HAROLD BELL,

Grievant,

v.

DOCKET NO. 97-22-003

LINCOLN COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Harold Bell, filed this grievance on September 12, 1996:

> Violation of WV Code 18A-4-7a in regard to the grievant's nonselection for the posted position in special education at Hamlin Elementary School. The selection was not made on proper criteria.

Grievant seeks as relief to be awarded the position and compensation for the loss of wages. A level two hearing was held on October 2, 1996, and the Superintendent's designee, Donna Martin, denied the grievance by decision dated December 18, 1996. Grievant appealed to level four on January 6, 1997, and the parties requested the matter be submitted on the record developed below. This case became mature for decision on February 14, 1997, the deadline for the submission of the parties' proposed findings of fact and conclusions of law.

The material facts in this grievance are not in dispute and are set forth in the following findings of fact.

Findings of Fact

1. Grievant had been employed by Lincoln County Board of Education ("Board") as a sixth-grade teacher at Hamlin Elementary School during the 1995-96 school year.

2. In the spring of 1996, Grievant was reduced-in-force and placed on the preferred recall list.

3. The Board posted a vacancy bulletin on August 13, 1996, which included the position of Hamlin Elementary/Hamlin Jr. High Teacher - LD/BD, a special education teaching position.

4. Grievant applied for the position, as did several others, including Chris Burns, a teacher also on the preferred recall list.

5. None of the applicants had certification in special education. Grievant and Mr. Burns were the final top two candidates for the position.

6. The following comparison was made between the two in regard to the second set of selection criteria set forth in W. Va. Code § 18A-4-7a: (See footnote 1)

	Grievant	Burns
Certification	None	None
Total teaching experience	6 years	5 years
Degree Level	B.A.+15	B.A.+15
Teaching experience relevant to position	None	None
Specialized training	None	None
Evaluations	satisfactory	satisfactory
Seniority	6 years	5 years

7. Grievant is certified in elementary education 1-6 and math 4-8.

8. Mr. Burns is certified multi-subjects K-8.

9. Mr. Burns was the successful applicant for the posted position.

Discussion

Grievant alleges the Board violated W. Va. Code § 18A-4-7a because the selection was not based on the seven selection criteria. Grievant alleges that if the Board gave equal weight to all factors, he should have been the successful applicant based on his years of seniority and total teaching experience. The Board denies it violated the Code section, and argues that Mr. Burns'

certification in multi-subjects K-8 made him the better qualified applicant due to the fact the position included the instruction of junior high students.

W. Va. Code § 18A-4-7a provides, in pertinent part:

> If one or more permanently employed instructional personnel apply for a classroom teaching position and meet the standards set forth in the job posting, the county board of education shall make decisions affecting the filling of such positions on the basis of the following criteria: Appropriate certification and/or licensure; total amount of teaching experience; the existence of teaching experience in the required certification area; degree level in the required certification area; specialized training directly related to the performance of the job as stated in the job description; receiving an overall rating of satisfactory in evaluations over the previous two years; and seniority. Consideration shall be given to each criterion with each criterion being given equal weight. If the applicant with the most seniority is not selected for the position, upon the request of the applicant a writtenstatement of reasons shall be given to the applicant with suggestions for improving the applicant's qualifications. (Emphasis added).

Grievant does not contend that he was entitled to the position automatically because of his position on the preferred recall list. Indeed, he would not have been entitled to the position based on that fact alone, because he did not hold the appropriate certification for the posted position. See Woodson v. Monroe County Bd. of Educ., Docket No. 92-31-282 (Feb. 10, 1993). Rather, Grievant contends he is entitled to the position because he had more seniority than Mr. Burns.

It is well settled that county boards of education have substantial discretion in matters relating to hiring, assignments, transferring and promotion of school personnel, as long as they exercise this discretion reasonably, in the best interests of the school, and in a manner which is not arbitrary and capricious. Hyre v. Uphsur County Bd. of Educ., 412 S.E.2d 265 (W. Va. 1991); Dillon v. Bd. of Educ. of the County of Wyoming, 351 S.E.2d 58 (W. Va. 1986). The standard enunciated in Dillon has been expanded to matters involving curricular programs and the qualifications and placement of personnel implementing those programs. Cowen v. Harrison County Bd. of Educ., 465 S.E.2d 648 (W. Va. 1995). A board of education making a hiring decision under W. Va. Code § 18A-4- 7a should use its best professional judgment to select the applicant best suited to the needs of the students based on qualifications and evaluations of the applicants' past service.

It is clear in the instant case that, based upon the matrix alone, Grievant would have been the successful applicant, as he scored higher in two areas, total teaching experience and seniority. However, it is also clear that W. Va. Code § 18A-4-7a is not applicablebecause no candidate “[met] the standards set forth in the job posting.” The language of the statute is clear that only when at least

one of the applicants meets the standards set forth in the job posting are the seven criteria required to be utilized in the selection process. When a situation arises that is not specifically governed by the school personnel laws, the county board has discretion to act in the best interests of the schools, so long as that action is not arbitrary and capricious. Pockl v. Ohio County Bd. of Educ., 185 W. Va. 156, 406 S.E.2d 687 (1991); See Dillon v. Bd. of Educ., 177 W. Va. 145, 351 S.E.2d 58 (1986). Donna Martin, Assistant Superintendent, testified the decision was made to hire Mr. Burns over Grievant for the subject position because of his certification in Multisubjects K- 8. Since neither applicant held the requisite special education certification for the position, the determination was made that Mr. Burns' Multisubjects K-8 certification rendered him more qualified than Grievant, given the fact that junior high students would be among the students served by the posted position.

As stated in Cowen, supra, in order to find the Board's action in selecting Mr. Burns for the posted position was arbitrary and capricious, the undersigned would have to attack the underlying premise of the Board's decision, that of hiring the individual it believed had the closest requisite certification which would satisfactorily meet the needs and requirements of the students. The undersigned is not willing to interfere with the Board's discretion in this regard.

Conclusions of Law

1. It is well settled that county boards of education have substantial discretion in matters relating to hiring, assignments, transferring and promotion of school personnel, as long as they exercise this discretion reasonably, in the best interests of the school, and in a manner which is not arbitrary and capricious. Hyre v. Uphsur County Bd. of Educ., 412 S.E.2d 265 (W. Va. 1991); Dillon v. Bd. of Educ. of the County of Wyoming, 351 S.E.2d 58 (W. Va. 1986).

2. The standard enunciated in Dillon has been expanded to matters involving curricular programs and the qualifications and placement of personnel implementing those programs. Cowen v. Harrison County Bd. of Educ., 465 S.E.2d 648 (W. Va. 1995).

3. When a situation arises that is not specifically governed by the school personnel laws, the county board has discretion to act in the best interests of the schools, so long as that action is not arbitrary and capricious. Pockl v. Ohio County Bd. of Educ., 185 W. Va. 156, 406 S.E.2d 687 (1991); See Dillon v. Bd. of Educ., 177 W. Va. 145, 351 S.E.2d 58 (1986).

4. W. Va. Code § 18A-4-7a provides that, “[i]f one or more permanently employed instructional

personnel apply for a classroom teaching position and meet the standards set forth in the job posting, the county board of education shall make decisions affecting the filling of such positions on the basis of the following criteria. . . (emphasis added).

5. Because no applicant for the subject posting held the required certification on the posting, the county board of education was not required to make its hiring decision on the basis of the second set of criteria in W. Va. Code § 18A-4-7a. 6. Grievant has not proven by a preponderance of the evidence that it was arbitrary and capricious for the Board to hire an applicant whose certification most closely met the needs and requirements of the subject position. See Pockl, supra.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of * 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 25, 1997

Footnote: 1

It is unclear from the record whether any of the other candidates were permanently employed instructional personnel at the time the selection was made. In any case, the Board utilized the second set of criteria in W. Va. Code § 18A-4-7a, and Grievant does not contest the use of those criteria in the selection process.