WILLIAM E. McCOMAS,

Grievant,

v.

Docket No. 05-22-111

LINCOLN COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

The grievant, William E. McComas ("McComas"), challenges his non-selection for the position of Instructional Math Coach. Specifically, he asserts in his written statement of grievance that "[t]he Lincoln County Board of Education violated *West Virginia Code §*18A-4-7(a) by hiring a less qualified candidate for the position of Math Coach." For relief, he seeks "[i]nstatement into the position and back pay to which I am entitled."

The underlying record (See footnote 1) includes a transcript of the Level II hearing (See footnote 2) that was held on March 14, 2005. A well-reasoned decision denying the grievance at that level was issued on March 25, 2005. McComas brought this grievance to Level IV (See footnote 3) by filing it with the West Virginia Education and State Employees Grievance Board ("the Grievance Board") on April 7, 2005. A Level IV hearing was held on May 10, 2005, in the Grievance Board's Charleston office. McComas was represented by Gary E. Archer of the West Virginia Education Association. The respondent, Lincoln County Board of Education ("BOE"), was represented by William Grizzell, Superintendent of Lincoln County Schools ("Superintendent Grizzell"). This grievance matured for decision on May 16, 2005, by which date both parties had submitted proposed findings of facts and conclusions of law.

In reviewing the evidence adduced in a non-selection case, it is important to remember that the Grievance Board's role is to review and determine the legal sufficiency of the selection process used by BOE. With this limited role in mind, and after careful review of the entire record, the undersigned finds that the following facts were proven by a preponderance of the credible and relevant evidence:

Findings of Fact

I 1. On December 15, 2004, BOE posted a vacancy for a newly created professional position of Instructional Coach/Math ("Math Coach"). Jt.Exh.2 at II. This is a central office administrator position (See footnote 4) rather than a classroom teaching position.

II 2. Under the "Duties and Responsibilities" section of the Job Vacancy posting applicants were instructed to "See Lincoln County Job Description."

III 3. As set forth in the Job Description, the responsibilities of the position are "[t]o work with county level administrators, school level administrators, and teachers in a cooperative effort to monitor mathematics instruction, provide classroom modeling, complete needs assessments, and plan, implement, and/or provide professionaldevelopment for appropriate teaching staff." Jt.Exh.3 at II. Less formally, Superintendent Grizzell explained that the Math Coach was a new, federally-funded position. The Math Coach was expected to work with teachers at all grade levels (kindergarten through twelfth grade) in the area of mathematics.

IV 4. The Math Coach would "work under the direct supervision of the Federal Programs Administration." In addition, the successful applicant would be required to "[w]ork in a cooperative manner with administration and staff to provide oversight of mathematics instruction in each of the schools and grade level configurations with an emphasis on Middle and Secondary Education." Jt.Exh.3 at II.

V 5. According to the Job Vacancy posting, the qualifications for the Math Coach position were 1) a valid West Virginia teaching certificate, 2) certification in Math 5-12 or 7-12, and 3) a minimum of five years successful teaching experience in the field of mathematics. Jt.Exh.2 at II.

VI 6. The following additional qualifications were identified in the Job Description:

> 6.0.a a.
> Provide evidence of specialized training (e.g. Project Merit Math Trainer, Partnership Grant Participant, Middle Childhood Education, Classroom Management, Intervention, Technology, WVDE Staff Development Presenter, State Trained Mentor Teacher, Presentation Skills, Instructional Strategies, Organization and

Management, Leadership, etc.).

6.0.b b.
Ability to analyze assessment data to guide instruction.

6.0.c c.
Experience providing presentations or conducting trainings with adult learners.

6.0.d d.
Good written and verbal communication skills.

6.0.e e.
Provide strong evidence of leadership abilities.

7 7. According to the Job Description, the selection of the successful applicant would be accomplished by 1) application; 2) resume; 3) interview; 4) recommendation of the Superintendent; and 5) employment by the BOE. Jt.Exh.3 at II.

8 8. At the time the Math Coach position was posted, McComas was employed by BOE as a math teacher and technology specialist at Guyan Valley High School. He had approximately 28 years of experience as a high school math teacher.

9 9. McComas filled out and submitted a form application for the Math Coach position. He did not submit a resume.

10 10. McComas's application reflects that he holds a certificate in math (7-12). His graduate level grade point average is 3.85. He holds a Master's degree in mathematics.

11 11. On his application form, McComas wrote “I hold a master's degree with 28 years experience as a high school teacher” in the section marked “List On [sic] Related Work Experience That Would Help You In Teaching.” Resp.Exh.1 at II. (See footnote 5)

12 12. In the section marked “Specialized Training Related To The Position(s) For Which You Are Applying,” McComas wrote “I hold a master's degree in mathematics with 28 years experience in high school math.” Resp.Exh.1 at II. Under “Additional Training” the only thing McComas wrote was “Technology.” Resp.Exh.1 at II.

13 13. By contrast, the successful applicant, Jeff Midkiff ("Midkiff"), submitted a resume, with references. In addition, Midkiff expanded upon the application form by including, as an attachment, a two-page summary of relevant training and pertinentactivities that served to emphasize the depth of his qualifications for the position in question. Resp.Exh.2 at II.

14 14. In his application materials, Midkiff identified a number of varied professional development programs, relevant to the position in question, in which he had successfully participated. He also reported teaching adults, training other professionals in math and technology teaching skills, and mentoring new teachers. Midkiff's professional background included leadership positions, such as serving as a Project Merit Leader for the West Virginia Department of Education, chairing the Mathematics Vertical Team, serving on the Math Leadership Team, and chairing the Curriculum Focus Team at Hamlin High School. Further, his record reflects a strong background in both curriculum planning and standards- based math instruction. Midkiff has been involved in textbook selection and in the development of both the math questions and "cut scores" for the standardized WESTEST.

15 15. At the time he applied for the Math Coach position, Midkiff was teaching math (8-12) at Hamlin High School. He has 17 years of experience teaching mathematics. He holds certificates in math (7-12), general science (7-12), and administration (K-12). His graduate level grade point average is 3.95. Midkiff holds a Master's degree in Educational Leadership (K-12).

16 16. Both McComas and Midkiff were deemed qualified for the Math Coach position. Both were afforded an interview.

17 17. The interviews were conducted by a committee consisting of Superintendent Grizzell, Assistant Superintendent Donna Martin, Administrative Assistant Jeff Huffman, and Secondary Education Supervisor Dana Snyder (collectively "the Interview Committee"). Each applicant was asked a standard set of questions that had been developed in advance of the interviews.

18 18. Although individual responses were not scored, the Interview Committee discussed and rated the respective interview performances of McComas and Midkiff.

19 19. The Interview Committee prepared a matrix comparing McComas and Midkiff. Jt.Exh.4 at II.

20 20. Both applicants were rated on the seven criteria set forth in West Virginia Code section 18A-4-7a, which include certification/licensure; amount of relevant experience; degree level, both in

relevant field and in general; academic achievement; relevant specialized training; past performance evaluations; and other measures or indicators. Jt.Exh.4 at II.

21 21. Both applicants met the minimum certification requirement. Level IV Testimony of Administrative Assistant Jeff Huffman ("Huffman at IV").

22 22. Since this was a newly created position neither applicant had experience as a Math Coach. Huffman at IV.

23 23. McComas received a point in the area of degree level in relevant field for having his Master's in mathematics. Huffman at IV.

24 24. Because he had reported a Master's plus 45, Midkiff received a point in the area of degree level generally. Huffman at IV.

25 25. McComas asserted that he actually had a Master's degree plus sixty hours. However, he did not include this information on his application, so the Interview Committee did not know about it and could not consider this achievement in assigning points on the matrix. 26 26. Midkiff had a higher graduate level grade point average. As a result, he received a point on the matrix in the area of academic achievement. Huffman at IV.

27 27. Through his resume and the interview process, Midkiff provided a great deal of information about the extensive specialized training he had received that would be relevant to the Math Coach position. Accordingly, he received a point under relevant specialized training. Huffman at IV.

28 28. Unlike Midkiff, McComas did not identify any specific training or professional development courses that he had successfully completed that would enhance his qualifications for the position he was seeking. McComas merely told the Interview Committee that he had attended too many professional development sessions in his 28- year career to recall.

29 29. Both applicants had good evaluations. Therefore, each was awarded a point under the category of evaluation status. Huffman at IV.

30 30. Under the category of other measures or indicators, the Interview Committee awarded points for the applicants' performance during the interview. Although individual responses were not scored, the Interview Committee discussed and rated the respective interview performances of McComas and Midkiff. On a scale of three points, Midkiff was awarded two points whereas McComas only received one point. Huffman at IV.

31 31. The Interview Committee looked at the "manner in which the applicants were able to explain themselves throughout the questioning process." The Interview Committee also considered the applicants' knowledge of standards-based mathematics, (See footnote 6) which is thecurrent trend in math education at both the state and county level. Midkiff demonstrated a deeper understanding of standards-based mathematics. Midkiff also presented himself well in responding to questions about standards-based mathematics. Huffman at IV. His answers were "more focused and precise." Tr.11.

32 32. One of the members of the Interview Committee understood McComas to have said something to the effect that he "had a system of thinking that he didn't feel like all teachers could follow and that his ability to work with other teachers had not been great." Tr.21. At Level IV, McComas denied having made such statement and suggested that he had been misunderstood.

33 33. McComas received a total of 4 points on the matrix. Jt.Exh.4 at II.

34 34. Midkiff received a total of 7 points on the matrix. Jt.Exh.4 at II.

33. Superintendent Grizzell noted that both applicants were well-qualified and successful in the classroom. Superintendent Grizzell recommended Midkiff for the position.

39. BOE adopted this recommendation and awarded the position to Midkiff.

Discussion

This grievance was brought to challenge the action of BOE in failing to select McComas for the newly created Math Coach position. As the unsuccessful applicant for the position in question, McComas bears the burden of proving, by a preponderance of the evidence, that he was the more qualified applicant and, as such, should have been selected for the position in question, or that, but for a substantial flaw in the selection process, it is reasonable to believe that the outcome of the selection process might have been different. *Napier v. Logan County Bd. of Educ*., Docket No. 99-23-114 (July 15,1999), *Pack v. Summers County Bd. of Educ*., Docket No. 98-45-097 (Nov. 24, 1998). "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). Phrased differently, a preponderance "is generally recognized as evidence of greater weight, or which is more convincing than the evidence which is offered in opposition to it. *Petry v. Kanawha County Bd. of Educ*., Docket No. 96-20-380 (Mar. 18, 1997)." *Harvey v. Summers County Bd. of Educ*., Docket No. 01-45-360 (Sept. 20, 2001).

As provided in West Virginia Code section 18A-4-7a(a), "[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 assessing the qualifications of applicants for a position under the foregoing section, the statute instructs that "consideration shall be given" to each of the following:

> (1) Appropriate certification, licensure or both;
>
> (2) 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;
>
> (3) The amount of course work, degree level or both in the relevant field and degree level generally;
>
> (4) Academic achievement;
>
> (5) Relevant specialized training;
>
> (6) Past performance evaluations conducted pursuant to section twelve [§ 18A-2-12], article two of this chapter; and
>
> (7) Other measures or indicators upon which the relative qualifications of the applicant may fairly be judged.

W. Va. Code § 18A-4-7a(c).

Although all of the factors set forth in West Virginia Code section 18A-4-7a must be considered during the selection process, a board of education is entitled "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." *English v. Logan County Bd. of Educ*., Docket No. 03-23-307 (Feb. 27, 2004)(citing *Elkins v. Boone County Bd. of Educ.*, Docket No. 95- 03-415 (Dec. 28, 1995); *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)). As recently noted in *Bell v. McDowell County Bd. of Educ*., Docket No. 05-33-020 (Mar. 25, 2005), the only restriction upon the use of "other indicators or measures" is that they must be "factors 'upon which the relative qualifications of the applicant may fairly be judged.'"

> Indeed, 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. *Anderson v. Wyoming County Bd. of Educ*., Docket No. 93-55-183 (Sept. 30, 1993). The selection of candidates for educational positions is not simply a "mechanical or mathematical process." *Hoffman v. Mingo County Bd. of Educ*., Docket No. 97-29-266 (June 15, 1998)(citing *Tenny v. Bd. of Educ*., 183 W. Va. 632, 398 S.E.2d 114 (1990)); See *Deadrick v. Marion County Bd. of Educ*., Docket No. 90-23-071 (Jan. 30, 1991). This is especially true in the selection for an administrative position. *Stinn v. Calhoun County Bd. of Educ*., Docket No. 98-07-085 (Aug. 28, 1998).

Bell v. McDowell County Bd. of Educ., Docket No. 05-33-020 (Mar. 25, 2005).

The matrix illustrates the fact that the selection process comported with the requirements of West Virginia Code section 18A-4-7a, in that each of the statutory factorswas considered. Therefore, the pivotal question is whether, in evaluating those factors, BOE abused its substantial discretion.

McComas testified at Level IV that he thought he was “ahead” of any other applicant for the position of Math Coach because he had a Master's degree in the subject and 28 years of experience as a math teacher. Perhaps as a result of this entitlement attitude, McComas did not trouble himself to read the Job Description, submit the required resume, or comply with the request for information about any pertinent training he had received during his 28 years as a high school math teacher. By contrast, Midkiff provided a professional-looking resume and thoroughly detailed an extensive amount of relevant training he had successfully undertaken.

After the fact, McComas complained that he had a Master's degree plus sixty hours. He did not provide the Interview Committee with this information, so its members cannot be faulted for failing to afford him credit for this accomplishment. However, even if the point awarded to Midkiff for having the Master's plus forty-five hours were removed, Midkiff would still have six points on the matrix. Addition of another point to McComas's score would only yield five points for McComas, so Midkiff would still come out ahead on the matrix.

The Interview Committee found Midkiff's performance during the interview process to be superior to McComas's. This is corroborated by the fact that at least one of the Interview Committee understood McComas to be saying that he had an unusual thought process and had trouble working with other teachers. Of course, McComas has asserted that the member of the Interview Committee must have misunderstood him. Given that the statements would surely doom his application for the position in question, McComas isprobably correct that his remarks were misunderstood. However, the misunderstanding reflects that McComas did not communicate well and clearly during the interview. This is particularly telling, given the context, because an applicant would undoubtedly be trying to put his best foot forward during an interview.

If, in fact, there is no misunderstanding, and McComas did make the statements in question, the incident would have been a demonstration of exceedingly poor judgment on McComas's part. As such, it would still corroborate the Interview Committee's perception that McComas did not present

himself as well as Midkiff in the interview.

A Master's in math and longevity with the school system aside, McComas did not demonstrate to the Interview Committee, Superintendent Grizzell, or this Grievance Board that he was the most qualified applicant. Nor did he demonstrate any particular in which the selection process was flawed. This grievance is properly denied.

Based upon the foregoing, a review of the applicable law, and the arguments of the parties, the undersigned hereby concludes as follows:

Conclusions of Law

1 1. This is not a disciplinary grievance. Therefore, the grievant, McComas, bears the burden of proving his allegations by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-4.21 (2004); *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).

2 2. "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not."*Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). Phrased differently, a preponderance "is generally recognized as evidence of greater weight, or which is more convincing than the evidence which is offered in opposition to it. *Petry v. Kanawha County Bd. of Educ*., Docket No. 96-20-380 (Mar. 18, 1997)." *Harvey v. Summers County Bd. of Educ*., Docket No. 01-45-360 (Sept. 20, 2001).

3 3. It is well-established that the grievance procedure is not intended to be a "super interview" but, rather, "it allows analysis of the legal sufficiency of the selection process at the time it occurred. If the decision was properly based on the information then available to the board of education, and the process was not flawed to the point that the outcome might reasonably have been different otherwise, the hiring will be upheld." *Harrison v. Wyoming County Bd. of Educ.*, Docket No. 89-45-500 (citing *Stover v. Kanawha County Bd. of Educ.*, Docket No. 89-20-75 (June 26, 1989)). The selection process at issue in this grievance passes muster.

4 4. Selection of someone to fill the newly created position of Math Coach is governed by the statute that requires BOE to "make decisions affecting the hiring of professional personnel *other than classroom teachers* on the basis of the applicant with highest qualifications[.]" W. Va. Code § 18A-4-

7a(a)(emphasis added).

5 5. BOE gave the requisite “consideration” to each of the following factors when determining which applicant for the position in question has the “highest qualifications,” as that term is used in West Virginia Code section 18A-4-7a(a):

> (1) Appropriate certification, licensure or both; (2) Amount of experience relevant to the position . . .; (3) The amount of course work, degree level or both in the relevant field and degree level generally; (4) Academic achievement; (5) Relevant specialized training; (6) Past performance evaluations . . .; and (7) Other measures or indicators upon which the relative qualifications of the applicant may fairly be judged.

W. Va. Code § 18A-4-7a(c).

6 6. BOE could properly consider the applicants' performance during the interview process under the category of “[o]ther measures or indicators upon which the relative qualifications of the applicant may fairly be judged.”

7 7. “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.” Syl. pt. 3, *Dillon v. Wyoming County Bd. of Educ.*, 177 W. Va. 145, 351 S.E.2d 58 (1986). BOE did not abuse its discretion in selecting Midkiff for the position in question.

8 8. Generally, an action is considered arbitrary and capricious if the agency did not rely on criteria intended to be considered, reached a decision that is unsupported by the evidence, explained its decision in a manner that is inconsistent with the evidence before it, or came to a decision that was so implausible that it cannot be ascribed to a difference of opinion. *Trimboli v. Dep't of Health & Human Res*., Docket No. 93-HHR-322 (June 27, 1997). The selection of Midkiff was not arbitrary and capricious. 9 9. McComas failed to prove the he was the most qualified applicant and failed to demonstrate any appreciable flaws in the selection process. Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Lincoln 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 West Virginia Code section 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.

Date:

August 31, 2005

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JACQUELYN I. CUSTER

Administrative Law Judge

Footnote: 1

Social security numbers in the exhibits in the underlying record were redacted at Level IV.

Footnote: 2

References to pages in the Level II transcript shall appear herein as "Tr.__."

Footnote: 3

It is not clear from the record but it appears that Level III was bypassed.

Footnote: 4

W. Va. Code § 18A-1-1(4).

Footnote: 5

BOE's exhibits are denoted as "Lincoln Exhibit # __" in the Level II record. They are referred to herein as "Resp.Exh.__ at II."

Footnote: 6

This method of teaching mathematics is grounded in problem-solving, as contrasted with rote memorization. Huffman at IV.