JACK GOODWIN, .

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Grievant, .

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v. . Docket No. 93-20-260

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KANAWHA COUNTY BOARD OF EDUCATION, .

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Employer. .

D E C I S I O N

This complaint was filed by Jack Goodwin (hereinafter Grievant) on August 16, 1993, against the Kanawha County Board of Education (hereinafter Board). The statement of grievance reads as follows: I interviewed for the Vice Principal's position at Andrew Jackson Middle School. I was the most seniored [sic] applicant and scored the highest on the interview." In essence, Grievant's complaint is that he was unfairly denied the Vice Principal position because his credentials were not given a meaningful review by the individuals who made the final hiring recommendation to theBoard. He seeks instatement into the position. The following facts are deduced from the record developed through level four. (See footnote 1)

Findings of Fact

1. Grievant has been employed as a teacher by the Board for approximately twelve years and as an administrator for approximately ten years. Grievant has the following professional certifications

and endorsements: Middle/Junior High/Senior High Principal 7-12; Supervisor of General Instruction 7-12; Elementary/Middle/Junior High K-8; Superintendent K-12; Vocational Administration 5-Adult.

2. Up until the beginning of the 1993-1994 school year, Grievant served as a Curriculum Supervisor for Vocational Education.

3. Grievant applied for but was not chosen for an assistant principal position at Andrew Jackson Middle School which was posted as vacant on July 9, 1993.

4. The following qualifications for the position were listed on the July 9, 1993 job vacancy notice:

1.

Valid teaching certificate;

2.

Master's degree;

3.

West Virginia administrative certificate eligibility at the time of application;

4.

Minimum of three years of teaching experience;

5.

Middle school training preferred and must demonstrate knowledge of"teaming," "home base," "interdisciplinary units," "flexible scheduling," and other middle school concepts.

5. The Board's personnel office created profile sheets of the candidate's qualifications for review by the superintendent.

6. An interviewing committee consisting of six individuals conducted interviews of the candidates for the position. The questions to be used during these interviews were developed by

Becky Goodwin, Area Assistant Superintendent and Dr. Melanie Vickers, Principal at Andrew Jackson Middle School. Both of these individuals served on the committee.

7. The interviewing committee was asked to present the questions to the interviewees and to rate or score their answers. The rating given to each candidate by the interviewers was based upon that candidate's ability to articulate and explain his/her knowledge of middle school concepts in education. After the interviews, the committee discussed the results of the interviews with Dr. Vickers. In turn, Dr. Vickers discussed the ultimate recommendation with both Ms. Goodwin and Dr. Jorea Marple, Superintendent.

8. Dr. Vicker's recommendation was given great weight by Dr. Marple because of the essential working relationship which must exist between a principal and assistant principal.

9. Before Dr. Marple made the final recommendation to the Board, she reviewed the profile sheets and the interview scores.

10. Dr. Marple recommended Michael Cardinale for the position in question and the Board approved this recommendation. Mr. Cardinale was also Dr. Vicker's first choice.

11. The qualification which was judged to be the most important attribute was the candidates' relevant experience and training in middle school concepts.

12. Kanawha County has only recently, within the last two or three years, developed and utilized the middle school concept in four of its schools. Prior to these four schools being converted to middle schools, research was done into the various concepts which make up a middle school. These concepts include teaming, home base, interdisciplinary units, flexible scheduling, etc.

13. It has been Ms. Goodwin's primary duty during the last two years to develop a middle school program.

14. Grievant was asked to provide research on the issues surrounding middle schools. As a result, he has developed a program of study on Middle School Methods and Technology which he teaches to teachers during the summer months.

15. The majority of teachers who have been certified in the grade areas of seven through twelve have been "grandfathered" into their ability to teach at middle schools. Teachers have been able to receive a middle school endorsement which attaches to their certification through attendance at various workshops sponsored by the Board in conjunction with the West Virginia Graduate College.

16. Grievant has never taught in a middle school setting.

17. Mr. Cardinale has been a full-time teacher at Andrew Jackson since 1985.

18. Mr. Cardinale's professional certifications and endorsements are as follows: Health and Physical Education 7-12; Social Studies 7-9; Principal Jr./Sr. 7-12; Elementary/Middle/Junior High Principal K-8; Superintendent K-12; Supervisor of General Instruction K-12; Vocational Administration 5 - Adult.

19. Mr. Cardinale received a middle school endorsement by attending a year long training program at Andrew Jackson Middle School which began in June 1992 and was completed in June 1993.

20. Mr. Cardinale attended this training along with Dr. Vickers.

21. At the interview for this position, Mr. Cardinale did not expound upon the answers asked of him as to his knowledge and skills of middle school education.

22. On the other hand, Grievant was determined to have been very articulate in his ability to expound upon his knowledge and skills of middle school training and teaching during the interview.

23. Grievant received a cumulative score of 4.2 as rated by the interviewing committee. Mr. Cardinale received a score of 3.1.

24. Dr. Vickers' recommendation to Dr. Marple that Mr. Cardinale be awarded the position in question was based upon her personal knowledge of his skills and abilities in the area of middle school concepts and not upon the substantive information presented to the interviewing committee by Mr. Cardinale.

25. Dr. Vickers does not have personal knowledge of Grievant's skills and/or abilities relating to middle school training or teaching because she has neither worked with nor supervised him.

Discussion

County boards of education have substantial discretion in matters relating to the hiring of school personnel and they must exercise that discretion by considering of the best interests of the schools and in a manner which is neither arbitrary nor capricious. See, Hyre v. Upshur County. Bd. of Educ., 412 S.E.2d 265 (W.Va. 1991). With regard to the hiring of professional personnel, other than classroom teachers, boards of education must exercise their discretionary authority by considering the "qualifying factors" contained in West Virginia Code §18A-4-7a (1993). This statutory provision

states, in pertinent part,

> A county board of education shall make decisions affecting the hiring of professional personnel other than classroom teachers on the basis of the applicant with the highest qualifications. . . . In judging qualifications, consideration shall be given to each of the following: Appropriate certification and/or licensure; amount of experience relevant to the position . . . ; amount of course work and/or degree level in the relevant field and degree level generally; academic achievement; relevant specialized training; part performance evaluations conducted pursuant to section twelve [§ 18A-2-12]. article two of this chapter, and other measures or indicators upon which the relative qualifications of the applicant may be fairly judged.

The various county boards of education throughout the state are delegated the authority to interpret and apply the provisions of Code §18A-4-7a. An individual's mere disagreement with a board's hiring decision is not sufficient to show an abuse of discretion. Finally, boards of education are free to determine the weight which is to be applied to each of the factors listed in the first section of 7a in assessing candidates' qualifications. See, Blair v. Lincoln Co. Bd. of Educ., Docket No. 92-22-009 (July 31, 1991).

Although the arbitrary and capricious standard of review of administrative agency decisions requires a searching and careful inquiry into the facts, the ultimate scope of review is narrow, and the undersigned may not substitute his judgment for that of the Board. See generally, Harrison v. Ginsberg, __ W.Va. __, 286 S.E.2d 276. The Grievance Board cannot perform the role of a "super-interviewer" in matters relating to the selection of candidates for vacant positions. Stover v. Kanawha Co. Bd of Educ., Docket No. 89-20-75 (Jun. 26, 1989); Harper v. Mingo Co. Bd. of Educ., Docket No. 93-29-064 (Sep. 27, 1993). Generally, an agency's action is determined to be arbitrary and capricious if the agency did not rely on factors that were intended to be considered, entirely ignored important aspects of the problem, explained its decision in a manner contrary to evidence before it, or reached a decision that is so implausible that it cannot be ascribed to a difference of view. Bedford County Memorial Hosp. v. Health and Human Serv., 769 F.2d 1017 (4th Cir. 1985).

In the instant case, all proper inferences from the record support a finding that the decision to hire Mr. Cardinale was based almost entirely, if not solely, upon Dr. Vicker's recommendation which was itself largely based upon her knowledge of Mr. Cardinale's past work and classroom experience as opposed to hisperformance during the interview or a comparison of his credentials compared to the other candidates for the position. Although Dr. Marple did review all of the credentials of the candidates provided to her by the Board's personnel office, it cannot be overlooked that it was Dr.

Vicker's recommendation alone and not the recommendation of any of the other interviewers which appeared to have been given deference.

Notice is taken that boards of education make most hiring decisions influenced by recommendations and concerns made known to them by staff who have knowledge concerning various candidates' credentials. This utilization of knowledge is both practical and commendable when it is remembered that the "best qualified" candidates are to be hired for professional positions; however, the requirements of Code §18A-4-7a mandate that a meaningful review be performed of all candidates' qualifications before the recommendation is made to the board. The undersigned is mindful that he is not to substitute his judgement for that of either Dr. Marple or the Board on the issue of which candidate was the most qualified for the Assistant Principal position at Andrew Jackson Middle School and such has not been performed herein. It is simply noted that the evidence of record, when taken as a whole, indicates that a meaningful review of Grievant's credentials, when compared to those of Mr. Cardinale, was not performed. The interviewing process was flawed because Dr. Vicker's opinion and recommendation was not based upon Mr. Cardinale's performance during the interview but was instead based upon her own knowledge and opinion of hisactual skills and abilities which she derived from her working with him. None of the other candidates were given nor could have been given such a meaningful review of their credentials. It can only be concluded that the interviewing committee was established to provide the candidates with an opportunity to explain and expound upon their respective skills and abilities in a meaningful and fair fashion so that the ultimate hiring recommendation could be based upon a meaningful review of qualifications. However, the interviewing committee's role was compromised by Dr. Marple's acceptance of Dr. Vicker's recommendation which appears to have been based solely upon her own personal opinion and experiences. Dr. Vickers' opinion should have been given some weight; however, once the Board established the interviewing committee as a means to review the applicants' qualifications, the ultimate recommendation must have been based somewhat upon that committee's findings. Dr. Vicker's opinion about Mr. Cardinale's qualifications cannot, at least in this context, be considered an "other measure or indicator" upon which the his credentials may be fairly judged. In conclusion, the hiring decision at issue in this case is deemed to have been based on arbitrary and capricious grounds because no meaningful review of all of the candidates for the position in question was performed as required by Code §18A-4-7a.

The foregoing discussion of the facts of the case and of the law applicable to those facts is hereby supplemented by the following appropriate conclusions of law.

Conclusions of Law

1. County boards of education have substantial discretion in matters relating to the hiring of school personnel and they must exercise that discretion by considering the best interests of the schools and in a manner which is neither arbitrary nor capricious. See, Hyre v. Upshur County. Bd. of Educ., 412 S.E.2d 265 (W.Va. 1991). With regard to the hiring of professional personnel, boards of education must exercise their discretionary authority by considering the first set of "qualifying factors" contained in West Virginia Code §18A-4-7a (1992).

2. The Board's decision to hire Mr. Cardinale for the position of Assistant Principal at Andrew Jackson Middle School was not based upon a meaningful review of all of the qualifications of each of the candidates for that position, therefore, it was an arbitrary and capricious decision.

This grievance is hereby **GRANTED IN PART** and the Board of education is hereby **ORDERED** to perform a reevaluation of the two candidates for the Assistant Principal's position at Andrew Jackson Middle School affected by this Decision, consistent with the discussion had herein. If upon a meaningful review of the candidates for said position it is determined that Mr. Goodwin was the most qualified applicant then the Board may place him into that position at the beginning of the 1994-1995 school year or at the conclusion of the reevaluation process. However, Mr. Goodwin would still be entitled to any difference in pay and applicable senioritycaused by the Board's assignment of Mr. Cardinale to the position at the start of the 1993-1994 school year.

Any party may appeal this decision 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 Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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ALBERT C. DUNN, JR.

Administrative Law Judge

March 14, 1994

Footnote: 1This Decision shall address the second of two grievances filed by Grievant which were appealed to level four and heard on October 26, 1993. The first complaint was filed with the Board on April 5, 1993. The Decision on Grievant's first claim is styled Goodwin v. Kanawha Co. Bd. of Educ., Docket No. 93-20-161.