**DAVID L. HALL**

**v. Docket No. 93-25-293**

**MARSHALL COUNTY BOARD OF EDUCATION**

**D E C I S I O N**

Grievant David L. Hall complains because he was not selected by Respondent Marshall County Board of Education (MCBE) as principal for Union Junior High School, said position to begin prior to the closure of the 1992-93 school year. He claimed a violation of W.Va. Code §18A-4-7a and that he was more qualified than the successful applicant, David Takach. Subsequent to the level two hearing, Grievant competed for and was selected as principal of Cameron High School, effective the start of the 1993-94 school year. He does not now seek instatement in the Union position; instead, he seeks monetary damages in the amount of $2,100.00 which represents his wages for ten days' work had he been selected for the earlier-filled Union position. (See footnote 1)

The evidence in this case simply fails to prove any wrongdoing on MCBE's part relative to its selection of Mr. Takach for theUnion principalship. (See footnote 2) Instead, the record supports that MCBE examined the candidates in a fair, impartial manner and made a reasoned decision, on the basis of qualifications, to employ Mr. Takach rather than Grievant. Therefore, Grievant's claim for back wages must be denied.

Grievant was among three other applicants who were interviewed and considered for the Union job by a four-person selection committee consisting of MCBE's Assistant Superintendent for Secondary Education, Vincent Paoletti, its Personnel Director, a high school principal with about twenty years' prior service as a junior high principal and a long-term teacher from Union who had been selected by that school's faculty senate to serve on the committee. Oral interviews were conducted, and all candidates were asked the same set of questions. In addition, the candidates were asked to provide a written response to a hypothetical situation involving student discipline. In particular, the written exercise was based on a situation involving student drinking which actually occurred several years ago. According to MCBE, the committee evaluated these responses for "clarity" and "sensitivity."

After the interviews, the selection committee conducted a comparative analysis of the candidates'

qualifications relative to the seven specific factors outlined in Code §18A-4-7a, appropriate certification/licensure, amount of experience relevant to the position, amount of course work/degree level in the relevant field, academic achievement, relevant specialized training, pastperformance evaluations and other measures or indicators. It found the two candidates in question, i.e., Grievant and Mr. Takach, virtually equal in four of the categories, but that Grievant exceeded in the academic achievement category. However, the committee deemed Mr. Takach more qualified in the area of "amount of experience relevant to the position" for his total service as an interim and summer principal at a high school for 160 days versus Grievant's service as a temporary principal at a junior high school for only thirty-one days. (See footnote 3) It also gave Mr. Takach a higher mark for "other measures" because Mr. Takach had taught twenty-three years versus nearly twenty-two for Grievant, because Takach had a fraction of a year more overall seniority than did Grievant and because of its determination that Takach's written response to the hypothetical question was better than Grievant's.

Ultimately, the committee unanimously concluded that, although the question was very close, Mr. Takach's overall qualifications exceeded those of Grievant's. It then recommended that Mr. Takach be offered the Union principalship.

Grievant essentially claims that the hiring process was fatally flawed. (See footnote 4) He maintained in his level four brief that,inasmuch as MCBE had utilized a "grid system" to objectively assess the candidates' qualifications, it acted in an arbitrary and capricious manner when it did not also standardize the "weighted value for each of the seven categories." He argued that MCBE's decision to "give certain categories that favored Mr. Takach more weight than the categories that seemed to have favored [Grievant]" was violative of W.Va. Code §18-29-2(o). (See footnote 5)

In particular, Grievant asserts that he should have been given a higher ranking and not an equal ranking with Mr. Takach for the area of "specialized training." (See footnote 6) He further claims that, "based on the comparisons of the grid," he should have been "awarded a point" instead of Takach for the area of "Other Measures or Indicators." He opines that the committee "did not fairly judge the substance" of their portfolios, letter writing skills or educational involvement. (See footnote 7) Grievant's Brief at 5.

Grievant's allegations are unsubstantiated. It appears from the record that, contrary to Grievant's assertion that the selection committee improperly weighted some factors more than others, the committee actually accorded equal weight to each of the seven factors found in Code §18A-4-7a

relative to the employment of personnel for administrative positions, although it was not bound to do so. See Blair v. Lincoln County Bd. of Educ., Docket No. 92-22-009 (July 31, 1992). The record also establishes that the committee found both Grievant and Mr. Takach to be very qualified. However, Grievant failed to establish that the committee's judgement was flawed or otherwise impaired when it ranked Mr. Takach higher than him in two of the listed factors. In short, Grievant failed to prove a violation of Code §18A-4-7a, or any other statute, or to prove by a preponderance of the evidence that he was more qualified than the successful applicant.

In addition to the factual and legal determinations contained in the foregoing discussion and analysis, the following formal findings of fact and conclusions of law are made.

## Findings of Fact

1. Grievant applied for a principal's position which was to commence prior to the end of the 1992-93 school year.
2. A selection committee was formed to review the applicants' qualifications, to conduct oral interviews and analyze written responses to a hypothetical school situation and to recommend the most qualified candidate for employment.
3. Using a method to calculate points with respect to the seven qualifying factors described in Code §18A-4-7a, the committee determined, by a narrow margin, that an applicant other than Grievant was the most qualified candidate for the position in question. However, Grievant obtained another principal's position for the 1993-94 school year; this particular job started in Fall 1993.

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## Conclusions of Law

1. 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. W.Va. Code §18A-4-7a.
2. Grievant failed to prove that MCBE violated Code §§18A-4-7a and 18-29-2(o) or otherwise abused its discretion when it determined that Mr. Takach was the most qualified applicant for the principalship at Union Junior High School.

Accordingly, the grievance is **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**

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**Administrative Law Judge**

**Date: January 28, 1994**

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*Footnote: 1The parties agreed that a decision could be rendered based on the record compiled at level two. Grievant and MCBE completed briefing by the end of October 1993.*

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*Footnote: 2The parties agreed that a decision could be rendered based on the record compiled at level two. Grievant and MCBE completed briefing by the end of October 1993.*

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*Footnote: 3It appears that teachers at MCBE's junior high schools were permitted only recently to act as interim principals when a principalship fell vacant in their schools, but that Mr. Takach had been given the opportunity to act as interim principal of John Marshall High School at a much earlier time.*

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*Footnote: 4Among other things, Grievant apparently objected to the inclusion of Mr. Paoletti on the selection committee. During the level two hearing, Grievant cited three incidents which, according to him, proved that Mr. Paoletti had been biased against him over the years. Grievant's evidence was not convincing. In addition,there was no evidence of record that Mr. Paoletti would or could unduly influence the other committee members with respect to any of the applicants.*

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*Footnote: 5Favoritism is defined in §18-29-2(o) as "unfair treatment of an employee as demonstrated by preferential,*

*exceptional or advantageous treatment of another or other employees."*

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*Footnote: 6Basically, the committee weighed Grievant's participation in numerous "training" seminars sponsored by a teachers' union against Mr. Takach's participation in coaching-related training and activities and rated the candidates equally in the area of relevant specialized training. While the listed experiences for each man are different in nature, there appears to be no basis to value Grievant's more than Mr. Takach's.*

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*Footnote: 7During the level two hearing, Grievant claimed that the topic of the hypothetical question, student drinking, favored Mr. Takach because an actual incident involving student drinking occurred several years ago at the high school where Takach served. However, in a footnote in Grievant's brief, he opined that the letter he drafted to the parent of a student caught drinking was "clear, concise and to the point" while Mr. Takach's letter on the samesubject was "unprofessional and unclear." Grievant's Brief at 5.*