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THOMAS WHEELER

v.

DOCKET NO. 42-88-253

RANDOLPH COUNTY BOARD OF EDUCATION

DECISION

Grievant, Thomas Wheeler, is employed by the Randolph County Board of Education (Board) as a principal and is presently assigned to the Coalton Twelve Year School. Mr. Wheeler filed a level one grievance on September 26, 1988 in which he alleged violations of W.Va. Code §§18-29-2 and 18A-4-8b as well as county policy when he was denied the position of principal at Elkins High School.¹ The grievance was denied at levels one and two; the Board waived consideration at level three and a level four appeal was filed on December 20, 1988. A level four hearing was conducted on February 21, 1989 and proposed findings of fact and conclusions were submitted by March 21.

¹The county policy allegedly violated was never identified by the grievant and therefore cannot be addressed.

In August 1988 the Board posted the position of principal at Elkins High School. Eighteen individuals submitted applications and, after the initial screening, eight were interviewed by a committee comprised of the superintendent and two associate superintendents. All three members of the interview committee testified at the level four hearing regarding the selection process for the position in question. A five part rating sheet was completed by each committee member who assigned points to each candidate in five categories: education, experience, past achievements, professional development, and technical and analytical skills. The scores for the five categories were averaged to determine the total number of points earned by each applicant. The ratings were completed after the committee considered information gathered from the applicants' resumes and their responses to a standard list of interview questions. The ratings of the candidates placed Mr. Keeling in first place with sixty-four points and the grievant in third place with fifty-one points.

The grievant argues that he was the more qualified applicant and had more seniority than Mr. Keeling. He asserts that the interview process was flawed and subjective in nature and that the information considered by the interview committee was not presented to the Board when it approved the superintendent's recommendation. The Board asserts that its selection procedure was based upon objective criteria and was in all ways proper.

The record establishes that the grievant was awarded a Bachelor of Science degree from Davis and Elkins College in 1969. He accepted a position with the Board that same year and has been employed from that time to the present. The grievant has earned a Masters degree in education administration and completed all coursework towards a Doctorate level degree in the same area. He is certified to teach social studies, grades 7-12, and in administration as a secondary principal and superintendent. The grievant's work history includes teaching five years, serving as assistant principal three years, Coordinator of Personnel and Student Attendance three years, Coordinator of Personnel and Adult Programs/Adult Basic Education four years and as a principal three years.

The successful applicant has earned a Bachelor of Arts degree in the area of Social Studies and Speech, a Masters degree in Special Education and has completed sufficient hours to gain certification in administration as a secondary principal. He has taught in Virginia and West Virginia for eighteen years and served as vice-principal two years and principal for one year at a junior high school in Kanawha County.

Based on this data the grievant was rated higher than the successful applicant in the areas of education and experience. In the remaining three categories Mr. Keeling was rated significantly higher than the grievant. The committee characterized the grievant's performance as a

principal to be satisfactory but determined that Mr. Keeling excelled in the areas of past achievement, based upon his various programs to advance academics progress; professional development, based upon his professional publications/presentations and his participation in academies, conferences and workshops; and technical and analytical skills as evidenced by his development and implementation of computer programs within the school and his responses to problem solving questions.

While the law clearly requires that the most qualified candidate be awarded a professional position there is frequently a dispute as to which applicant is the most qualified and why. Such decisions would be more easily determined if only strictly objective factors such as education and experience could be considered; however, numerous and less quantifiable characteristics must be evaluated when choosing the best qualified applicant for a specific position. The W.Va. Supreme Court of Appeals recognized that such factors are properly considered in the decision of Higgins v. Board of Education, Randolph County, 286 S.E.2d 682 (W.Va. 1981), in which it held that boards were not required to make personnel decisions based only upon seniority, quantized rating sheets or degree levels and recognized "... that there are qualities which cannot be quantized such as elan, enthusiasm, leadership, and talent which can be evaluated only through personal interaction with

an applicant and ultimately a subjective judgment about his or her potential to do a new job."

The testimony of the interview committee indicates that consideration was given to various criteria relevant to the position of principal and that the decision to hire Mr. Keeling was rational and well supported. Therefore it cannot be determined that the Board has acted in any statutory violation or failed to hire the most qualified candidate for the position of principal.

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. In August 1988 the Board posted a position vacancy for principal at Elkins High School. Eighteen individuals submitted applications for the position.

2. An interview team consisting of the superintendent and two associate superintendents initially determined eight applicants were properly qualified. These individuals were evaluated in five categories: education, experience, past achievement, professional development, and technical and analytical skills. The committee members evaluated the applicants based upon information gathered through resumes and standard interview questions.

3. Each candidate received a final numerical designation based upon points assigned by the committee members to

each category. The individual who had received the highest number of points was ultimately hired by the Board for the position. The grievant ranked third in total points.

4. Although the successful applicant was rated higher in areas which are not easily quantifiable, specific examples provided by the interview team establishes a rational basis for their determination.

Conclusions of Law

1. Decisions concerning the filling of professional positions must primarily be based on qualifications and seniority has a bearing when applicants have otherwise equivalent qualifications or the differences in qualification criteria are insufficient to form a basis for an informed and rational decision. Dillon v. Wyoming County 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 Mr. Keeling was the most qualified candidate was based upon appropriate criteria applied uniformly to all applicants. The decision was rational and well supported and showed no evidence of arbitrariness.

5. The grievant has failed to show that the Board acted in any statutory violation or that he was the most qualified applicant.

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Randolph 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: April 28, 1989

Sue Keller

SUE KELLER

SENIOR HEARING EXAMINER