NORM ALLISON,

Grievant,

v. **Docket No. 96-15-488**

HANCOCK COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Grievant Norm Allison is employed by Respondent Hancock County Board of Education (Board) as a physical education instructor. He filed this grievance stating that:

> The grievant can prove that favoritism and partiality were present in the selection of a less qualified applicant for the position of Life Skills Curriculum and Instruction Leader. -- The grievant requests the position and the salary compensation.

The grievance was denied at the lower levels (See footnote 1) and appealed to Level IV on November 15, 1996. Grievant indicated on his appeal form that a decision could be made on the lower level record. The Board rested upon the findings of the Level II decision. The case became mature for decision on January 22, 1997, with the receipt of Grievant's written final comments dated January 19, 1997.

DISCUSSION

Grievant is a physical education teacher at Oak Glen High School. In the fall of 1996, he applied for a posted extracurricular position at that school designated as life skills curriculum and instruction leader. There were three such positions at the school with one vacancy. There were three other candidates for the position. All met basic qualifications and were each given a twenty minute interview by an interview committee composed of the school's principal, Faculty Senate President, and the other two life skills curriculum and instruction team leaders.

Interview committee member Suzan Smith, the Oak Glen High School Principal, testified at the Level II hearing of October 28, 1996, regarding the nature of the position sought and the selection process. She indicated there were three positions in the program. The other two team positions had different specializations. One centered on math, science and technology while the other was in the

fields of English and social studies. The vacant life skills position was related to health, safety, physical education, home economics, business, special education, art, and music. (See footnote 2)

The successful candidate was Paula Vagnoni. Her selection appears to have been based largely upon the interview. At the Level II hearing, Principal Smith testified that Ms. Vagnoni's interview was very good, and revealed a concern for students and a desire to be helpful. (See footnote 3)

Principal Smith further stated that there was no bias or discrimination in her recommendation. Ms. Vagnoni simply had the better interview.

The other members of the interview committee, Karen Oyster, Kelsey J. Hayward, and Jules E. Adam testified as well. Ms. Oyster is a math teacher at Oak Glen High School and also servesas the Faculty Senate President. Her testimony was consistent with that of Ms. Smith. She denied any preconceived bias or prejudice and believed that the interviews were conducted fairly. The interview was heavily relied on because all candidates were qualified. Further, she stated that Ms. Vagnoni exhibited good communication skills which were regarded as important. Ms. Oyster also noted Ms. Vagnoni's past activities including serving on various committees and projects. From this she felt that Ms. Vagnoni had the ability to work with everybody and was successful in getting people to cooperate with each other. “She has a unique way of handling people. . . . We thought that would be an important skill in this position”. (See footnote 4) Of the four candidates, one of her final two choices was Ms. Vagnoni. Grievant was not one of her final choices.

Kelsey Hayward, a social studies teacher at Oak Glen High, testified that he had no preconceived biases regarding Grievant's candidacy and agreed with the testimony of Ms. Oyster and Ms. Smith. He also believed that Ms. Vagnoni was the best choice based mainly upon the interview. He was impressed with the fact that she came to the interview having thought out some of the problems existing in the curriculum and could discuss them. She was very prepared. As a consequence, she was his choice.

Jules Adams, a science teacher at Oak Glen, agreed with the other members of the committee that Ms. Vagnoni was the best qualified, and would work best with the students and teachers.

Grievant cross-examined all witnesses in an attempt to show that the successful candidate was not as knowledgeable as he was in the area of physical education. However, the interview committee was satisfied with this aspect of Ms. Vagnoni's background. She had demonstrated to them sufficient ability in the health field. Grievant also attempted to prove that the members of the committee and

Ms. Vagnoni were a “clique” (See footnote 5) and that as a result they were biased in her favor. However there was no objective evidence of anything other than a normal professional relationship. It was determined through Grievant's questioning that Ms. Smith, Ms. Oyster, and Ms. Vagnoni were members of Alpha Delta Kappa, apparently a women teachers' organization. He was not able to show that there was favorable treatment directed toward Ms. Vagnoni as a result. Of course, Mr. Hayward and Mr. Adam were not members. In addition, Grievant attempted through cross-examination to show that Mr. Hayward was anti Physical Education and therefore biased; and that because Mr. Adam's room was directly across the hall from Ms. Vagnoni, that he was biased. It is assumed by the undersigned that the inference is that a friendship and therefore an allegiance was formed. Nothing came of these allegations.

It is Grievant's burden to prove by a preponderance of the evidence that Respondent abused its discretion in selecting Ms. Vagnoni and that as a result, the Grievant was discriminated against. (See footnote 6) According to W.Va. Code, §18-29-2(m), discrimination means any differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing by the employees. There is no evidence that the search committee or the Board chose Ms. Vagnoni for any reasons other than those directly related to job responsibilities. The ability to communicate and her enthusiasm for the job were the qualities which appealed to the committee. The Grievant may have been the better candidate with regard to Physical Education. However, the committee regarded more highly the other qualities displayed by Ms. Vagnoni. Grievant clearly has not met his burden of proof. He must prove the allegations of his complaint by a preponderance of the evidence. Williams v. Lincoln County Bd. of Educ., Docket No. 93-22-386 (March 7, 1994).

Based upon the foregoing discussion, the undersigned makes the following findings of fact and conclusions.

FINDINGS OF FACT

1. Grievant Norman E. Allison is a health and physical education teacher at Oak Glen High School.

2. Grievant and three other teachers applied for an extracurricular position designated as life skills curriculum and instruction leader.

3. The life skills curriculum and instruction leader was to be one member of a teaching team of three and would be teaching life skills such as health, safety and physical education.

4. The two other members were teaching in the fields of math, science, language, and humanities.

5. The search committee was composed of the school principal, the Faculty Senate President, and the other two members of the life skills team.

6. Each of the applicants for life skills leader was given a twenty minute interview by the committee.

7. The search committee did not choose Grievant but instead chose Ms. Paula Vagnoni.

8. Ms. Vagnoni was chosen on the basis of her better interview, display of enthusiasm and excellent communication skills.

CONCLUSIONS OF LAW

1. In order to prevail, Grievant must prove the allegations of his complaint by a preponderance of the evidence. Payne v. W.Va. Dept. of Energy, Docket No. ENGY-88-015 (Nov. 2, 1988); Williams v. Lincoln County Bd. of Educ., Docket No. 93-22-386 (March 7, 1994).

2. Grievant must also prove by a preponderance of the evidence that Respondent abused its discretion in hiring Ms. Vagnoni and not Grievant for the extracurricular position of Life Skills Curriculum and Instruction Leader. Allison v. Hancock County Bd. of Educ., Docket No. 94-15- 1090 (June 15, 1995).

3. Discrimination means any differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing by the employees. W.Va. Code §18-29-2(m).

4. The search committee chose the successful applicant for reasons directly related to the actual job responsibilities and did not illegally discriminate against Grievant.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Hancock 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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JAMES D. TERRY

Administrative Law Judge

DATE: July 10, 1997

Footnote: 1

A Level II evidentiary hearing was held on October 28, 1996. A decision was issued on November 6, 1996.

Footnote: 2

Level II transcript, page 15.

Footnote: 3

Level II transcript, page 21.

Footnote: 4

Level II transcript, page 32.

Footnote: 5

Level II transcript, page 10.

Footnote: 6

Allison v. Hancock County Bd. of Educ., Docket No. 94-15-1090 (June 15, 1995).