BRENDA ALIFF,

Grievant,

v. DOCKET NO. 94-27-075

MERCER COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Brenda Aliff, contends that the Mercer County Board of Education (Board) violated W. Va. Code § 18A-4-7a in selecting another applicant over her for an English/Language Arts teaching position at Pikeview High School. Ms. Aliff appealed adverse decisions at the lower grievance levels to Level IV on February 28, 1994. This grievance was initially scheduled for hearing at Level IV, but the parties agreed to submit the case on the record developed below, which consists of the transcript, exhibits and decision entered at Level II and the Board's affirmation of the Level II decision at Level III. (See footnote 1)

County boards of education have substantial discretion in matters relating to the hiring of school personnel and they must exercise that discretion only within the best interests of theschools 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 reviewing the candidates' qualifications under the categories contained in W. Va. Code § 18A-4-7a (1992). This statutory provision states, in pertinent part:

> . . . If one or more permanently employed instructional personnel apply for a classroom teaching position and meet the standards set forth in the job posting, the county board of education shall make decisions affecting the filling of such positions on the basis of the following criteria: Appropriate certification and/or licensure; total amount of teaching experience; the existence of teaching experience in the required certification area; degree level in the required certification area; specialized training directly related to the performance of the job as stated in the job description; receiving an overall rating of satisfactory in evaluations over the previous two years; and seniority. Consideration shall be given to each criterion with each criterion being given equal weight. If the applicant with the most seniority is not selected for the position,

> upon request of the applicant a written statement of reasons shall be given to the applicant with suggestions for improving the applicant's qualifications.

It is not necessary to review the methodology used by the Board or its agents in determining the qualifications of the candidates for the reasons set forth below.

Findings of Fact

1. The Board posted Administrative Memo No. 34 on May 27, 1993, listing approximately 39 teaching positions available at Pikeview High School, including the following:

> English/Language Arts Teacher - 5 positions
>
> Proper endorsement in English/Lang. Arts required.
>
> Experience with computers desired.
>
> English/Language Arts Teacher - 1 position
>
> Proper endorsement in English/Lang. Arts and
>
> experience with computers required.
>
> English/Language Arts Teacher - 1 position
>
> Proper endorsement in English/Lang. Arts and Journalism
>
> required. Experience in dramatic arts, print and
>
> photo journalism desired.

Board Exhibit 4 (emphasis added). (See footnote 2)

2. Ms. Aliff wrote to Mr. Roger Daniels, Administrative Assistant/Human Resources Director for Mercer County Schools on May 28, 1993, as follows:

> I would like to apply for a teaching position at Pikeview High School.
>
> I am currently teaching English 11 and 12 at Matoaka High School. My certification is in English 7-12 and Social Studies 7-9.

. . .

Board Exhibit 1.

3. An interview committee met with all applicants for the posted positions. The committee used the second set of factors described in W. Va. Code § 18A-4-7a to determine the best qualified person for each posted position. Each category was given equal weight. A total of 20 points was given to the candidate with the most experience, seniority, specialization, etc. The candidate with the next most seniority, for instance, would be given 19 points, and so on. No other criteria was used to determine the best qualified person for the job postings. Tr., p. 10.

4. Each applicant was asked at the beginning of their interview the position or positions for which they were making application. Tr., p. 26.

5. Ms. Aliff was considered, along with 16 other candidates, for the five English/Language Arts positions with computer experi-ence desired. Ms. Aliff did not receive any of the positions.

6. Carol C. Christensen also wrote to Mr. Daniels and indicated in two separate letters dated June 8, 1994, that she wished to be considered for one of the five English/Language Arts positions with computer desired and for the English/Language Arts position with computer experience required, respectively. Board Exhibits 2 and 3. Ms. Christensen was awarded the single English/Language Arts position with computer experience required.

Discussion

Ms. Aliff contends that she should have been awarded the single English/Language Arts position with computer experience required because she is more qualified than Ms. Christensen. Mr. Dan Zirkle, Principal, Pikeview High/Athens High School, testified that Ms. Aliff was not even considered for the single English/
Language Arts position and was therefore not compared to Ms. Christensen, who was the only applicant who applied for the "computer experience required" position. Tr., p. 27. The interview committee did not believe that Ms. Aliff was applying for the single English/Language Arts position with computer experience required. Tr., p. 26.

Ms. Aliff apparently believed she was applying for that position because she indicated on her

resume that she had computer experience and she presented her resume to Mr. Zirkle on the day of her interview. Tr., p. 9. However, Ms. Aliff admits that on her letter of application, she merely indicated that she was interested in "a teaching position". She goes so far as to say that "maybe I didn't make myself clear. . . I thought the ones I was qualified for were the ones that I was applying for." Tr., p. 28. She admits that she intended to apply for all of the English/Language Arts positions, except the one requiring Journalism certification, but doesn't know if she made the distinction in the interview. Tr., p. 28.

In Ms. Aliff's letter of interest to Mr. Bailey, she merely indicated she was applying for a teaching position. Her letter indicates that she has certification in English and in Social Studies. There were positions available in both English and Social Studies. It is reasonable to conclude that the interview committee must have made some inquiry of Ms. Aliff to determine for which positions she wished to be considered. Unfortunately, it appears Ms. Aliff did not express herself clearly and the interview committee considered her for one of the five English/Language Arts positions with computer experience desired, and not for the single English/Language Arts position with computer experience required.

In order to prevail, Ms. Aliff must establish the truth of her allegations by a preponderance of the evidence. Black v. Cabell County Bd. of Educ., Docket No. 06-88-238 (Jan. 31, 1989). Ms.Aliff has failed to establish that the method used to evaluate the candidates for the various teaching positions was arbitrary and capricious. Indeed, Ms. Aliff really is not questioning the methodology used by the interview committee in selecting candidates at all, but rather complains that she was not even considered for one of the available positions. The relief she seeks is the reposting of the English/Language Arts position with computer experience required so that she can be considered for that position.

In Mills v. Doddridge County Bd. of Educ., Docket No. 90-09-402 (Nov. 26, 1990), the Grievance Board found that it was the applicant's responsibilty to ensure that her application for a teaching position was received by the Board by the established deadline. The application was not received and it was the applicant and not the Board who was found at fault, precluding her from challenging the successful applicant's placement.

Likewise, Ms. Aliff cannot prevail in her grievance. Applicants should know what positions they are applying for and have the responsibility of effectively communicating their wishes to the interview

committee. Ms. Aliff's confusion and failure to communicate does not justify requiring the Board to repost a position which was filled properly and in accordance with the statutory requirements of W. Va. Code § 18A-4-7a.

Conclusions of Law

1. Ms. Aliff has failed to establish that the Board, or any agent thereof, violated, misinterpreted or misapplied W. Va. Code§ 18A-4-7a, in the process of hiring an employee for the English/Language Arts with computer experience required position at Pikeview High School.

2. Ms. Aliff has failed to establish by a preponderance of the evidence that the Board, or any agent thereof, abused its discretion by acting arbitrarily or capriciously in the selection process utilized to fill the position in question.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mercer 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.

MARY JO ALLEN

Administrative Law Judge

Dated: August 3, 1994

Footnote: 1 *This grievance was assigned to the undersigned from another Administrative Law Judge for administrative reasons.*

Footnote: 2 *The posting also listed 5 Social Studies teacher positions.*