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FRANK BLAKE

v.

Docket No. 35-88-181

OHIO COUNTY BOARD OF EDUCATION

DECISION

Grievant Frank Blake is employed by the respondent Ohio County Board of Education as an Assistant Principal presently assigned to Bridge Street Junior High School (BSJH). He filed a level four grievance protesting his non-selection for a position as Principal at Triadelphia Junior High School (TJHS), effective the 1988-89 school year. The grievance had been denied at the various lower administrative levels August 4, August 25, and September 13, 1988, respectively. A level four hearing was conducted November 22, 1988. Respondent later requested in writing that the record remain open for the testimony of Dr. Henry Marockie, School Superintendent, and Dr. Marockie and the parties appeared February 9, 1989 for that purpose. Proposed findings of facts and conclusions of law were filed by the parties February 27, 1989.

The principal's vacancy for TJHS was posted in July 1988 and ten individuals applied. In accordance with respondent's prevailing practice, an Interview Committee was formed. For this particular position, the interview team was comprised of three TJHS staff members and three Central Office staff persons. The committee interviewed the applicants and advanced four names to Assistant Superintendent Frank Dumas for further consideration on the matter but grievant was not among those selected by the committee. A named individual, Lawrence Miller, was employed for the position by the respondent board in July 1988. Grievant protested Miller's employment. He contended he possessed superior qualifications and/or his qualifications and Miller's were equal and his superior seniority over Miller thus entitled him to instatement as principal at TJHS.

Chronologically, grievant's 22-year tenure with respondent included four years teaching junior high school; one year as a cadet assistant principal at a junior high school and two elementary schools while teaching night classes at two high schools; two years assistant principal at Warwood High School, grades 7-12, then four years as principal at that school until its closure; and ten years assistant principal at the newly consolidated Wheeling Park High School until the end of the 1985-86 school year. According to Michael Pockl, principal at BSJH, he responded to Assistant Superintendent Dumas' advisory in 1986 that grievant was the most senior and a "strong candidate" for an assistant principal vacancy at BSJH, and Pockl requested that the interview process be waived for grievant's

appointment to that position effective the 1986-87 school term (T4.\_\_). In October 1987, Mr. Pockl took a leave of absence from his duties at BSJH and grievant was appointed substitute principal in Pockl's stead for the rest of the 1987-88 school year.

The successful applicant for the disputed position, Lawrence Miller, had 19 years seniority with respondent board. After several years teaching on the elementary level (K-8) he served four years as an assistant principal, two at an elementary school and two at a junior high school. He served in the Central Office as Title One Director for four years until January 1984 and was then appointed acting Assistant Superintendent of Curriculum and Instruction, a temporary appointment,<sup>1</sup> until his employment as principal at TJHS, the subject of this dispute.

Grievant contends that the respondent board had no rational basis upon which to determine Miller to be more qualified than him. He maintains that the board's interviewing committee acted in an arbitrary and capricious manner in failing to fairly

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<sup>1</sup> Respondent claimed the Assistant Superintendent's position was not filled because none of the original applicants were properly certified. Miller, who had not applied, was appointed in an acting capacity to avoid any suggestion that one of the unqualified applicants was given preferential treatment via an acting appointment to the position.

evaluate and compare his and Lawrence Miller's respective qualifications.<sup>2</sup>

Respondent maintains that the interview committee represented a fair composition of individuals capable of conducting a fair, unbiased and impartial interview. Further, that the selection of Lawrence Miller was based on Miller's administrative experience, his background and knowledge in education research and analysis and his demonstrated ability to interact (communicate) with staff, students and parents.

Grievant relies on Dillon v. Bd. of Educ. of County of Wyoming, 351 S.E.2d 58 (W.Va. 1986) and State ex rel. Oser v. Haskins, 374 S.E.2d 546 (W.Va. 1988). Grievant is correct that both cases clearly stand for the proposition that the most qualified applicant be hired for professional positions, and, as set forth in Dillon, seniority prevails when candidates are determined to be equally qualified. However, in both Dillon and Oser, the Court determined that the professional positions had been awarded without any meaningful selection process by which to evaluate the applicants' credentials and to determine the

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<sup>2</sup>In his proposed findings (No. 22), grievant charged that Miller's temporary position as acting Assistant Superintendent was an "illegal appointment," a "violation" of W.Va. Code §18A-4-8b(a), and Miller should not therefore "be permitted to assert ... his experience" in that position as a qualification for the position at issue. Inasmuch as Miller's long-standing tenure in the temporary position had not been challenged by grievant or any party in the past, it is inappropriate for grievant to now discredit Miller's experience gained at that post, especially without a clear and convincing legal argument that said appointment was improper.

most qualified candidate. Thus the selection process in each case was found to be flawed.

Such is not the case herein. Grievant was invited to discuss his credentials with the selection committee. He was not among the candidates recommended to Mr. Dumas for further consideration. Grievant made no allegation of a tainted or inadequate selection process, only that, in his opinion, the committee members, as respondent's agents, and respondent, made inaccurate qualification determinations. It is true that grievant's principal, an educator-principal of note, opined that among two highly qualified persons such as grievant and Miller, grievant, with more experience in the field as assistant principal, would probably be his choice for the position. However, Dr. Marockie made a very strong argument that older standards for a building principal with "books, bonds and busses training" had given way to prevailing standards which support the selection of a principal with demonstrated communication, leadership and interpersonal skills. He noted that leadership instead of how-to administration depends on a selection process for a particular administrative position which utilizes the staff persons the administrator will be working with. Those persons interact with candidates as a means to determine the most suitable candidate.

It is not the function of the West Virginia Education and State Employees Grievance Board to substitute its judgement for that of school officials. Respondent's selection methodology for position vacancies has previously withstood challenge. See,

e.g., Myles v. Ohio Co. Bd. of Educ., Docket No. 35-88-081 (August 1, 1988). With respect to the disputed position, respondent's published criteria that the successful candidate possess superior communication skills was relevant to the position and known to the applicants via the posting. That criteria, among others, was a rational basis upon which to determine the most qualified applicant.

In addition to the foregoing narration, the following specific findings of facts and conclusions of law are made. Proposed findings and conclusions of the parties have been analyzed and considered and are incorporated herein to the extent that they are consistent with the probative evidence and the determinations of the undersigned hearing examiner.

#### FINDINGS OF FACT

1. On May 17, 1988, respondent board posted a position for Principal at Triadelphia Junior High School (TJHS). Ten individuals filed application for the position, Cliff Bowers, William Carmen, Christine Carder, Harry Chorpenning, Lawrence M. Miller, Patricia Pockl, Frank Potter, Charles Smith, Ronnie Williams and grievant herein. Mr. Carmen was the most senior candidate although grievant's tenure was short of Carmen's by just a few days.<sup>3</sup>

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<sup>3</sup>Mr. Carmen's starting date predated grievant's by 12 days.  
(Footnote Continued)

2. The printed "Job Goal" for the position required that the principal "use leadership, supervisory and administrative skills . . . to promote the educational development of each student . . . ." The listed qualifications emphasized writing, research, analytical and communication skills.

3. An Interview Committee of six individuals consisting of three teachers from TJHS and three administrators from the Central Office interviewed the ten applicants for the principal's position on June 8 and 9, 1988. Assistant Superintendent Frank Dumas chaired the committee; the other administrative staff members were Patricia Soloman, Director of Personnel, and Dr. Larry Jones, Director of Student Services.

4. The Interview Committee had a list of written questions which followed the written qualifications of the posting and the same questions were asked of each individual candidate. The committee was not provided with the applicants' personnel files but several of the candidates presented written resumes and, presumably, the candidates reviewed their credentials and qualifications with the committee.

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(Footnote Continued)

Grievant argued that Carmen's one-year unpaid leave of absence could not be counted toward seniority and thus he (grievant) was the most senior. W.Va. Code §18A-4-8b(a) states that the seniority of a professional employee shall be determined by the length of the employment tenure and does not set forth provisions for omitting seniority accrued when an employee is on an approved leave.

5. Grievant was not selected by the Committee as one of four recommendations for principal that were presented to Mr. Dumas. From those four recommendations, Dumas recommended to Superintendent Henry Marockie that Lawrence Miller be employed as principal. On July 12, 1988, the respondent board acted on Marockie's nomination of Miller and appointed Mr. Miller as Principal of TJHS for the 1988-89 school year.

6. Grievant met minimal qualifications for the principal's position. He holds a master's degree in Health and Physical Education (PE), and attained 72 additional graduate hours, primarily in Education Administration. He is certified to teach Safety, Health and PE, 7-12, and likewise certified as a secondary principal, 7-12. During his 22-year tenure with respondent board, the latter 18 were spent as an assistant principal except for three years, 1973-76, in which he served as principal at Warwood High School, until its closure. He was also appointed Substitute Principal at Bridge Street Junior High (BSJH) during the absence of its principal from October 1987 through the rest of the academic year in 1988. He has served on various relevant committees and participated in other school related activities throughout his tenure. Grievant had no adverse evaluations.

7. The successful applicant, Lawrence Miller, met minimal qualifications for the principal's position. Miller holds a master's degree in Administration and Supervision and has completed 90 additional post-graduate hours in Education Administration. He is certified to teach elementary education, K-8,

and his principal's certificate encompasses grades K-9. During Miller's 19-year tenure, he taught six years on the elementary level. His initial administrative experience was for assistant principal for two years at an elementary school and two years on the junior high level. He joined the Central Office staff in 1979 and served as Director of Title One and Energy Coordinator for four-plus years. In January 1989 he was appointed Acting Assistant Superintendent of Curriculum and Instruction until his employment as principal at TJHS. Miller has served and participated in various professional and civic endeavors and has been highly active as a presenter of education topics at seminars and association meetings. He has published three articles in various educational journals and has compiled a Chapter One Handbook.

8. Respondent's implementation of an interview committee comprised of employees who must work with the successful candidate in a given position and to gain their input in the selection process is in conformance with prevailing education philosophy on such matters and was not shown to be an improper procedure for candidate selection.

9. Respondent's determination that Mr. Miller possessed the superior communication skills necessary for contemporary school leadership as principal at TJHS, as evidenced by his prior administrative performance and activities, is not contrary to the evidence of record.

10. Grievant presented no evidence that he was discriminated against during the selection process, that the selection

process was tainted or that the selection itself was arbitrary and capricious or contrary to law and he offered no legal precedent to support his position that his seniority rights were violated and he was entitled to reinstatement to the contested principal's position.

#### CONCLUSIONS OF LAW

1. County boards of education have substantial discretion in matters relating to the hiring and assignment of school personnel but the discretion must be exercised reasonably, in the best interests of the school system and not in an arbitrary or capricious manner. State ex rel. Hawkins v. Tyler Co. Bd. of Ed. 275 S.E.2d 911 (W.Va. 1980); Beverlin v. Bd. of Educ. 216 S.E.2d 554 (W.Va. 1975); Myles v. Ohio Co. Bd. of Educ., Docket No. 35-88-081 (August 1, 1988).

2. W.Va. Code §18A-4-8b(a) provides that decisions of a county board of education affecting the filling of vacant teaching positions must be based primarily upon the applicants' qualifications for the job, with seniority having a bearing on the selection process when the applicants have otherwise equivalent qualifications or where the differences in qualification criteria are insufficient to form the basis for an informed and rational decision. Dillon v. Bd. of Educ. of County of Wyoming,

351 S.E.2d 58 (W.Va. 1986); Shaver v. Jackson Co. Bd. of Educ.,  
Docket No. 18-88-107 (November 7, 1988).

3. The discretionary exercise of a board of education to employ and assign professional personnel for a specialized position in a designated school should not be disturbed when the action was taken in good faith for the benefit of a school system and was not arbitrary. State ex rel. Hawkins v. Tyler Co. Bd. of Ed., supra; Myles v. Ohio Co. Bd. of Educ., supra.

4. The exercise of judgment as to which candidate is the most qualified by individuals who are trained to make such decisions will be upheld unless shown to be arbitrary and capricious or clearly wrong. Shaver v. Jackson Co. Bd. of Educ. supra; Skinner v. Harrison Co. Bd. of Educ., Docket No. 17-88-114 (Sept. 30, 1988).

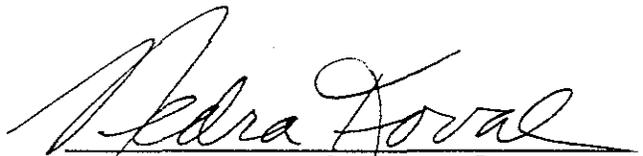
5. Respondent made a reasoned, rational decision that the successful applicant was more qualified for the position in question than was the grievant.

6. Grievant has failed to prove by a preponderance of the evidence that respondent acted arbitrarily and capriciously or that he is entitled to reinstatement to the principal's position at issue as a matter of law.

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Ohio 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

  
Nedra Koval  
Hearing Examiner