JESSE K. MULLINS,

Grievant,

v.

DOCKET NO. 01-20-239

KANAWHA COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Jesse K. Mullins, filed the following grievance against his employer, the Kanawha County Board of Education ("Board") on November 4, 1999:

> Non-selection for Director of Maintenance, Energy Management and Custodial Services at Crede. Closing date Oct. 1, 1999. Hire Date 10-22-99. Award me the job with any back pay or compensation needed to make me whole.

Grievant's immediate supervisor was without authority to grant the requested relief and denied the grievance on November 16, 1999. A level two hearing was held on February 28, 2000, and September 11, 2000, and a decision was issued on February 12, 2001, by Grievance Evaluator Carolyn Cloer. (See footnote 1) The Board waived participation at level three, and Grievant appealed to level four on May 7, 2001. A level four hearing was held in the Grievance Board's Charleston, West Virginia, office, on July 30, 2001, and thismatter became mature for decision on August 24, 2001, the deadline for the parties' submission of proposed findings of fact and conclusions of law. Grievant was represented at level two by Steve Angel and Rosemary Jenkins, and at level four by Sidney Fragale, all with the West Virginia Federation of Teachers. The Board was represented by its counsel, James W. Withrow, Esq.

SUMMARY OF EVIDENCE

LII Evaluator's Exhibit

Ex. 1 -

Grievance documents.

LII Grievant's Exhibits

Ex. 1 -

Resume of Jesse K. Mullins.

Ex. 2 -

References of Jesse Kenneth Mullins.

Ex. 3 -

Certificates of completion of various training programs.

Ex. 4 -

September 23, 1999 Kanawha County Schools posting for Director of Maintenance, Energy Management and Custodial Services.

Ex. 5 -

October 22, 1999 Kanawha County Schools posting for Assistant Principal and Coordinator of Facilities Planning.

Ex. 6 -

Kanawha County Board of Education Policy, Administrative Selection.

Ex. 7 -

Applications for Director of Maintenance, Energy Management and Custodial Services position.

LIV Grievant's Exhibits

Ex. 1 -

Service Personnel Class Titles and Pay Grades.

Ex. 2 -

Kanawha County Schools Central Office Administrators Salary Schedule.

Board Exhibits

None.

Testimony

Grievant testified in his own behalf, and presented the testimony of Bob Bass, James Lewis, Norton Bashlor, Jeffrey Allred, William Courtney, Dr. Melanie Vickers, Timothy Easterday, and Barry Doss. The Board presented the testimony of Chuck Wilson.

FINDINGS OF FACT

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

1. Grievant is employed by the Board as a classroom teacher assigned to Ben Franklin Career and Technical Center. At the time of filing the grievance, Grievant had been employed by the Board for approximately 27 years.

2. Grievant's primary job duties have been to provide instruction in the areas of automotive technology and diesel mechanics. Grievant has also held an extra-duty position as evening coordinator at the school for approximately one year.

3. On September 23, 1999, the Board posted a notice of vacancy for the position of Director of Maintenance, Energy Management and Custodial Services.

4. Grievant, as well as others, applied for the position.

5. Dr. Melanie Vickers, Assistant Superintendent, Systems Support, and Charles Wilson, Administrative Assistant of Facilities, and the immediate supervisor of the position in question, reviewed the applications and determined which applicants met the minimum requirements for the position and would be interviewed.

6. Dr. Vickers and Mr. Wilson determined Grievant did not meet the minimum qualifications for the position in that his application did not demonstrate he had: the ability to comprehend

specifications and drawings; experience in facilities planning and maintenance, including architectural, electrical and mechanical systems, computerized heating and cooling systems; mechanical louver and air movement systems; and knowledge of planning construction and custodial operations.

7. Jeff Allred, Coordinator of Facilities Planning, was selected for the position.

8. The Board considered the factors set forth in W. Va. Code § 18A-4-7a in evaluating the applicants. The Board assigned the criteria "amount of experience" fifty percent (50%) of the total score, and the interview was worth fifteen percent (15%) of the total score.

9. The Board posted a Coordinator of Facilities Planning position subsequent to the subject posting. In evaluating the statutory criteria for that position, the Board assigned twenty-five percent (25%) of the total score to the "amount of experience" criteria.

DISCUSSION

Grievant has the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); 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. Grievant asserts the Board failed to properly consider his qualifications under W. Va. Code § 18A-4-7a, and that the process utilized for selection was so flawed as to be arbitrary and capricious, particularly in light of the subsequent posting for Coordinator of Facilities Planning (See Finding of Fact No. 9).

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; relevantspecialized 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 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). 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).

> All that Code §18A-4-7a requires when a decision concerning the hiring [for an administrative position] is made is that the decision is the result of a review of the credentials of the candidates in relation to the seven factors set forth. Once that review is completed, the Board may hire any candidate based solely upon the credentials it feels are of most importance. An applicant could "win" four of the seven "factors" and still not be entitled to the position based upon the Board's discretion to hire the candidate it feels has the highest qualifications. Again, a board is free to give whatever weight it deems proper to various credentials of the candidates and because one of the factors is "other measures or indicators," it is extremely difficult to prove that a decision is based upon improper credentials or consideration of such.

Harper v. Mingo County Bd. of Educ., Docket No. 93-29-064 (Sept. 27, 1993).

County boards of education have substantial discretion in matters relating to the hiring of school personnel. The exercise of that discretion must be within the best interests of the schools, and in a manner which is neither arbitrary nor capricious. See Hyre v. Upshur County Bd. of Educ., 186 W. Va. 267, 412 S.E.2d 265 (1991). The arbitrary and capricious standard of review of county board of education decisions requires a searching and careful inquiry into the facts; however, the scope of review is narrow, and the undersigned may not substitute her judgment for that of the board of education. See generally, Harrison v. Ginsberg, 286 S.E.2d 276 (W. Va. 1982). The undersigned

cannot perform the role of a "super-interviewer" in matters relating to the selection of candidates for vacant positions. Harper, supra; Stover; supra. Generally, a board of education's action is arbitrary and capricious if it did not rely on factors that were intended to be considered, entirely ignored important aspects of the problem, explained its decision in a manner contrary to the evidence before it, or reached a decision that is so implausible that it cannot be ascribed to a difference of view. Bedford County Memorial Hosp. v. Health and Human Serv., 769 F.2d 1017 (4th Cir. 1985). With regard to Grievant's qualifications, the record shows that he was and is an automotive and diesel mechanics teacher at Ben Franklin Career and Technical Center. Grievant has a Master's Degree in vocational administration, holds an administrative certificate from the State Department of Education, and has attended a number of continuing education courses related to automotive and truck repair. Grievant also serves as the evening coordinator at the vocational center, and is responsible for the entire operations of the school in the evening hours. In addition to his experience with Kanawha County Schools, Grievant has some heavy equipment maintenance training, and was a supervisor for two years in the military. Grievant has a heating and air-conditioning certification for trucks and cars.

Dr. Vickers and Mr. Wilson testified that, in screening applicants for the subject position, they were looking for someone with an “extreme” amount of experience in the field, with knowledge of electrical, mechanical, architectural, custodial, and heating and air- conditioning specialties relating to facilities operations. Dr. Vickers indicated she wanted someone who could “hit the ground running” in this position, and that is why she put fifty percent (50%) weight on experience relative to the position. Dr. Vickers acknowledged Grievant has impressive qualifications in his field, but in relation to the other applicants for the subject position, he did not meet the interview threshold.

There is no question that Grievant is exceptionally well-qualified for his position as an automotive and diesel mechanics instructor. However, the evidence does not demonstrate that he had the experience and skills needed to step into the Director of Maintenance, Energy Management and Custodial Services position. Grievant also argues that the selection process was flawed because of the fifty percent (50%) weight given to the experience factor. Grievant suggests this weighting was done in order to ensure a specific candidate received the position, in light of the fact that the subsequent administrative posting for Coordinator of Facilities Planning only weighted experience as twenty-five percent (25%) of the total score. Dr. Vickers and Mr. Wilson offered credible testimony why they felt it was necessary to have someone be able to step into the position with the necessary

skills and knowledge, and that is why they weighted the experience factor so high for this position. Moreover, Grievant's assumption that the field was weighted in order for a particular candidate to get the job is not played out by the facts. The successful applicant, Jeffrey Allred, was not the first candidate to be offered the position. Dr. Vickers testified that a Mr. Lindell was the top choice of the interview committee, and he was offered the position, but declined based on the salary. Mr. Allred was the next choice for the position. Therefore, Grievant's claim that the selection process was tainted in favor of Mr. Allred must fail.

CONCLUSIONS OF LAW

1. Because non-selection for a position is not a disciplinary matter, Grievant bears the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); Mauck v. Berkeley County Bd. of Educ., Docket No. 97-02-231 (Jan. 30, 1998); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997). See W. Va. Code § 18-29-6. 2. The selection process for filling an administrative position is governed by the “first set of factors” set forth in W. Va. Code § 18A-4-7a.

3. While each of the factors must be considered, Code § 18A-4-7a permits county boards to determine the weight to be applied to each factor when filling an administrative position, so long as this does not result in an abuse of discretion. Thus, a county board may determine that “amount of experience relevant to the position” is the most important factor. Baker v. Lincoln County Bd. of Educ., Docket No. 97-22-482 (Mar. 5, 1998).

4. County boards have substantial discretion in matters relating to the hiring of school personnel, so long as the discretion is exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious. Syl. Pt. 3, Dillon v. Bd. of Educ., 177 W. Va. 145, 351 S.E.2d 58 (1986).

5. The arbitrary and capricious standard of review of county board of education decisions requires a searching and careful inquiry into the facts; however, the scope of review is narrow, and the undersigned may not substitute her judgment for that of the board of education. See generally, Harrison v. Ginsberg, 286 S.E.2d 276 (W. Va. 1982).

6. Generally, a board of education's action is arbitrary and capricious if it did not rely on factors that were intended to be considered, entirely ignored important aspects of the problem, explained its

decision in a manner contrary to the evidence before it, or reached a decision that is so implausible that it cannot be ascribed to a difference of view. Bedford County Memorial Hosp. v. Health and Human Serv., 769 F.2d 1017 (4th Cir. 1985). 7. Grievant failed to prove by a preponderance of the evidence that he was better qualified than the successful applicant to hold the position of Director of Maintenance, Energy Management and Custodial Services, or that the Board abused its discretion, or acted in an arbitrary and capricious manner when it did not select him for the position.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha 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: September 20, 2001

Footnote: 1

This matter was before this Board previously on Grievant's motion for default judgment. After a hearing on March 13, 2001, it was determined no default had occurred.