DAVID D. JUDY

v. **Docket No. 96-12-446**

GRANT COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, David D. Judy, employed by the Grant County Board of Education as a teacher, filed an undated level one grievance in August 1996, alleging a violation of W. Va. Code §18A-4-7a when the position of half-time principal at Dorcas Elementary School (DES) was awarded to another employee. Grievant's immediate supervisor lacked the authority to rule on the Board's decision, and the grievance was denied at level two. Grievant waived consideration at level three in accordance with W. Va. Code §18-29-4(c), and the matter was advanced to level four on October 17, 1996. An evidentiary hearing was conducted to supplement the record on February 28, 1997, and the matter became mature for decision with the filing of post-hearing proposed findings of fact and conclusions of law, and response from the Board, by March 27, 1997.

The following Findings of Fact are made based upon the evidence of record, including the transcript of the level two hearing, the testimony of the witnesses who appeared at level four, and the documentary evidence admitted.

Findings of Fact

1. Grievant is employed by the Grant County Board of Education (Respondent) as a teacher at Maysville Elementary School.

2. By posting dated August 2, 1996, Respondent advertised the position of half-time principal at Dorcas Elementary School, beginning the 1996-97 school year.

3. Four individuals, including Grievant and Mitchell Webster, the successful applicant,applied and were considered for the position.

4. Harold D. Garber, Superintendent of Grant County Schools, recommended Mr. Webster for the position, and Respondent approved the recommendation on August 21, 1996.

5. Grievant has a Masters degree plus forty-five (45) hours in Education Administration and had twenty-two years' experience teaching in Grant County. Mr. Webster has been employed by the Board on a full-time basis since 1985, and holds administrative certification.

6. Neither Grievant nor Mr. Webster had been employed by Respondent as a principal; however, both had performed administrative duties in the absence of the assigned principal at their respective schools. Superintendent Garber credited Grievant with three (3) years, and Mr. Webster with six (6) years, of this experience.

7. As permitted by W. Va. Code §18-5A-5, the Faculty Senate at DES recommended Mr. Webster for the position of half-time principal.

Grievant argues that Respondent created and awarded the position of Head Teacher/Administrator at DES to Mr. Webster in 1993, without posting, thereby denying Grievant the opportunity to apply for the assignment. (See footnote 1) Grievant cites his own series of extra-duty contracts beginning in 1990-91, and notes that only two (2) years of administrative experience was documented for Mr. Webster. Grievant attacks exhibits which purport to establish that Mr. Webster worked in an administrative capacity in 1986, 1987, and 1988. Grievant asserts that he has five (5) years of documented administrative experience, while Respondent has provided documents establishing that Mr. Webster has two (2) years and twelve (12) days of such experience. Basedupon this greater experience, Grievant argues that he was entitled to the position at DES.

Respondent argues that the informal administrative duties performed by both Grievant and Mr. Webster were not considered in assessing the experience factor because it is extremely difficult to document and account for their assignments prior to 1990 when certain duties were formally assigned by the Board. However, if pre-1990 experience were to be considered, Respondent asserts that the ultimate outcome regarding the position at DES in 1996 would not change. This conclusion is based upon the undisputed fact that Mr. Webster had performed administrative duties in the absence of his principal since the time he was hired as a full-time teacher in 1985. Respondent reasons that because Mr. Webster was charged with administrative duties half a day, every day, for a period of eleven (11) years, he still had accrued more experience than Grievant, with three years of daily experience and the balance of ten (10) years on only a periodic basis. Because Grievant and Mr. Webster were considered to be otherwise equally qualified under the provisions of W. Va. Code §18A-4-7a, Respondent argues that Mr. Webster was properly awarded the position based upon his

greater administrative experience.

Discussion

Because this grievance does not involve a disciplinary issue, Grievant has the burden of proving each element of the grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & Employees Grievance Bd. 156 C.S.R. 1 §4.19 (1996); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code §18-29-6.

Administrative positions, including those of principals and assistant principals, must be filled under the "first set of factors" set forth in W. Va. Code §18A-4-7a, which states in pertinent part: 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, in the case of a classroom teaching position, the amount of teaching experience in the subject area; the amount of course work and/or degree level in the relevant field and the 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.

"County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. Nevertheless, this discretion must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious." Dillon v. Bd. of Educ., 177 W. Va. 145, 351 S.E.2d 58 (1986). Additionally, W. Va. Code §18A-4-7a permits county boards of education to determine the weight to be applied to each of the factors in assessing a candidate's qualifications for administrative positions, so long as the discretion is not abused. Bell v. Lincoln County Bd. of Educ., Docket No. 97-22-013 (July 23, 1997); Hughes v. Lincoln County Bd. of Educ., Docket No. 94-22-543 (Jan. 27, 1995).

In the present matter, the only issue is whether Grievant had accrued greater administrative experience than the successful applicant. Using Respondent's criteria, if Grievant could prove that he had more experience, he would be entitled to the half-time principal position at DES. After

considering the evidence in its entirety, it must be determined that Grievant failed to prove that he was entitled to the administrative appointment.

Superintendent Garber testified that he considered the administrative experience earned by Grievant and Mr. Webster since 1990. The choice of this date was not arbitrary, but was the initialpoint at which the Respondent entered into formal agreements with Grievant and Mr. Webster defining administrative duties which they would assume. Although Grievant would like his experience from 1983 through 1990 to be considered, there is no record of the nature or frequency of duties he performed. Should this period of time be considered, Mr. Webster would also be credited from 1985 to 1990.

Should the informal experience be considered, it would initially appear that Grievant would have more years of administrative experience, however, yet another factor affects the final computation. Grievant was appointed “Staff Leader” at Maysville Elementary School in the absence of the principal, and paid a stipend in the amount of $1,000.00 per year, for the school years 1990-91 through 1993-94. Grievant does not dispute that after a full-time principal was appointed to Maysville for the 1993-94 school term, he did not complete the administrative duties assigned to him the previous years, but asserts that he was paid “as though those duties were actually performed.” To justify the additional salary awarded to Grievant prior to the appointment of the principal, he was assigned certain duties including supervising hallways. Although Grievant also claims credit for administrative experience during the 1994-95 school year, he offered no supportive documentation for that period of time.

Because of the difficulty in verifying any applicant's informal experience, it was not improper for Respondent to limit consideration to the formal assignment of administrative duties. The evidence of record supports a finding that Mr. Webster has accrued more formal experience than Grievant. Given that Grievant and Mr. Webster were equally qualified in all other criteria, Respondent did not violate W. Va. Code §18A-4-7a in selecting Mr. Webster for the position of principal at DES. In addition to the foregoing findings of fact and discussion it is appropriate to make the following formal conclusions of law.

Conclusions of Law

1. In a nondisciplinary grievance the grievant has the burden of proving each element of his

grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & Employees Grievance Bd. 156 C.S.R. 1 §4.19 (1996); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code §18-29-6.

2. A county board of education must make decisions on the selection of professional personnel other than classroom teachers on the basis of the highest qualifications. In making its selection, the board must give consideration to appropriate certification, experience relevant to the position, course work and degree level in the relevant field, degree level generally, academic achievement, relevant specialized training, past performance evaluations and other measures or indicators upon which the relative qualifications of the applicants may be fairly judged. County boards have wide discretion in choosing administrators once they have reviewed the criteria in W. Va. Code §18a-4-7a. Bell v. Lincoln County Bd. of Educ., Docket No. 97-22-013 (July 23, 1997); Hughes v. Lincoln County Bd. of Educ., Docket No. 94-22-543 (Jan. 27, 1995).

3. Grievant failed to prove that the Board's consideration of only documented administrative experience was improper, that he was more qualified than the successful applicant for the position in issue, that the Board abused its discretion or otherwise failed to comply with the requirements of W. Va. Code §18A-4-7a.

Accordingly, the grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Grant 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.

Date: August 19, 1997 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

Grievant apparently did not file a grievance at that time, and the matter may not now be considered.