PATRICK MILLS,

Grievant,

v.

DOCKET NO. 99-50-016

WAYNE COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Patrick Mills, filed the following grievance against his employer, the Wayne County Board of Education ("Board"), on August 28, 1998:

> I feel I should have been given the Supervisor of Purchasing/English position. I would like to have either the position or the salary of the position plus extended employment salary if it exceeds my current gross. I would like the salary from as long as the position is held by the person currently assigned to it or for as long as the position exists and I do not fill it.

Grievant's immediate supervisor did not have the authority to decide the grievance, and advanced it to level two. A level two hearing was held on October 14, 1998, and a decision denying the grievance was issued by James J. Ross, the Superintendent's designee, on January 6, 1999. The grievance was by-passed at level three and advanced to level four on January 12, 1999. The parties agreed to submit the grievance on the record developed below, and this matter became mature for decision on February 5, 1999, the deadline for the parties' submission of proposed findings of fact and conclusions of law. Grievant was represented by Susan Hubbard, West Virginia Federation of Teachers,and the Board was represented by Michael E. Ferguson, Director of Federal Programs, Wayne County Schools.

SUMMARY OF EVIDENCE

Grievant's Exhibits

Ex. A -

August 13, 1998 letter from Patrick H. Mills.

Ex. B -

September 2, 1998 letter from Wilts Salmons, Superintendent, to Patrick Mills.

Board Exhibits

Ex. A -

August 28, 1998 letter from Patrick Mills to Superintendent Wilts Salmons; Statement of grievance; level one response.

Ex. B -

October 6, 1998 letter from James J. Ross to Patrick Mills; September 11, 1998 letter from James J. Ross to Patrick Mills.

Ex. C -

Wayne County Schools Supervisor of Purchasing/English Job Description.

Ex. D -

West Virginia Code § 18A-4-7a.

Ex. E -

Professional Employment Check List for Administrators: 18A-4-7a.

Ex. F -

August 21, 1998 handwritten note from the interview committee.

Testimony

Grievant testified in his own behalf and presented the testimony of Wilts Salmons. The Board presented the testimony of Wilts Salmons.

FINDINGS OF FACT

I find, by a preponderance of the evidence, the following facts.

1. Grievant is employed by the Board as Assistant Principal at Wayne Middle School.

2. The Board posted an administrative position of Supervisor of Purchasing/English. Grievant, Jerry Workman, Vickie Smith, and Nora Copeland were considered for the position. 3. The Superintendent selected an interview committee consisting of Assistant Superintendent Jim Hale, Assistant Superintendent Larry Heck, Treasurer Bob Smith, Assistant Superintendent Gary Adkins, and Director of Elementary Education Katie Carey.

4. The Superintendent created a matrix of all the applicants' qualifications relating to the selection criteria established in W. Va. Code § 18A-4-7a. Bd. Ex. E. The ratings for Grievant and the successful applicant, Vickie Smith, are reproduced below:

	Grievant	Smith
Appropriate certification	Check	Check
Amount of administrative experience	17 years	13 years
Course work/Degree Level	MA45	MA45
Academic Achievement	3.72	3.70
Relevant Specialized Training	Check	Two Checks
Evaluations	Check	Check
Other Measures or Indicators		Check

6. For the category relevant specialized training, the Superintendent gave one check to applicants with purchasing experience, and one check to applicants with English experience. Ms. Smith received a check in both areas, and Grievant received a check in English experience.

6. The highest ranking given by Superintendent Salmons in the area course work/degree level was a Master's Degree plus 45, even though applicants may have had a greater amount of course work.

7. Neither Grievant nor Ms. Smith had the highest rank in Academic Achievement, so although Grievant's rank is higher than Ms. Smith's, neither of them was successful in that category in the Superintendent's matrix. 8. The Superintendent considered all the criteria and decided to rely on the recommendation of the interview committee, giving the category other measures or indicators,

i.e., the interview, the heaviest weight in the selection.

9. The interview committee recommended Ms. Smith for the subject position. Bd. Ex. F.

DISCUSSION

Grievant alleges he was the most qualified candidate for the Supervisor of Purchasing/English position, utilizing the selection criteria for administrative positions contained in W. Va. Code § 18A-4-7a. The Board maintains its selection of Ms. Smith for the position conformed with the selection requirements in the Code, and was not arbitrary or capricious.

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.

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 bestinterest of the school, and are not arbitrary and capricious. Dillon v. Bd. of Educ. of County of Wyoming, 177 W. Va. 145, 351 S.E.2d 58 (1986). 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). 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).

Grievant has not proven the Board violated any statute, policy, rule or regulation in assessing these criteria. As previously noted, the Board has wide discretion in matters involving the selection of administrative personnel, and has broad discretion to determine the weight to be afforded a particular criterion. Christian v. Logan County Bd. of Educ., Docket No. 94-23-173 (Mar. 31, 1995). W. Va. Code § 18A-4-7a contemplates that countyboards may look beyond certificates, academic training, and length of experience in assessing the relative qualifications of the applicants. Alt v. Mineral County Bd. of Educ., Docket No. 97-28-015 (Aug. 25, 1997); Anderson v. Wyoming County Bd. of Educ., Docket No. 93-55-183 (Sept. 30, 1993). Thus, the fact that the Board gave great weight to the interview process, or other measures and indicators category, than the other six factors, does not render the selection process flawed.

Grievant has presented no evidence to demonstrate that the selection process violated the statute or was arbitrary and capricious. Grievant claims he is superior to the successful applicant in all seven categories, but testified that he had no knowledge of her qualifications. The matrix completed by the Superintendent confirms that Grievant and the successful applicant both were highly qualified for the position. The Superintendent decided to rely on the decision of the interview committee in light of the superior qualifications of all the applicants. The interview committee recommended the selection of Ms. Smith. The Superintendent followed that recommendation. There is no evidence that the Superintendent ignored any aspects of the applicants' qualifications or experience, or that his decision was in any way arbitrary.

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 interest of the school, and are not arbitrary and capricious. Dillon v. Bd. of Educ. of 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 mustbe 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).

5. The Board has wide discretion in matters involving the selection of administrative personnel, and has broad discretion to determine the weight to be afforded a particular criterion. Christian v. Logan County Bd. of Educ., Docket No. 94-23-173 (Mar. 31, 1995). W. Va. Code § 18A-4-7a contemplates that county boards may look beyond certificates, academic training, and length of experience in assessing the relative qualifications of the applicants. Alt v. Mineral County Bd. of Educ., Docket No. 97-28-015 (Aug. 25, 1997); Anderson v. Wyoming County Bd. of Educ., Docket

No. 93-55-183 (Sept. 30, 1993).

6. The fact that the Board gave greater weight to the interview process, or other measures and indicators category, than the other six factors, does not render the selection process flawed.

7. Grievant has failed to prove by a preponderance of the evidence that the selection criteria of W. Va. Code § 18A-4-7a were not utilized and considered, or that the decision to award the position to the successful applicant was arbitrary and capricious.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Wayne 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: February 22, 1999