas expressed in his interview might allow him to be the impetus for change at the school. He also explained that he believed Mr. Hypes credentials would enhance or complement his own. The undersigned can find no fault in his reasoning.

To the extent that Mr. Bennett discounted Grievant Amick's qualifications, it was based on his belief that his extensive administrative experience on the elementary level would not probably would not translate into practical experience administering a high school. The undersigned also cannot disagree with his reasoning on this point.

In summary, a preponderance of the evidence in the case establishes that for valid reasons, including his lack of any administrative experience on any level, Grievant Friend was, at best, the third most viable candidate for the post in issue, and that Mr. Hypes' recent and impressive service in the administrative internship program at Summersville Junior High School and other aspects of his qualifications allowed him to overcome Grievant Amick's considerable, successful elementaryschool administrative experience. Neither grievant has shown a violation of W.Va. Code §18A-4-7a, or demonstrated that Mr. Hypes's appointment was otherwise contrary to law.

Accordingly, the grievances are **DENIED.** Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Nicholas County and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va Code §18-27-7. 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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JERRY WRIGHT

Administrative Law Judge

DATE: June 9, 1997

Footnote: 1

The record is ambiguous on this point, but it appears that the teaching portion of the position was added for state funding purposes. The parties agree that the position was administrative, and that the statutory provisions cited herein controlled the selection process.

Footnote: 2

It appears that two of these applicants withdrew before the selection process began.

Footnote: 3

It appears that the West Virginia Department of Education has adopted a policy whereby a teacher who has completed the educational requirement for or an administrative certificate must complete an internship before obtaining the license.