NOEL R. NAPIER,

Grievant,

v.

DOCKET NO. 99-23-114

LOGAN COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Noel R. Napier, filed this grievance on August 26, 1996, protesting his non-selection for a Principal's position at Ralph R. Willis Vocational Technical Center. A level two hearing was conducted on February 11, 1997. The record does not contain the level two decision, but the grievance was appealed by Grievant to level four on March 12, 1999. Thereafter, the parties requested this matter be submitted on the record, and this case became mature for decision on May 6, 1999, upon receipt of the parties' proposed findings of fact and conclusions of law. Grievant was represented by Steve Angel, AFT Representative. The Board was represented at level two by Superintendent John Myers, and its post-hearing brief was submitted by its counsel, Brian R. Abraham, Esq.

SUMMARY OF EVIDENCE (See footnote 1)

Grievant's Exhibits

A -

Letter from Grievant to Brenda Skibo.

B -

Grievant's Resume

C -

Job Posting 455 for Principal of Ralph R. Willis Vocational School, dated July 12, 1996.

D -

1988 Job Posting for Principal, requiring Master's Degree and Vocational Administration Certificate.

F -

Letter from Brenda Skibo to State Superintendent of Schools.

Board Exhibit

G -

Job Posting for Principal or Vice-Principal, dated 1984.

Testimony

Grievant testified in his own behalf. The Board presented no testimony.

FINDINGS OF FACT

1. The Board posted a position for Principal of the Ralph R. Willis Vocational Center on July 12, 1996.

2. Grievant applied, and was given an interview for, the posted position.

3. Grievant was not selected as Principal. Another applicant received the position.

4. Grievant has been a vocational teacher at the Ralph R. Willis Vocational School for the past 14 years. Grievant has extensive industrial experience in many of thecurricular areas that are taught at the vocational school, such as plumbing, electrical, welding and hydraulics.

5. Grievant has held many educational leadership roles at the state, local, and school level.

6. Grievant has been an active participant in education training sessions and has served on numerous county and state committees.

7. Grievant has a Master's Degree in Adult Education, a Principal's Administrative Certificate, and a Vocational Administration Certificate.

8.

Grievant has satisfactory evaluations.

9. The subject posting did not require a Vocational Administration Certificate, but was rather, the generic Logan County Principal job description.

CONCLUSIONS OF LAW

1. W. Va. Code § 18A-4-7a sets forth the criteria to be used in filling administrative positions. That Section directs county boards of education to hire "professional personnel other than classroom teachers on the basis of the applicant with the highest qualifications." Further, "in judging qualifications, consideration shall be given to each of the following:

> Appropriate certification and/or licensure; 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 . . . and other measures or indicators upon which the relative qualifications of the applicant may be fairly judged.

W. Va. Code § 18A-4-7a.

2. It is well settled that county boards of education have substantial discretion in matters relating to the hiring of school personnel as long as their decisions are in the best interests of the school, and are not arbitrary and capricious. Dillon v. Bd. of Educ. V. County of Wyoming, 177 W. Va. 145, 351 S.E.2d 58 (1986)/

3. Additionally, a county board of education is free to determine the weight to apply to each of the above-stated factors when assessing an applicant's qualifications for an administrative position, as long as this substantial discretion is not abused. Hughes v. Lincoln County Bd. of Educ., Docket No. 94-22-543 (Jan. 27, 1995); Blair v. Lincoln County Bd. of Educ., Docket No. 92-22-009 (July 31, 1992). Once a county board of education reviews the criteria, it has "wide discretion in choosing administrators. . . ." March v. Wyoming County Bd. of Educ., Docket No. 94-55-022 (Sept. 1, 1994).

4. The standard of review in cases brought by unsuccessful candidates for administrative posts generally entails an inquiry into whether the criteria set forth in W. Va. Code § 18A-4-7a were accurately assessed for each applicant; whether favoritism and/or discrimination played a role in the selection process; and whether flaws in the process were so significant that the outcome might reasonably have been different. Stover v. Kanawha County Bd. of Educ., Docket No. 89-20-75 (June 26, 1989). Ultimately, it must be decided whether the Board abused its considerable discretion in personnel matters. See Dillon, supra; Amick v. Nicholas County Bd. of Educ., Docket No. 95-34-037 (Aug. 23, 1995).

DISCUSSION

Grievant has failed to prove by a preponderance of the evidence that the Board acted in an arbitrary and capricious manner, or violated applicable Code Sections, when selecting another applicant for the Principal of Ralph R. Willis Vocational School. Grievant failed to present any evidence as to the successful applicant's qualifications. Moreover, Grievant's statements that the posting should have required a Vocational Administration Certificate, and that the interview questions were not specifically related to vocational education, are merely his own conclusory opinions, and do not serve to demonstrate that the selection process was flawed in any way.

Grievant also complained that he was denied the opportunity to present certain evidence at level two. Specifically, he alleges that the Grievance Evaluator refused to admit what has been identified as Grievant's Exhibit F, a letter from Brenda Skibo to the State Superintendent of Schools advising him that Grievant had been selected County Teacher of the Year. This assertion is incorrect. The letter was admitted into evidence, however, the Grievance Evaluator stated he would give it little weight because it was not among the materials available during the selection process. Superintendent Myers did state, however, that he was aware at the time of the selection that Grievant had received this honor.

Grievant further alleges that the Grievance Evaluator went off the record when asked questions by Grievant, and that letters of recommendation in his behalf were not admitted into evidence. It does appear from the level two transcript that the Grievance Evaluator went off the record at one point when questioned by Grievant, and no furthertestimony was recorded. Whether this was intentional or not is unknown. However, if Grievant believed additional evidence needed to be taken, he could have

asked for a level four hearing. As he chose not to, it must be concluded that he felt no additional evidence was necessary to his case, and he cannot complain about it now. As to the letters of recommendation, their omittance is viewed as harmless error, as it is doubtful they would have resulted in a different outcome in this grievance, based on the rest of the evidence presented.

Accordingly, Grievant has failed to meet his burden of proof in this matter, and this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of the Logan County. Any 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. However, the appealing party is required by W. Va. Code § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

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MARY JO SWARTZ

Administrative Law Judge

Dated: July 15, 1999

Footnote: 1

Despite repeated efforts by the parties, the exhibits could not be found, and the listing above was stipulated to by the parties as a true and correct description of the exhibits entered at level two.