JOSEPH KOMOROWSKI

v. Docket No. 93-25-478

MARSHALL COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, professionally employed by Respondent Marshall County Board of Education (MCBE) for approximately twenty-six years, filed a grievance upon his nonselection for a vacancy at John Marshall High School (JMHS). The level four appeal stated that

[MCBE] appointed a committee to make a recommendation concerning the hiring of an Assistant Principal at [JMHS]. The committee failed to fully and fairly evaluate the candidates. The superintendent failed to make any review of the committee's actions. As a result the Grievant was improperly, unfairly, arbi trarily & capriciously denied a position to which he was properly entitled.

The parties agreed to submit the matter for decision based upon the evidence adduced at the lower grievance levels and supple mented with some of Grievant's job application materials. Grievant filed a brief at level four on or about February 14, 1994. It is presumed MCBE elected to stand on its October 29, 1993, level two decision. Some background information is necessary. In May 1993, a long-time JMHS teacher who had served a number of years as Athletic Director retired. T.142-43. Grievant, who had com pleted his first year in the administrative post of Vocational Education Placement Director and Adult Education Coordinator following several years of prior service as assistant principal at JMHS, approached Superintendent Nick Zervos about the the resultant vacancy at the school. He submitted a written list containing a number of suggested job responsibilities and activities for an evening assistant principal/athletic director position, Ex.19, and also expressed interest in the job. T.25.

Following further input from pertinent administrative staff as to the nature and scope of the newly-created position, Mr. Zervos then authorized the posting of a notice of vacancy for Assistant Principal at JMHS on July 2, 1993. Among other things the posting noted that

[t]he successful candidate will be required to sched ule his/her time in a non-traditional manner to accommodate the needs of the position. Due to the non-traditional time requirements and duties of this position, the successful candidate will not be permit ted to coach.

The usual minimum qualifications were listed on the posting aswell as a stated preference for "applicants with successful teaching experience at the secondary level." Preference was also to be given to "applicants having experience with a school athletic program." Attached to the posting was a four-page job description which detailed numerous duties and responsibilities in the separate areas of "Athletic Director," "Assistant Princi pal," and "Evening Activities Director."

Applicants were required to respond to a printed matrix or grid-like "bid sheet" which contained topic areas corresponding to the seven factors or qualification criteria set forth in W.Va. Code §18A-4-7a for the employment of (non-teaching) professional personnel and referred to in the job posting. Seven persons applied and furnished data in appropriate sections on the bid sheet. Grievant neatly typed his bid sheet and filled it in with a considerable amount of information relative to his professional achievements and experiences. Ronald Trowbridge, the successful applicant, furnished little informa tion on his hand-written bid sheet; rather, he mainly referred to several attachments documenting his accomplishments.

Mr. Zervos appointed a five-member selection committee, consisting of Vincent Paoletti, Assistant Superintendent for Secondary Education; Steven Bland, Personnel Director; Donald Yost and Thomas Garner, Stephen Bland, JMHS Assistant Princi pals; and Dan Kolas, a JMHS teacher and faculty senate member. The committee's task was to review the application materials, schedule meetings with the applicants, comparatively assess the candidates' credentials and ultimately submit a recommendationfor the employment of the most qualified person to MCBE's superintendent. Interviews were scheduled for July 26 and 27, 1993.

The committee's purpose for the scheduled meetings was to permit the candidates to answer any questions which may have been raised by the application materials and to supply the committee with any additional information thought relevant. The committee did not intend to conduct or subjectively assess interview "performances." Four applicants, including Grievant, availed themselves of the opportunity to meet with the commit tee. Mr. Trowbridge declined because he had previously paid for summer vacation accommodations, and the vacation time conflicted with the interview dates.

Grievant appeared before the committee and submitted three loose-leaf binders containing extensive documentation, such as copies of vacation, holiday and maintenance schedules, mainte nance and supply requests, newspaper clippings, thank-you notes, banquet notices, seminar agendas, professional certificates and evaluations, and the like, all relative to Grievant's many years

of service, professional accomplishments and extensive partici pation in school-related activities, for the committee's consid eration. Several committee members scanned the binders, and the committee as a whole designated one of its members to review the contents of them more closely. That member reviewed the data and found it essentially corroborated information which Grievant had already written on his bid sheet.

After deliberation, the committee ultimately decided thatMr. Trowbridge and Grievant were essentially equal on four of the seven statutory hiring factors for non-teaching positions, "appropriate certification and/or licensure," "academic achieve ment" "relevant specialized training," and "past performance evaluations." It concluded that Mr. Trowbridge exceeded Grievant on all three of the remaining factors, "amount of experience relevant to the position," "the amount of course work and/or degree level in the relevant field and degree level generally" and "other measures or indicators upon which the relative qualifications of the applicant may fairly be judged."

By letter dated July 27, 1993, and signed by all members, the committee wrote that, "after much deliberation," it decided to recommend the employment of Mr. Trowbridge. On that same day, MCBE's Superintendent elected not to perform an independent investigation of the candidates' qualifications, but merely con curred with the committee's findings and nominated Mr. Trowbridge. Thereafter, MCBE acted upon the nomination and employed Mr. Trowbridge for the position at issue on July 27, 1993.

The parties do not dispute that the selection of profes sional personnel other than teachers must be based on the first set of qualifying factors found in §18A-4-7a:

In judging [the] qualifications [of candidates for a principal position], consideration must be given to each of the following: Appropriate certification and/or licensure; the amount of experience relevant to the position. . .; the amount of course work and/or degree level in the relevant field and degree level generally; academic achievement; relevant specialized training; past performance evaluations conducted pursuant to. . .[W.Va. Code §18A-2-12]. . .; and other measures or indicators upon which the relative qualifications of the applicant may fairly be judged.

Also, both parties agree that while MCBE has substantial discre tion in matters relating to the employment of school personnel, MCBE must exercise that discretion in a manner which is not arbitrary and capricious.

Grievant asserts that the selection process was fatally flawed because the committee denied him

a "reasonable, rational and fair evaluation of his qualifications." He maintains that had a proper evaluation occurred, he reasonably could have been ranked higher than Mr. Trowbridge in certain of §18A-4-7a's qualification factors. Finally, Grievant argues that MCBE violated all but one of the "six general principles" set forth in Smith/Jarvis v. McDowell County Bd. of Educ., Docket No. 89- 33-586/588 (June 19, 1990), and applicable in a determination of "whether a board abused its discretion in the filling of a professional position." (See footnote 1)

With respect to the selection committee's determinations of qualifications, Grievant expressed a belief that he should have been ranked higher than Mr. Trowbridge in the areas of "amount of course work and/or degree level in the relevant field and degree level generally," "academic achievement" and "other measures or indicators." He also avers that the committee unfairly determined he and Mr. Trowbridge were equally qualified in the area of "relevant specialized training." Grievantmaintains that these errors would not have occurred had MCBE "fairly" apprised him of the "criteria" on which selections would occur, conducted a proper interview and thoroughly re viewed his application materials.

Contrary to Grievant's specific assertion that he had not been "fairly" apprised of the "criteria on which the selection would be based," it is evident that Grievant knew or should have known the relevant hiring criteria because he filled out his bid sheet containing the criteria with great detail. (See footnote 2) Moreover, while Grievant was not especially pleased with the manner in which his "interview" was conducted (because he apparently wanted to discuss the entire contents of his three binders of documentation and/or expound upon each and every one of the more than sixty job responsibilities set forth in the posting, see Ex.20 and T.228), it is exceedingly clear from the record that Grievant was given ample opportunity to expand upon the contents of his bid sheet, discuss his many accomplishments/experiences and to furnish the committee with any additional information hedeemed relevant. See T.242-249.

It is noted that, inasmuch as the other six factors did not squarely address the duties required of an athletic director, the committee gave special weight to the factor, "other measures or indicators upon which the relative qualifications of the applicant may fairly be judged." This factor was emphasized and utilized primarily to assess the candidates with respect to the expressed preference in the job posting for candidates possess ing "experience with a school athletic program." In reaching its conclusions about "other factors or indicators," the commit tee considered Mr. Trowbridge's

service for twelve years as an executive director of the forty-seven-school, sixteen-sport, Ohio Valley Athletic Conference and as president of the Mason- Dixon Athletic Conference, his planning and participation in state wrestling and basketball tournaments for many years, and his three years of junior high school coaching experience in football, basketball, and track, plus one year of experience as a varsity assistant basketball coach. It also gave great weight to the fact that, for twelve of the seventeen years Mr. Trowbridge served CHS, he had served as the athletic director of the junior and senior high school athletic programs, grades 7 through 12, and was seasonally involved with as many as four football games and eight basketball games per week.

In contrast, the committee concluded that Grievant's coaching experience was limited to four years as a cheerleading coach at JMHS. He also had experience assisting the JMHS athletic director over the years with ticket sales and otherplanning chores, checking the public address system at athletic events, hosting some of the visiting principals, picking up papers in the halls, and, on two or three occasions, with actually taking charge of the arrangements for a basketball game when the athletic director was away. Based on its findings, the committee concluded Mr. Trowbridge's experience with school athletic programs exceeded Grievant's and ranked Mr. Trowbridge higher in the area of "other measures or indicators."

In summary, the record does not support Grievant's asser tions of wrongdoing on MCBE's part in this case. Rather, the record amply demonstrates that MCBE applied the proper hiring criteria, considered all seven factors prior to any final determinations as to which candidate was the most qualified and permissibly determined the weight which was to be applied to each hiring factor. Moreover, it cannot be said that MCBE improperly or impermissibly gave special consideration, greater emphasis and the most weight to one specific factor, "other measures or indicators," in order to determine the most quali fied applicant in light of its need to find the most appropriate applicant to perform an athletic director's function. Grievant simply did not prove by a preponderance of the evidence that he was more qualified than Mr. Trowbridge. Finally, there has been no showing of an abuse of discretion on MCBE's part with respect to its determination that Mr. Trowbridge and not Grievant should be employed for the Assistant Principal position at JMHS.

In addition to the foregoing discussion and analysis, the following formal findings of fact and conclusions of law aremade.

Findings of Fact

1. A selection committee of experienced, relevant person nel ranked Ronald Trowbridge as slightly more qualified overall than Grievant with regard to a newly-created Assistant Princi pal's position at John Marshall High School.

2. MCBE's superintendent accepted the recommendation and nominated Mr. Trowbridge for the position. Mr. Trowbridge was ultimately hired.

3. For twelve of the seventeen years Mr. Trowbridge served as principal at Cameron (Junior/Senior) High School, he served as the athletic director of the junior and senior high school athletic programs, grades 7 through 12. He also had some team coaching experience and extensive involvement with other sports-related matters.

4. Grievant served for at least a dozen years as an unofficial "assistant" athletic director at John Marshall High School; as such, he was involved with ticket sales and manage ment, promotional activities and assisting with the planning of athletic events; his coaching experience was slight.

5. The factor given the most weight by the selection committee was "other measures or indicators," primarily due to the preference stated in the job posting for an applicant with "experience with a school athletic program." As the committee determined that Mr. Trowbridge's "experience with a school athletic program" exceeded that of Grievant's, Trowbridge was ranked higher in "other measures or indicators" which essential ly tipped the overall balance in Mr. Trowbridge's favor.

Conclusions of Law

1. In order to prevail, a grievant must prove his allega tions by a preponderance of the evidence. Blankenship v. McDowell County Bd. of Educ., Docket No. 92-33-220 (April 23, 1993); Rupich v. Ohio County Bd. of Educ., Docket No. 89-35-719 (June 29, 1990); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988).

2. County boards of education have substantial discretion in matters relating to the hiring of school personnel. Hyre v. Upshur County Bd. of Educ., 412 S.E.2d 265 (W.Va. 1991); Dillon v. Bd. of Educ. of the County of Wyoming, 351 S.E.2d 58 (W.Va. 1986).

3. The grievance procedure is not intended to be a "super interview" for unsuccessful job applicants. Rather, in this context, it allows analysis of the legal sufficiency of the selection process at the time it occurred. Brode v. Berkeley County Bd. of Educ., Docket No. 89-02-577 (Feb. 27, 1990); Stover v. Kanawha County Bd. of Educ., Docket No. 89-20-79 (June 26, 1989).

4. As in all selection cases, the determination of the most qualified candidate is a subjective process, and it is not important to list and review all of the many qualifications of the applicants, since a hearing officer's subjective assessment of the relative qualifications of applicants is largely irrele vant. "In short, where two candidates for an administrative position are minimally qualified, i.e., hold administrative certification, there is generally no one right answer as to whomis the most qualified under Code §18A-4-7a, but only the Board's opinion as to who is more qualified based upon its interpreta tion and consideration of the section 7a factors." Harper v. Mingo County Bd. of Educ., Docket No. 93-29-064 (Sept. 27, 1993).

5. All W.Va. Code §18A-4-7a requires in the employment of a principal is that the decision resulted from a review of the candidates' credentials in relation to the seven factors set forth. Once that review is completed, a board or education may hire any candidate based solely upon the credentials it feels are of most importance. Id.

6. A board of education is free to determine the weight which is to be applied to each of the seven factors, so long as the board does not abuse its discretion. Blair v. Lincoln County Bd. of Educ., Docket No. 92-22-009 (July 31, 1991). In this case, MCBE acted within its discretion in stressing the credentials which it did, including the relative experience of the candidates in the area of school athletic program involve ment, a stated preference in the job posting.

7. In identifying "other measures or indicators upon which the relative qualifications of the applicant may fairly be judged," a board of education has "much latitude." Suan v. Lewis County Bd. of Educ., Docket No. 91-21-074 (Aug. 28, 1991). As long as the measures or indicators are fair and do not constitute an abuse of discretion, they may permissibly be employed. Blankenship, supra. Clearly, the committee's empha sis upon experience in athletic programs was fair, in light ofthe fact that the vacancy was created when the athletic director resigned, athletic programs are considered important to the school involved, and skills important to the athletic director duties were not squarely reflected in the other six statutory factors.

8. Grievant has failed to prove by a preponderance of the evidence that he was more qualified under the first set of factors in W.Va. Code §18A-4-7a to fill the position of assis tant principal at JMHS. Further, he has not demonstrated that the selection committee, the superintendent, or Marshall County Board of Education abused their discretion in this case.

Accordingly, the grievance is hereby **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Marshall 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 appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate Court.

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NEDRA KOVAL

Administrative Law Judge

Date: April 28, 1994

Footnote: 1 Smith/Jarvis was decided prior to the enactment of Code §18A-4-7a. At that time, a less-defined, "most qualified" hiring criteria for professional personnel was found in Code §18A-4-8b(a).

Footnote: 2 Grievant cited various other alleged improprieties on the part of the selection committee. For example, he argued that the committee members "failed to consider any subjective materials in their evaluation." However, Grievant failed to state what effect this particular matter had on his case. In addition, Grievant claimed that the selection committee indirectly and improperly considered "seniority" when it assessed the length of time Mr. Trowbridge served as a principal and therefrom determined Trowbridge should rank higher in the area of "amount of experience relevant to the position." This claim has no merit. It does not appear to be arbitrary or capricious for the committee to conclude that Mr. Trowbridge, a full-fledged principal for seventeen years, should rank higher in this area of administrative experience than Grievant. The eighteen years in which Grievant served as an administrator included one year as a Director/Coordinator, nine years as an assistant principal and eight years as an "evening" principal at JMHS. The committee apparently believed that a full principal's job was the most important administrative post in relation to the newly-created position at JMHS.