THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

CYNTHIA BODKIN, et al.,
Grievants,

v. **Docket No. 2010-0767-CONS**

RANDOLPH COUNTY BOARD OF EDUCATION,
Respondent.

DECISION

Cindy Bodkin, Eric Lucas, and John Daniels, Grievants, initiated this grievance on December 8, 2009, alleging the following in their Statement of Grievance:

> On November 16, 2009, the Randolph County Board of Education did not hire the most highly qualified candidate for the Assistant Principal Position at Elkins Middle School. This is a violation of WV Code 18A-4-7a, which states in part that the board of education shall make decisions of hiring on the basis of the most highly qualified person with the appropriate certification or licensure or both. The successful candidate did not have the appropriate certification and should not have been awarded the position over the fully certified candidates.

The relief sought by Grievants is that "the position needs to be reposted."

A hearing was held at level one on December 17, 2009, and the grievance was denied at level one on February 8, 2010. Grievants appealed to level two on February 24, 2010, and a mediation session was conducted on June 9, 2010. Grievants appealed to level three on June 14, 2010, and a level three hearing was conducted before the undersigned Administrative Law Judge on October 10, 2010, at the Grievance Board's Westover office. Grievants were represented by Frank Caputo, AFT-West Virginia, and Respondent was represented by its counsel, Gregory W. Bailey, Bowles Rice McDavid Graff & Love, LLP. The matter became mature for decision on December 1, 2010, upon receipt of the parties' proposed findings of fact and conclusions of law.

Synopsis

Grievants seek to have the assistant principal position at Elkins Middle School re-posted because the successful applicant did not hold the required professional certificate on the night of the Respondent's hiring. Grievants failed to meet their burden of proof in light of the opinion in *Keatley v. Mercer County Bd. of Educ.*, 200 W. Va. 487, 490 S.E.2d 306 (1997), which permits interviewing or hiring an applicant who does not physically possess the required certification at the time of the interview or date of hiring and is waiting for the certification results.

The following findings of fact are based upon the record developed at level one and level three.

Findings of Fact

1. Grievants are employed as certified professional educators, also known as teachers, by the Respondent, Randolph County Board of Education.

2. On October 20, 2009, Respondent posted a vacancy for the position of assistant principal at Elkins Middle School.

3. Six individuals, including the Grievants and the successful applicant, Angela Wilson, applied for the assistant principal vacancy at Elkins Middle School.

4. The candidates were interviewed for the position on November 9, 2009, by Assistant Superintendent Terry George, and four other members of the Interview Committee.

5. The role of the Interview Committee was to make recommendations to the Superintendent, with the committee members offering various questions during the

interviews, giving assessments of the candidates, and ranking the candidates.

6. In selecting the most qualified candidate, the committee used a scoring system to rank the candidates based on the first set of factors listed in WEST VIRGINIA CODE § 18A-4-7a. The interview score sheet allowed the Interview Committee to rank each candidate in response to fourteen questions asked during the interview. Each candidate was asked the same set of questions, and then the committee awarded a check mark to those individuals they felt best responded to the question.

7. The scored factors included nine questions related to the position and administrative philosophies, and the remaining questions involved review of the first six factors contained in the first set of seven factors, that being certification and teaching experience, relevant experience to the principal position, degree level, academic achievement and past evaluations. Relevant specialized training was not required by the posting and was not considered.

8. With respect to whether the candidates possessed the appropriate certification for the position, Ms. Wilson indicated that her certification was pending.

9. Ms. Wilson was awarded a temporary administrative certificate effective August 2, 2009, and was awarded a professional administrative certificate effective March 6, 2010. Respondent's Exhibit 3, Level Three.

10. On the score sheet, Ms. Wilson scored nine points if her pending certification was not counted and ten points if it was counted. Ms. Bodkin received six points, Mr. Daniels received five points, and Mr. Lucas received six points.

11. At the conclusion of the interview process, the Interview Committee recommended Ms. Wilson for the assistant principal position at Elkins Middle School

because her score demonstrated that she was the most qualified candidate for that position.

12. The Superintendent agreed with the committee, and recommended to the Board of Education on November 16, 2009, that Ms. Wilson be hired as the assistant principal at Elkins Middle School. At that time, Ms. Wilson had been awarded her temporary administrative certificate from the West Virginia State Department of Education.

13. The Board of Education accepted the Superintendent's recommendation and hired Ms. Wilson as the school's assistant principal effective November 18, 2009.

14. Grievants seek to have the position re-posted, but none of the Grievants sought to be placed in the position.

Discussion

As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *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). "A preponderance of the evidence is evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997). In other words, "[t]he 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).

Grievants argue that the Respondent's awarding of the assistant principal position to a candidate that did not have the required professional certificate, at a time when there were five fully certified applicants holding the required professional certificate for the position, was arbitrary and capricious, a violation of W. V. CODE § 18A-4-7a, and a violation of West Virginia Department of Education Policy 5202. Respondent counters that county boards of education have discretion to determine whether applicants holding temporary administrative certificates satisfy certification requirements.

The only issue raised in this grievance concerns the certification of the successful applicant, and the contention that Respondent violated W. V. CODE § 18A-4-7a "which mandates them to select a fully certified applicant over an uncertified applicant. Respondent did not hire the most highly qualified applicant and they also chose an applicant who did not meet the qualifications as listed on the job posting."[1] The Grievants seek to have the position re-posted based upon the fact that the successful applicant did not hold the appropriate professional administrative certificate at the time of the posting, and at the time of hiring.

Respondent notes that the Grievance Board has held it was within the county board's discretion to determine that the successful candidate met the posting requirements. County boards of education are afforded wide latitude in applying reasonable interpretations of their own postings. *James v. Monroe County Bd. of Ed.*,

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[1]Grievants' Proposed Findings of Fact and Conclusions of Law, page 3.

Docket No. 05-31-048 (Sept. 29, 2005). In further support of its position, Respondent cites the West Virginia Supreme Court of Appeals' opinion in *Keatley v. Mercer County Bd. of Educ.*, 200 W. Va. 487, 490 S.E.2d 306 (1997). In *Keatley*, the Court held that the "certification requirement for professional personnel under *W. Va. Code § 18A-4-7a* (1993) permits interviewing or hiring an applicant who does not physically possess the required certification, but who has completed the requirements for certification at the time of the interview or date of hiring and is waiting for the certification results." *Id.*, Syl. Pt. 3.

In the instant case, although Ms. Wilson's professional administrative certificate was not made effective until March 6, 2010, she had previously submitted her application for administrative certification on October 29, 2009, and was issued a temporary administrative certificate on August 2, 2009. Accordingly, Ms. Wilson had completed all requirements for certification prior to the time of her interview, November 9, 2009, and prior to the date of being hired, November 18, 2009. To order that the Respondent re-post the position in question would not serve to address the Grievants' underlying claim regarding the successful candidate's certification status at the time of the initial posting. In addition, there is no claim that the selection process itself was flawed so as to require a re-posting.

Pursuant to the holding set forth in *Keatley*, *supra*, the undersigned finds that Grievants failed to prove that the Randolph County Board of Education violated W. V. CODE § 18A-4-7a or otherwise abused its discretion when it determined that Ms. Wilson was the most qualified applicant for the assistant principal position at Elkins Middle School.

The following conclusions of law support the decision reached.

Conclusion of Law

1. As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *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. A board of education is permitted to fill a vacant position with an applicant who has completed the requirements for certification at the time of the interview or date of hiring and is waiting for the certification results. *Keatley v. Mercer County Bd. of Educ.*, 200 W. Va. 487, 490 S.E.2d 306 (1997).

3. Grievants failed to prove that the Randolph County Board of Education violated W. V. CODE § 18A-4-7a or otherwise abused its discretion when it determined that Ms. Wilson was the most qualified applicant for the assistant principal position at Elkins Middle School.

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. *See* W. VA. CODE § 6C-2-5. Neither the West Virginia Public 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 Civil Action number should be included so that the certified record can be properly filed with the circuit court. *See also* 156 C.S.R. 1 § 6.20 (2008).

Date: February 23, 2011

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Ronald L. Reece
Administrative Law Judge