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RALPH KRAUS

v.

DOCKET NO. 22-88-235

MINERAL COUNTY BOARD OF EDUCATION

DECISION

Grievant, Ralph Kraus, is employed as a teacher by the Mineral County Board of Education (Board). Mr. Kraus filed a level one grievance on October 21, 1988 in which he alleged violations of W.Va. Code §18A-4-8b and West Virginia State Board of Education Policy Nos. 5300 and 5310 when he did not receive the position of principal at Fountain Elementary School. The grievance was denied at level two and the Board waived consideration at level three prior to the appeal to level four.

The position of principal at Fountain Elementary School was posted September 7-14, 1988 with seven individuals submitting applications. The position was subsequently awarded to Carol Bittner.

The grievant argues that he is equally or better qualified than the successful applicant and has earned more seniority. He requests to be instated to the position with backpay and benefits effective the 1988-89 school term. The Board argues that it properly awarded the position to Ms. Bittner who was more qualified than the grievant.

Evidence presented at the level four hearing revealed the qualifications of the grievant and the successful applicant to be as follows:¹

| | Grievant | Successful Applicant |
|--|---|--|
| 1. Education | MA + 30 | MA + 30 |
| 2. Total Graduate Hours | 67 | 103 |
| 3. Certification | Elementary Education/language arts/reading administration (principal K-8) | art, administration (principal/supervisor) |
| 4. Administrative experience as principal or assistant principal | 0 years | 6 years ² |

In addition to teaching the grievant has been extensively involved in professional activities including working with the staff development council and serving as a member

¹These were the facts considered at the time the position was filled.

²The successful applicant had been employed as an assistant principal for five and one-half years (on a half-time basis) and as a principal for one-half year. She was in fact transferring to Fountain as a principal.

of the county textbook committee.³ He vehemently takes issue with the Board's determination that he has acquired no administrative experience. While he has never been employed as a principal or assistant principal, the grievant asserts that he has acquired broader and greater administrative experience through activities in professional organizations, his work with student teachers and with curriculum which has earned him the county-wide award of Teacher of the Year in 1976 and runner-up in 1987 and by serving as the "building designee" for twelve years. As "building designee" he acts in place of the principal when she is out of the building and has performed various functions including attendance at special education placement meetings, calling substitute employees and even attending a principal's meeting.

The Board does not consider the position of building designee an administrative position and distinguishes it from the position of assistant principal. An assistant principal is relieved of a teaching assignment and performs administrative duties within the building, such as teacher evaluations. He has the administrative authority conferred upon him by the position at all times. A building designee remains a full-time teacher who has no administrative duties

³These are but two examples from an extensive recitation of activities provided by the grievant at level four.

but is simply the individual to be contacted in cases of emergency and only when the principal is out of the building. The Board argues that Ms. Bittner's administrative experience and advanced graduate work supports the determination that she was the most qualified applicant.⁴

The Board's determination that building designee is not an administrative position is not clearly wrong based upon the limited authority and duties imposed upon the individual who holds the position. The determinative factors (education and administrative experience) provide an objective basis to establish that Ms. Bittner was more qualified for the position than the grievant.

In addition to the foregoing narration it is appropriate to make the following specific findings of fact and conclusions of law.

Findings of Fact

1. The grievant has been employed by the Mineral County Board of Education as a teacher for twenty-two years.

2. In September 1988 the position of principal at Fountain Elementary School was posted with seven individuals, including the grievant, submitting applications.

⁴Other criteria were considered such as past evaluations and community involvement but are not addressed as both the grievant and the successful applicant were determined to be equally qualified in these areas.

3. A comparison of the qualifications of the grievant and the successful applicant, which are addressed with specificity in the body of this decision, indicate the successful applicant has earned more graduate credits and more formal administrative experience than the grievant.

Conclusions of Law

1. Decisions affecting the promotion and filling of any classroom teacher's position shall be made on the basis of qualifications with seniority having a bearing on the selection process only when the applicants have otherwise equivalent qualifications or where differences in qualification criteria are insufficient to form the basis for an informal and rational decision. Dillon v. Board of Education, 351 S.E. 2d 58 (W.Va. 1986).

2. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer and promotion of school personnel but this discretion must be exercised reasonably and in a manner which is not arbitrary and capricious. State ex rel. Hawkins v. Tyler County Board of Education, 275 S.E. 2d 908 (W.Va. 1981).

3. It is incumbent upon a grievant to prove all the allegations constituting the grievance by a preponderance of the evidence. Butler v. McDowell County Board of Education, Docket No. 33-88-208 (March 31, 1989); Lucas v. Mercer

County Board of Education, Docket No. 27-88-180 (December 15, 1988); Helton v. Kanawha County Board of Education, Docket No. 20-87-028-1 (October 26, 1988).

4. The Board's determination that the higher educational level and administrative experience earned as principal and/or assistant principal resulted in the successful applicant being more qualified than the grievant was not arbitrary or capricious.

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Mineral County or to the Circuit Court of Kanawha 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 Hearing Examiners is a party to such appeal, and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate Court.

DATED:

August 29, 1989

Sue Keller

SUE KELLER

SENIOR HEARING EXAMINER