DEBORAH MARSH

v. Docket Nos. 94-55-022

WYOMING COUNTY BOARD OF EDUCATION

DECISION

The grievant, Deborah Marsh, is employed by the Wyoming County Board of Education (Board) as Principal of Baileysville High School (BHS). She initiated a grievance at Level I August 12, 1993, protesting her non-selection for the position of Assistant Superintendent of Secondary Schools. Her supervisor was without authority to grant relief and the grievance was denied at Level II following a hearing held September 20, 1993. The Board, at Level III, declined to address the matter and appeal was made to Level IV January 24, 1994. The parties subsequently agreed to submit the case for decision on the record developed at the lower levels. The parties declined to submit proposed findings of fact and conclusions of law.

FACTS

There is no dispute over the facts of the case. The record developed at Level II (See footnote 1) supports the following findings.

1) The Board posted the position in issue on June 11, 1993. "Legal requirements as listed in State Code 18-5-32, Masters degree and Professional Administrative Certificate, Demonstrates qualifications further detailed in job description" (See footnote 2) were the minimum qualifications listed in the posting. Attached to the posting was a detailed job description for the position.

2) Thirteen persons, including the grievant, submitted timely applications for the position.

3) Upon completion of the application process, Superintendent of Schools Frank Blackwell developed a matrix sheet reflecting the seniority, experience as an administrator, professional certifications, and degree level of the candidates.

4) Superintendent Blackwell then interviewed all thirteen candidates and administered them a written test in which they were to review a hypothetical parent complaint and prepare a response letter for the superintendent. The test was designed to assess theapplicant's comprehension of instructions, writing ability, and knowledge of Board policy related to the complaint. (See footnote 3)

5) After reviewing the results of the tests and interviews, Mr. Blackwell determined that the grievant did not follow the directions contained in the test. Drawing from his personal contacts with the grievant during her tenure as principal and after reviewing her performance evaluations, Mr. Blackwell also concluded that the grievant had not demonstrated a capacity to listen and accept suggestions from her peers or subordinates. Mr. Blackwell further concluded that the grievant had distanced herself somewhat from the student population at BHS.

6) Also a factor in his assessment of the grievant's qualifications was Mr. Blackwell's conclusion that she had not made sufficient improvement on numerous problems at BHS cited in an April 1992 assessment of the school conducted by the State Department of Education. (See footnote 4)

7) Mr. Blackwell eventually narrowed the field of applicants to five or six persons he considered the most qualified for the job. The grievant was not among this group.

8) After further review of the credentials of the top candidates, Mr. Blackwell concluded that Frank Mann was the most qualified. A keym if not dispositive, consideration in this conclusion was Mr. Blackwell's determination that Mr. Mann was the only applicant who completed the written test per its instructions. The Board ultimately accepted Mr. Blackwell's recommendation that Mr. Mann be awarded the position.

9) At the time of the posting the grievant had been employed by the Board for approximately nineteen years, five and one-half years of which had been served as Principal of BHS. She holds a Masters degree in Educational Administration and Speech and Librarian teaching certificates. The grievant also possesses superintendent, supervisor, vocational administration and principal certificates.

10) Mr. Mann holds a Masters degree in Special Education and Education Administration, and teaching certificates in mental retardation, specific learning disabilities and behavioral disorders. He too possesses superintendent, supervisor, vocational administrator, and principal certificates. At the time of the posting, Mr. Mann had been employed by the Board as a teacher for approximately 10 years. He had never served in an administrative capacity in any school system.

ARGUMENT

The grievant asserts that by virtue of her administrative experience she was more qualified for the position in issue than Mr. Mann and his appointment was therefore violative of W.Va. Code§18A-4-

7a. She does not assert that the selection process was procedurally flawed in any way. The Board simply maintains that the position was filled in accordance with the mandates of Code §18A-4-7a and that the grievant has failed to establish otherwise.

CONCLUSIONS

After a careful review of the parties' positions, the applicable statute and the foregoing findings of fact, the undersigned makes the following conclusions of law.

1) A county board of education must make decisions on the selection of professional personnel such as an assistant superintendent 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. Seniority is not a determinative factor in such selections. Jones v. Monroe County Bd. of Educ., 441 S.E.2d 367 (W.Va. 1994).

2) An applicant's greater experience in education administration does not necessarily entitle him or her to an administrative post. A county board of education must look to all aspects of the applicants' qualifications in filling such positions and it is not necessarily an abuse of discretion for it to afford greater weight to factors other than administrative experience.Bowe v. Kanawha County Bd. of Educ., Docket No. 93-20-269 (Dec. 28, 1993); Tracewell v. Wood County Bd. of Educ., Docket No. 90-54-398 (Jan. 30, 1991).

3) The grievant has failed to establish that she was more qualified than the successful applicant for the position in issue or otherwise demonstrate that the Board did not comply with the requirements of W.Va. Code §18A-4-7a. The record clearly and convincingly establishes that the Board fulfilled all statutory requirements and exercised its discretion in a reasonable manner in selecting Mr. Mann for the position.

Accordingly, the grievance is **DENIED.**

Any party may appeal this decision to the Circuit Court of Kanawha County or the Circuit Court of Wyoming 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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JERRY A. WRIGHT

CHIEF ADMINISTRATIVE LAW JUDGE

Dated: September 1, 1994

Footnote: 1The Assistant Superintendent of Secondary Schools position was also the subject of Swimm v. Wyoming County Bd. of Educ., Docket No. 94-55-023 (Aug. 12, 1994). The record herein is essentially the same as that developed in Swimm.

Footnote: 2W.Va. Code §18-5-32 authorizes a county board of education to hire an assistant superintendent for each "two hundred teachers or major fraction thereof" and requires the state board of education to promulgate rules and regulations for the licensure of such employees.

Footnote: 3The test was not admitted into the record. Since the evidence regarding its content and purpose was sparse, the above findings are based to some extent on inferences drawn from the testimony of the grievant and Mr. Blackwell.

Footnote: 4The record reflects that a great many if not all of the problems predated the grievant's appointment to the principalship of BHS and that Mr. Blackwell took this into consideration. The import of his testimony on the issue was that the grievant had accomplished a great deal at the school but, in his opinion, could have accomplished more.