BILLY JOE KEATLEY,

Grievant,

v. DOCKET NO. 93-27-203

MERCER COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Billy Joe Keatley, contends that the Mercer County Board of Education (Board) violated W. Va. Code § 18A-4-7a in selecting another applicant over him for an Assistant Principal position at Pikeview High School. He contends that he should have been awarded the Assistant Principal position because he is more qualified and has more years' experience than the successful applicant, Ms. Laura Liz Henry.

Mr. Keatley appealed adverse decisions at the lower grievance levels to Level IV on June 4, 1993. This grievance was initially scheduled for hearing at Level IV, but after several continuances, the parties agreed to submit the case on the record developed below, which consists of the transcript, exhibits and decisionentered 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 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 reviewing the candidates' qualifications under the categories contained in W. Va. Code § 18A-4-7a (1992). 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, . . .; 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 section twelve [§ 18A-2-12], article two of this chapter; and other measures or indicators upon which the relative qualifications of the applicant may fairly be judged. . . . 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.

The following findings of fact and conclusions of law are derived from the record developed below.

Findings of Fact

1. The Board posted Administrative Memo No. 6 on August 26, 1992, listing, among others, the following job opening:

> Assistant Principal - Pikeview High School
>
> Qualifications:
>
> Must have or be eligible for a 7-12 certificate in secondary administration. A minimum of three years of supervisory or administrative experience preferred. Additionally, preference will be given to applicants having knowledge of or experi-ence with effective schools research, school restructuring (Re: Learning), coalition of essential schools, team teaching, and integrated curriculum planning. Please refer to the job des-cription for Pikeview High School for further information.

Board Exhibit 1.

2. Mr. Keatley, then Vice-Principal at Athens High School, applied for the Assistant Principal position at Pikeview High School.

3. Mr. Keatley had an interview with the interview committee. Tr., p. 11. The interview committee was composed of central office staff, Mr. Dan Zirkle, Principal, Pikeview High/Athens High School, and county teachers.

4. Mr. Keatley possesses the required certification and the minimum of three years supervisory

or administrative experience. Mr. Keatley has been employed by the Mercer County Schools for 25 years, with approximately 13 years as Assistant Principal.

5. The Assistant Principal position was awarded to Laura Liz Henry.

6. Mr. Keatley admits that he does not possess any of the remaining qualifications listed for the Assistant Principal position, except some experience with team teaching. Tr., p. 19.

7. Mr. Keatley admits that he has no knowledge of Ms. Henry's qualifications, employment history, or experience. Tr., pp. 19-23. No evidence of Ms. Henry's qualifications was presented at the Level III hearing.

8. Mr. Keatley was advised by Mr. Zirkle by letter dated January 4, 1993, of the reasons why he was not selected as Assistant Principal. The reasons included, among others, the lack of the preferred qualifications, failure to keep current on any phase of curriculum and professional development, and a tendency to leave all decision-making up to the Principal. Mr. Keatley agrees that the reasons given were accurate. Tr., pp. 24-26.

9. Mr. Keatley does not point to any flaws in the selection process, other than his concern that teachers were members of the interview committee. Despite his concerns, Mr. Keatley did not feel that any members of the committee had any bias or animus toward him. Tr., p. 27.

Conclusions of Law

1. It is incumbent upon a grievant to prove the allegations of his complaint by a preponderance of the evidence. Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988); Andrews v. Putnam County Bd. of Educ., Docket No. 40-87-330-1 (June 7, 1988).

2. W. Va. Code § 18A-4-7a requires that decisions of a county board of education affecting the filling of vacant professional positions other than a classroom teacher be based upon the applicant with the highest qualifications.

3. County boards of education have substantial discretion in matters relating to the hiring and assignment of school personnel but the discretion must be exercised reasonably, in the best interests of the school system and not in an arbitrary or capricious manner. State ex rel. Hawkins v. Tyler County Bd. of Educ., 275 S.E.2d 908, 911 (W. Va. 1980).

4. While Mr. Keatley has established that he has served as an administrator for more years

than the successful applicant, he has not proven that such experience alone makes his overall qualifications greater than those of Ms. Henry or that Mr. Zirkle did not conduct a fair and equitable assessment of the qualifications of all applicants before reaching his conclusion that Ms. Henry should be awarded the position.

5. Mr. Keatley 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 Ms. Henry for the Assistant Principal position at Pikeview High School.

6. Mr. Keatley 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 throughout 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.

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MARY JO ALLEN

Administrative Law Judge

Dated: August 10, 1994

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