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PATRICIA POCKL

v.

Docket No. 35-88-220

OHIO COUNTY BOARD OF EDUCATION

DECISION

Grievant Patricia Pockl is employed by respondent Ohio County Board of Education as an administrator presently assigned to the Central Office staff. She filed a level one grievance protesting her non-selection for a position as Assistant Principal at Wheeling Junior High School (WJHS), effective the 1988-89 school year. The grievance was denied at the lower administrative levels and appealed to level four November 16, 1988. A hearing was conducted January 24 and February 9, 1989. Proposed findings of facts and conclusions of law were filed by the parties in late February 1989.

The assistant principal's vacancy for WJHS was posted in August 1988 and seven individuals applied, including grievant, a 19-year employee. In accordance with county practice, a screening committee was formed to interview the applicants. For this particular position, the interview team was comprised of five WJHS professional staff members and its principal, Thomas Innocenti, committee chairman. A common list of questions formulated by the committee was put forth to all candidates, who were then rated by each individual committee member. After the interview process the committee advanced two names to Mr. Innocenti for consideration on the matter, William Carmen, a 22-year employee and most senior applicant, and Daniel Coram, a 12-year employee with the least seniority among the applicants. Innocenti recommended to Frank Dumas, Assistant Superintendent, that Coram be appointed and Superintendent Henry Marockie subsequently advanced a recommendation for Mr. Coram's employment to the respondent board. The board formally acted on the matter August 23, 1988.

Grievant contends she was more qualified than Mr. Coram¹ by virtue of her academic, administrative and professional accomplishments, experiences, and activities and superior seniority. Grievant proposes the following comparison of her credentials as

¹Grievant alternatively argues that, at the very least, she is equally as qualified as Coram and should prevail on the matter on the basis of being more senior than Coram.

compared generally to all of the other applicants; i.e., that she,

(a) [Was] the only applicant who held a Superintendent's Certification;

(b) [Was] the only applicant who held a Supervisor's Certification;

(c) [Was] the only applicant who had any prior experience as an Assistant Principal (Bridge Street Junior High School grades 7 through 9 Assistant Principal for the year 1987-88 with a Personnel Evaluation rating of "exceeds standards");

(d) ... had more post graduate hours than any other applicant; and

(e) ... had more seniority with Ohio County Schools than any other applicant with the exception of applicant William Carmen who did not file a grievance and whose appeal time has expired.

Gr. Proposed Finding of Fact, No. 27

With respect to Daniel Coram, grievant further compares her credentials with his and proposes that,

(a) ... [she] had a Superintendent's Certification and Mr. Coram did not;

(b) ... [she] had a Supervisor's Certificate and Mr. Coram did not;

(c) ... [she] had prior experience as an Assistant Principal of a junior high school in the same school system (i.e. Bridge Street Junior High School) for one (1) year and Mr. Coram had no prior experience as an Assistant Principal;

(d) ... [she] had eighty-three (83) post graduate hours beyond her Masters degree and Mr. Coram had approximately thirty-one (31) post graduate hours beyond his Masters degree;

(e) ... [her] Masters degree was in the field of Education Administration which deals directly with the training of administrators (i.e. includes Assistant Principals) and Mr. Coram's Masters degree dealt with Speech Communication;

(f) ... [she] has served as a Department Chairperson in the field of Mathematics for seven (7) years during her career and Mr. Coram has never served as a department head in any field;

(g) ... [her] teaching experience includes six (6) years as a secondary and elementary school teacher prior to being employed with Ohio County Schools and then seven (7) full years as a Math instructor for Ohio County Schools and three (3) years from 1976 through 1979 as a Math teacher for one-year (1/2) day at Wheeling Park High School for a total of thirteen (13) years full-time and three (3) years part-time teaching experience at five (5) different schools, compared to Mr. Coram who has had twelve (12) years teaching experience in the field of Physical Education and Health at one school;

(h) ... [she] has served in paid Administrative positions part-time with Ohio County Schools for three (3) years from 1976 through 1979 and has been a paid full-time Administrator as either a Math Supervisor or Assistant Principal for the last nine (9) years with Ohio County Schools, compared to Mr. Coram who has never held a part-time or full-time paid Administrative position with Ohio County Schools or any other school system;

(i) ... [she] has eighteen (18) years of seniority with Ohio County Schools compared to twelve (12) years seniority for Mr. Coram, who had the least seniority of any applicant for the job; and

(j) ... [she] has experience teaching at the College level and in Industry compared to Mr. Coram who has no teaching experience other than his above-described teaching experience at Wheeling Junior High School.

Gr. Proposed Finding of Fact, No. 28.

Among other things, grievant faults the committee's work in that its members did not ask questions which related to the posted qualifications or ask about and consider any candidates' seniority.² Further, grievant charges that she has been a victim of favoritism in violation of W.Va. Code §18-29-2(o) in that Coram was already on the staff at WJHS. She appears to argue that, inasmuch as the five other unsuccessful applicants

²This contradicts grievant's contention that she did fully inform the committee of her credentials as set forth in a resume she introduced at hearing and the resume notes her employment tenure with respondent. Gr. Ex. No. 6.

for the position did not grieve their non-selection, they are thereby excluded for further consideration on the matter and she is entitled to reinstatement to the position.

Conversely, respondent defends the selection process it employed to determine the most qualified applicant for the assistant principal position at WJHS. It maintains that Coram's status as a staff member at WJHS did not place him in a favored position in the selection process as two other staffers at WJHS who applied were not selected, and all applicants were treated uniformly. It argues that the selection of Daniel Coram was based on his demonstrated ability to fulfill the needs at a particular school, where interaction skills between disparate groups, e.g., administrative staff, teaching personnel, students and parents, are an absolute necessity.

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 most qualified candidate. Thus the selection process in each case was found defective.

Such is not the case herein. Grievant and six other applicants were screened by an interview committee comprised of personnel who would work closely with the candidate selected and were also considered by appropriate administrators. The evidence does not preponderate that respondent's personnel were wrong in their determinations that Daniel Coram was the most qualified applicant for the particular position at issue and it is not the function of the West Virginia Education and State Employees Grievance Board to substitute its judgement for that of school officials.

Among other things, grievant believes her one-year service as assistant principal, while Mr. Coram had no equivalent experience, proves her qualifications are superior to Coram's for the disputed position. However, Mr. Innocenti, the first and only principal at WJHS since its inception in 1976, testified that while he believed grievant to be highly qualified, the most qualified individual for the assistant principal position at WJHS was Daniel Coram.

Innocenti testified that WJHS was the school no Wheeling community wanted since minority students would be part of the student population. He said that, from the very beginning, he had to build a strong image that the school could integrate with and contribute to the community. He spoke at length about the school's need for an assistant principal who could be flexible and work with teachers, students and parents alike and noted that grievant's long-standing supervisor position did not entail

direct responsibility to students, parents and teachers. He also heeded his committee's view that grievant had a rigid personality and no sense of humor.³

In Higgins v. Bd. of Ed., Randolph Cty., 286 S.E.2d 682 (W.Va. 1981), the Court provided enlightenment on acceptable, rational procedures which may be employed to select qualified candidates for position vacancies. Informed subjective judgment on the part of appointing authorities was deemed a relevant criterion. In dicta, the Court pronounced that personnel promotions (to a professional vacancy) were not entirely dependent upon either seniority, quantized rating sheets or degree levels,

Normal human experience indicates that there are qualities ... 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 job.

Higgins, at 685.

As in Higgins, there is no hint in the instant grievance that committee members recommended Daniel Coram's employment from improper motives of influence or favoritism inasmuch as an extensive personal interview was conducted to find the person with the required qualifications and a personality which would match the specific needs of the assistant principal position at

³It is noted that, while grievant exuded professional competence at the level four proceeding, her overall demeanor was quite formidable until after several hours when she appeared to relax and display some warmth. It would not be difficult to imagine, on first impressions, that her management style might be very strict and unyielding.

WJHS. Further, as respondent suggested, it would be arbitrary on its part to exclude WJHS staffers from consideration.

In addition to the foregoing narration, the following specific findings of fact 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 August 2, 1988, the respondent board posted a vacancy for the position of Assistant Principal at Wheeling Junior High School (WJHS). Seven applicants filed for this position, including grievant, a Central Office mathematics supervisor and second most senior employee, and the successful appointee, Daniel Coram, the least senior employee. Two of the applicants as well as Coram were on the staff at WJHS.

2. An Interview Committee of five WJHS staff teachers and principal Thomas Innocenti, Committee Chairman, interviewed the applicants on August 10, 1988. All applicants were asked the same questions and were invited to set forth their qualifications for the position.

3. Grievant verbally related to the committee all of her academic and professional accomplishments and credentials. The committee did not recommend to Mr. Innocenti that grievant be

further considered for the position as they believed her to be rigid and lacking a sense of humor.

4. Mr. Innocenti reviewed grievant's personnel file and did further consider her qualifications despite the committee's lack of recommendation. He ultimately determined Daniel Coram to be the candidate most qualified to meet the needs of the staff, students and parental population of WJHS.

5. The recommendation that Mr. Coram be appointed as principal at WJHS followed respondent's normal administrative procedure and Coram was so employed August 23, 1988.

6. Grievant is a highly qualified professional educator holding certificates for secondary principal, supervisor and superintendent positions. She has outstanding academic credentials including a Masters degree in Curriculum and Instruction, and further post-graduate hours, and many impressive professional educational experiences. Her excellence has been rewarded by respondent via professional advancement from teacher and department chairperson on the school level to coordinator and supervisor with the Central Office staff. In 1987-88 she was appointed via respondent's selection process, i.e., determinations made by relevant school staff and administrators, to fill a one-year assistant principal vacancy at Bridge Street Junior High School.

7. Daniel Coram likewise met the posted and legal qualifications for the position at issue. He has a 12-year tenure with respondent teaching at WJHS and has coached and served as

Athletic Director there. In addition, the record is replete with instances of his extended hours of devotion and service to the students at WJHS in many activities and endeavors in furtherance of the development of school programs and goals.

8. Grievant's check-list comparing her credentials with those of Mr. Coram's did not take into account subjective factors, such as the ability to effectively work with varied persons, which properly related to the uniqueness of the position at WJHS and which served as the basis for respondent's selection of Coram for the position. See Gr. Proposals of Fact Nos. 27 and 28.

9. Respondent's implementation of an interview committee comprised of employees at WJHS who must work with the successful candidate for assistant principal and to gain their input in the selection process was not shown to be an improper procedure for candidate selection.

10. Grievant presented no evidence that respondent's selection of Coram for the position at issue was per se favoritism; that any of respondent's individual committee members or administrators acted in a capricious, prejudiced or arbitrary manner in its determination of the most qualified candidate; or that respondent was compelled to appoint her as assistant principal as a matter of law.

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. 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. Interviews, when conducted fairly, are relevant to making a determination as to applicants' qualifications for professional positions and informed subjective judgment is a relevant criterion in the absence of arbitrary or capricious conduct. Higgins v. Bd. of Ed., Randolph Cty., 286 S.E.2d 682 (W.Va. 1981).

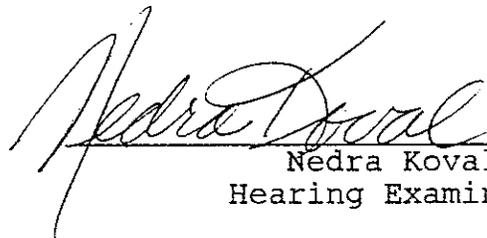
6. Respondent made a reasoned, rational decision, via the use of an interview committee and the further considerations of appropriate administrators, that the successful applicant was more qualified for the position in question than was the grievant.

6. Grievant has failed to prove by a preponderance of the evidence that respondent acted arbitrarily and capriciously or that she is entitled to reinstatement to the assistant 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