FRANKLIN H. COLLIER and

PAMELA I. HEWITT

v. Docket No. 94-42-269

RANDOLPH COUNTY BOARD OF EDUCATION

DECISION

Grievants, Franklin H. Collier and Pamela I. Hewitt, are employed by the Randolph County Board of Education (Board) as professional personnel and are presently assigned as principals. Mr. Collier and Ms. Hewitt initiated a level one grievance on February 25, 1994, protesting their non-selection for the position of principal at George Ward Elementary School (GWES). The matter was denied following an evidentiary hearing held at level two on May 13, 1994. After reviewing the record, the Board denied the grievance at level three and appeal was made to level four on June 30, 1994. The parties subsequently agreed to submit the case for decision on the record, supplemented with proposed findings of fact and conclusions of law. Responses were filed on or before October 11, 1994, at which time this matter became mature for decision.

There is little, if any, dispute over the facts of the case. By posting dated January 4, 1994, the Board announced a vacancy for the position of principal at George Ward Elementary School. The attached job description stated the qualifications for the position to be:

l. Master's Degree

2. Holds a West Virginia's [sic] principal's certificate in grades 1-9

3. Minimum of three years' teaching experience at elementary school level

4. Shall process [sic] recognizable leadership ability

The posting advised that applicants would be evaluated utilizing the appropriate indicators set forth in W. Va. Code §18A-4-7a. One-third of each applicant's total score would be based upon that part of the evaluation relating to strong management skills, instructional leadership, innovative teaching strategies and community and staff relations.

Three individuals, Grievants and Rodney Taylor, submitted applications for the position. At Superintendent Tony J. Marchio's direction, Dr. Shannon Bennett, Director of Personnel, evaluated the applicants with regard to the Code §18A-4-7a criteria. Dr. Bennett reviewed and ranked the applicants for each criterion, using a scoring scale and form previously developed by a committee of school employees. The results of Dr. Bennett's review were included in the applicants' "Portfolio Packet" and were distributed to the committee members at the interviews.

Superintendent Marchio also appointed a committee to interview each of the applicants. This committee was composed of Superintendent Marchio, Dr. Larry Parsons, Associate Superintendent, Director of Special Education Virginia Landrum, GWES Faculty Senate President Rachel Snavely, Deborah Lambert, a cook from within the school system, and aparent of a GWES student. The members of the committee utilized a list of standard questions and a score sheet for each applicant. In addition to the interview, each committee member also had access to the applicants' portfolios. After completing their review, the individual members' scores were averaged and a composite score was determined. Mr. Taylor was rated as the number one candidate by the committee. Superintendent Marchio subsequently recommended, and the Board approved, Mr. Taylor's appointment as principal at GWES.

Grievants set forth four assignments of error in the selection process.

1. THE SUCCESSFUL APPLICANT LACKED THE REQUIRED QUALIFICATION OF "TEACHING EXPERIENCE AT (THE) ELEMENTARY SCHOOL LEVEL," AS REQUIRED BY THE POSTING AND WAS THEREFORE NOT QUALIFIED FOR THE POSITION.

Grievants assert that while they have elementary teaching certificates for grades 1-8 or 1-6, Mr. Taylor is certified only for social studies, grades 5-8, and his teaching experience consists solely of teaching history and social studies at Tygarts Valley High School. Because Mr. Taylor has no teaching experience below the seventh grade he is not certified to instruct nearly 72% of the students at GWES. Grievants offer numerous citations referencing "middle school" as an entity separate and apart from elementary school in support of their argument that Mr. Taylor lacks the requisitethree years teaching experience at the elementary school level.

2. THE SUPERINTENDENT OF RANDOLPH COUNTY SCHOOLS IMPROPERLY DELEGATED HIS AUTHORITY, DUTY AND OBLIGATION WITH REGARD TO REVIEWING THE QUALIFICATIONS

OF THE APPLICANTS FOR THE POSTED POSITION OF PRINCIPAL AT GEORGE WARD ELEMENTARY SCHOOL TO THE RANDOLPH COUNTY PERSONNEL DIRECTOR IN VIOLATION OF WEST VIRGINIA CODE §18A-2-1.

Grievants argue that Superintendent Marchio's delegation to Dr. Bennett of the Code §18A-4-7a evaluation of the applicants was a relinquishment of his statutorily defined responsibility to nominate and recommend the employment of professional personnel. Grievants note that while a superintendent may delegate certain duties to subordinates, Code §18A-2-1 makes no provision for anyone other than the superintendent to make nominations and recommendations for employment.

3. THE EVALUATION BY THE PERSONNEL DIRECTOR OF THE APPLICANTS' QUALIFICATIONS FOR THE POSTED POSITION WAS ARBITRARY, CAPRICIOUS, UNREASONABLE, AND NOT IN THE BEST INTERESTS OF THE SCHOOLS.

Grievants complain that Dr. Bennett's use of the scoring form "made no interpretation, interpolation or extrapolation of the scoring scales, even though the relative qualifications of the applicants might have made such appropriate." Specifically, Grievants assert that while all of the applicants have attained Master of Arts degrees, GrievantCollier and Mr. Taylor have 30 credit hours beyond the degree and Grievant Hewitt had accrued an additional 45 hours. Nevertheless, each applicant was awarded 8 points because the scale used by Dr. Bennett did not distinguish any advanced academic level beyond 30 hours, with the exception of a Ph.D. The scale also did not provide for recognition of a second Master's degree, an Ed.D., or any other professional degree.

Grievants additionally note that this "tool" used by Dr. Bennett has never been approved by the Board or disseminated to the Board's employees. They assert that the Board's failure to fairly apprise applicants for professional positions of the criteria on which the selection will be based is an abuse of discretion as defined in Smith-Jarvis v. McDowell County Bd. of Educ., Docket Nos. 89-33-586, 588 (June 19, 1990).

4. THE REVIEW COMMITTEE APPOINTED TO REVIEW SOME OF THE QUALIFICATIONS OF THE APPLICANTS FOR THE POSTED POSITION PRECLUDED THE APPLICANTS A FAIR OPPORTUNITY TO SUBMIT MATERIALS, DENIED THE GRIEVANTS OF THE RECOGNITION OF

THEIR "DEMONSTRATED EXPERIENCE," WAS ARBITRARY, CAPRICIOUS, UNREASONABLE, AND NOT IN THE BEST INTERESTS OF THE SCHOOLS.

At level two the Director of Special Education Virginia Landrum testified that the applicants were rated only on their performance in the interview. She disregarded prior knowledge of the applicants' individual experiences, job performance, or her professional interaction with them. For example, theDirector stated that (notwithstanding her prior testimony to the contrary) she rated Grievant Collier poorly based upon a belief that he practices a "passive leadership" style and that Department of Education Policy 2000 guidelines state that an active style of leadership is preferred. Ms. Landrum also stated that she did not consider Grievant Collier's success as a principal in Randolph County.

Grievants assert that had they been aware of this approach by the committee member(s), they would have made substantially different presentations at their interviews. Grievant Collier argues that Ms. Landrum's perception of him as a passive leader and that that style of leadership is not desirable, indicates an abuse of discretion, as defined in Smith-Jarvis, in that negative aspects of a rejected candidate's performance cannot be used in the selection process unless those aspects have been brought to his attention through regularly performed evaluations. In consideration of the foregoing, Grievants request that the decision to employ Rodney Taylor as principal of GWES be set aside and that a proper evaluation of the original applicants be performed.

The Board argues that the interview process was fair and equitable in that the same questions were posed to each applicant and that all were permitted the opportunity to present themselves and their credentials to the committee. No applicant was given more or less information than anotherabout the interview procedure or the role of the interview team. On the contrary, all were given appropriate information and none were disadvantaged by the committee members' procedure or methodology. The Board also asserts that Dr. Bennett's review of the applicants was consistent with established practice and with the law.

The Board states that it interprets "elementary school level" to mean grades K-8. Consistent with this interpretation, it asserts that Mr. Taylor had taught seventh grade for several years and had worked closely with sixth grade students in certain aspects of programming. Additionally, Mr. Taylor had served as elementary principal for one semester prior to receiving the appointment at GWES.

While conceding that interpretations of the State Superintendent of Schools, statutes, and

perhaps other authority, indicates seventh grade is not an elementary grade for certain purposes, the Board argues that in the absence of any authority specifically applicable to the facts and circumstances of this case, its interpretation must be granted great deference. In summary, the Board argues that the posting, interview, and selection process was flawless and, absent any showing that the decision to hire Mr. Taylor was arbitrary, capricious, unreasonable, illegal or outside the best interest of the school system, it may not be overturned.

Three of Grievants' arguments may be disposed of promptly. First, the delegation of an initial review toascertain the applicants' qualifications under the statutory criteria was not an improper transfer of responsibility by Superintendent Marchio. There is no evidence that anyone other than the Superintendent nominated and recommended the successful applicant for the position at GWES. Therefore, it cannot be determined that Superintendent Marchio acted in violation of W.Va. Code §18A-2-1.

Second, the evidence of record does not support a finding that the evaluation conducted by the Director of Personnel was arbitrary, capricious, unreasonable, or not in the best interest of the schools. Information provided on the position posting, the job description, and the sample portfolio packet gave the applicants an adequate representation of how they would be evaluated. While the review sheet completed by the Director did not include advanced academic achievement beyond that recognized for salary purposes or an alternative doctoral level degree, the information was readily available in the applicants' portfolios for consideration by the committee. The fact that the applicants did not have access to the form does not establish that they were not fairly apprised of the criteria on which a selection would be based. On the contrary, since Dr. Bennett reviewed only that criteria set forth in W. Va.Code §18A-4-7a, the applicants should have known exactly which factors she considered.

Grievants' third argument, that the committee precluded them a fair opportunity to submit materials and denied themthe recognition of their demonstrated experience, was arbitrary, capricious, unreasonable, and not in the best interest of the school, is also unsupported by the evidence. Each of the applicants submitted a substantial portfolio packet for the committee members' review. These packets contain documentation of the applicants' educational background, academic achievement, relevant specialized training, past performance evaluations, and other indicators of their expertise and/or ability in management skills, instructional leadership, innovative teaching strategies, and

community and staff relations. Additionally, the applicants were given an opportunity during the interview to discuss these issues.

Grievants' concern that Ms. Landrum disregarded her prior knowledge of their experience, job performance and professional interaction with the applicants during her deliberations, appears to lack a solid foundation. Initially, Ms. Landrum was exposed to information relating to the applicants' experience and performance via the portfolios. Furthermore, it is incredible that an evaluator could completely disregard her personal and/or professional interactions with the applicants. Clearly, Ms. Landrum was not able to do so, contrary to her assertion, as evidenced by her comment that her rating of Grievant Collier was based upon a belief that he employed a passive style of leadership. Thus, while the interview committee was fraught with the usualsubjectivity which cannot be entirely eliminated from this process, it does not appear that the interview was conducted in an arbitrary, capricious, or unreasonable manner.

Grievants' fourth argument, that the successful applicant lacked the required teaching experience, is more problematic. As noted by the parties, numerous sources address issues relating to elementary and secondary positions; however, there is no definitive criteria to be applied across the board. For purposes of this decision it is relevant to note that the West Virginia State Department of Education issues three levels of certification: K-4, which is defined as early childhood or elementary, 5-8, designated as middle school and formerly included junior high school, and 9-12, which is secondary or high school. (See footnote 1)

The Board has adopted the middle school concept with six schools composed of grades K-5, three schools of grades K-6, one middle school, one school including grades 7-12, one school consisting of grades 9-12, and two K-12 schools. This breakdown establishes that grades 5 and 6 are considered lower-level when not part of the middle school, while grades 7 and 8 are considered upper-level and are housed within the high school structure.

The successful applicant, Rodney Taylor, is certified toteach social studies, grades 5-8 (middle school). He has taught history and social studies at Tygarts Valley High School, grades 7-12 from 1979-93, served as Assistant Principal at TVHS the first semester of 1992-93 and Principal at Valley Head Elementary School the first semester of the 1993-94 school year. (See footnote 2) Based upon Mr. Taylor's certification and the Board's configuration of grade levels, he has not accrued three years' of experience teaching at the elementary level.

The Board's assertion that it regularly utilizes a K-8 standard for elementary principals is repudiated by its own admission that it has interpreted experience gained in grade 6 to fulfill a requirement of three years' experience at the secondary school level. As described by the Board, it previously placed an individual who had only sixth grade or lower teaching experience into the position of principal of Elkins Junior High School, grades 7-9 (now Elkins Middle School, grades 6-8). One of the qualifications for that position had been three years' experience at the secondary level. The Board's erratic interpretation of what constitutes elementary or secondary teaching experience can only be defined as arbitrary and capricious.

In reviewing Grievants' teaching experience, it appears that Grievant Hewitt easily meets the three year qualification having taught sixth grade two years, third grade seven years and physical education, grades K-6, for three years. Grievant Collier also meets this qualification since he has taught grades five and six in self contained classrooms for three years. Because Mr. Taylor does not meet the qualifications imposed by the Board, the position of principal at GWES must be vacated. An additional review of the applicants would appear to be unnecessary in light of the prior holdings in this decision. Therefore, the position is to be awarded to whichever Grievant was rated second during the evaluation.

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

FINDINGS OF FACT

1. On January 4, 1994, the Board posted a position vacancy for principal at George Ward Elementary School. Attached to the posting was an outline of a portfolio packet which the applicant was to prepare and a job description.

2. Three individuals applied for the position, Grievants and Rodney Taylor. All applicants were employed by the Board as principals in January 1994.

3. Superintendent Tony Marchio directed the Director ofPersonnel to review the applications utilizing a score sheet developed to evaluate applicants' qualifications with regard to the appropriate W. Va. Code §18A-4-7a criteria.

4. Superintendent Marchio appointed an interview committee which consisted of himself, an

Associate Superintendent, the Director of Special Education, the GWES Faculty Senate President, a cook in the school system, and a parent of a GWES student.

5. The committee reviewed the portfolio packets and posed standard questions to each of the applicants during their interviews.

6. Rodney Taylor was unanimously determined to be the most qualified applicant. Superintendent Marchio subsequently recommended and the Board approved Mr. Taylor's appointment as principal at GWES.

7. The job description for the position of elementary school principal lists four qualifications. The successful applicant must possess a Master's degree and a principal's certificate for grades 1-9, have accrued a minimum of three years' teaching experience at the elementary level, and possess recognizable leadership ability.

8. The Board currently maintains nine schools composed of grades K-5 or K-6, one middle school, two high schools (grades 7-12 and 9-12), and two K-12 schools. This configuration indicates that for the purpose of determining whether teaching experience is at the elementary or secondarylevel, elementary school in Randolph County consists of grades K-6.

9. Mr. Taylor's teaching experience is restricted to grade seven or above; therefore, he does not have three years' experience teaching at the elementary level.

10. Grievants have accrued the requisite three years' experience teaching at the elementary level.

CONCLUSIONS OF LAW

1. Absent any authority as to what constitutes elementary and/or secondary teaching experience in this matter, the configuration of the county school system will be used to determine that elementary consists of grades K-6 and secondary, grades 7-12.

2. A county board of education must make decisions on the selection of professional personnel, such as a principal, on the basis of qualifications. In making its selection the board must give consideration to appropriate certification, experience relevant to the position, course work and degree level in the relevant field, degree level generally, academic achievement, relevant specialized training, past performance evaluations and other measures or indicators upon which the relative

qualifications of the applicants may be fairly judged. W. Va. Code §18A-4-7a.

3. Grievants have proven by a preponderance of theevidence that the successful applicant for the position of principal at George Ward Elementary School did not meet the Board's qualification of three years' teaching experience at the elementary level.

Accordingly, the grievance is GRANTED and the Board is Ordered to instate the Grievant ranked second during the evaluation to the position of principal at George Ward Elementary School.
December 30, 1994 Sue Keller, Senior Admn. Law Judge

Footnote: 1The Grievance Board has previously noted a presumption exists that elementary and middle-school are two separate programs. See Donofe v. Hancock Co. Bd. of Educ., Docket No. 93-15-188 (Nov. 30, 1993).

Footnote: 2Mr. Taylor's portfolio indicates that he was "Assistant to the Principal" first semester of the 1992-93 term and that he was also assigned as a teacher at TVHS that term. His assignment as principal at Valley Head Elementary School in 1993 was on a half-time basis while he retained the teaching assignment at TVHS the remaining half-day.