JAMES FOLTZ

v. Docket No. 94-15-203

HANCOCK COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant James Foltz, professionally employed by Respondent Hancock County Board of Education (HCBE), was an applicant for a position as a full-time assistant principal at Allison Elemen tary School. When another candidate was selected to serve as a half-time principal at the school, Grievant filed the within complaint alleging a violation of W.Va. Code §18A-4-7a on HCBE's part "with regard to the posting and subsequent hiring" for the position. Grievant seeks "immediate placement in the position with appropriate back pay and seniority." (See footnote 1)

Based on all matters of record, the following findings are made.

Findings of Fact

1. Grievant, a teacher holding approximately twenty-two years' seniority, is currently assigned to Oak Glen High School. Among other things, he possesses special education training and the necessary certification to serve as an assistant principal.

2. During the 1993-94 school term, HCBE considered creating the position of assistant principal to serve both Allison Elementary School (Allison) and Oak Glen Middle School (OGMS).

3. Throughout the fall and winter of the 1993-94 school term, various administrative positions for Allison and OGMS were posted; however, no assistant principal position was filled at Allison until some time after the final posting in the series in March 1994. (See footnote 2)

4. During the period when the multiple postings appeared, Allison's principal suffered a protracted illness and eventually died. At the same time, input was forthcoming from staff,school councils, PTAs, and interested members of the community as to how the administrative needs of the affected school and others would be best served. It appears from the record that both OGMS and Allison desired full-time assistant principals with no loss in overall teacher or support staff.

5. At some point after the death of Allison's principal, Linda Robinson, who had administered Allison during the former principal's illness and absence, was employed as Allison's new principal.

6. On March 2, 1994, HCBE posted an offering for a full- time assistant principalship at Allison, posting No. 209. Grievant and others applied. Neither this posting nor any previous posting in the

series ever set forth any requirement or even a preference that the candidate possess special education training, skills or experience.

7. According to Superintendent Daniel Curry, the appli cants' qualifications, certifications and backgrounds were reviewed by administration and staff. In addition, interviews were conducted by Allison's principal and select staff in order to make recommendations to Mr. Curry.

8. From this process, Grievant and three other applicants were found to be qualified and properly certified to hold the position as full-time assistant principal at Allison Elementary School.

9. During the candidate review period, a question existed in Mr. Curry's mind as to whether Allison needed a full-time assistant principal's position. 10. Prior to making any final determinations about filling the Allison job, Mr. Curry also conducted interviews. During those interviews, Mr. Curry advised Grievant and the other candidates of the distinct possibility that the posted position of full-time assistant principal at Allison would be reduced to a half-time assistant principal depending upon need.

11. By letter dated March 10, 1994, Ms. Robinson advised Mr. Curry that she recommended Patty Bonnell for a half-time position as assistant principal since Ms. Bonnell already taught at Allison and no down-time would occur for travel if she received the job. She recommended Grievant for a full-time slot, primarily because she felt his experience in special education would benefit the special education programs and need for "the discipline of students with special needs" at Allison.

12. Although Mr. Curry considered Grievant and Ms. Bonnell to be "the two finalists" for the job at Allison, T.24, he concluded that Ms. Bonnell was the strongest candidate for either a full-time or half-time assistant principal's position at the school. T.23-24.

13. Eventually, an administrative decision was made that Allison would require only a half-time assistant principal.

14. Based upon Mr. Curry's March 14, 1994 recommendation, HCBE awarded a contract for the half-time assistant principal's position to Ms. Bonnell.

The Parties' Positions

As support for his argument that he is entitled to a full- time assistant principal's job at Allison, Grievant cites theposting requirements of W.Va. Code §18A-4-7a (See footnote 3) and holdings in Smith v. McDowell County Bd. of Educ., Docket No. 89-33-588 (June 19, 1990), and Rogucki v. Gilmer County Bd. of Educ., Docket No. 11-87-260-3 (Feb. 17, 1988), that a board "must make

accurate and complete job postings and give due consideration to the minimum qualifications listed therein." Grievant argues that HCBE acted unreasonably when it ignored Allison's princi pal's recommendation that he be hired for a full-time assistant principal's job, especially in light of his experience in special education. He further claims HCBE acted arbitrarily and capriciously when it ignored "the law that mandates how vacan cies must be posted and filled" and hired a half-time instead of full-time assistant principal as posted.

HCBE denies any wrongdoing in this matter and claims Grievant has not met his burden of proof. It avers that the postings in question had to be altered due to changing circum stances and need. As to its ultimate selection of a candidate other than Grievant, HCBE urges that it followed the hiring criteria of W.Va. Code §18A-4-7a and that the successful candi date had more seniority than the Grievant, had more experience at the elementary education level, and had projected a well-or ganized interview including a portfolio of activities andadditional studies. Finally, HCBE argues that the relief sought by Grievant, a full-time assistant principalship at Allison, is not available to him because such a position does not exist at Allison. (See footnote 4)

Discussion

There is no doubt but that HCBE filled a position which deviated in scope from that described in the posting, i.e, that it employed a half-time instead of full-time assistant princi pal. Mr. Curry admitted that interested parties wanted Allison to have a full-time assistant principal and lobbied extensively to that end. T.17. (See footnote 5) Mr. Curry stated that he posted such a full-time position in error and without HCBE's authorization. T.22. He did not dispute the fact that HCBE has no policy which permits the awarding of a job in variance of the job described on a posting. Finally, Mr. Curry agreed that once an adminis trative decision had been made that only a half-time assistant principal would be needed for Allison, posting No. 209 probably should have been rescinded.

Nevertheless, while Grievant has established that HCBE filled a position which deviated in scope from that described in the posting, he has not demonstrated any entitlement to therelief he requests in this action. Mr. Curry's explanation as to why the half-time job was filled at Allison without reposting was reasonable. He testified that events over a long period at Allison, such as the former principal's illness and death, had left the school in dire need of some additional administrative support. In Mr. Curry's and HCBE's view, once a final determi nation about whether to hire a full-time

or part-time assistant principal had been made, a prompt resolution of the situation would be the best way to proceed since candidates had already been assessed. Certainly, that the job at Allison was eventu ally filled as a half-time position came as no surprise to Grievant for the multiple postings indicated indecision, and Mr. Curry had explained to the candidates that the job might be half-time instead of full-time.

In addition, Grievant failed to present any evidence that a full-time assistant principal's position at Allison is legally required or otherwise necessary. HCBE and Mr. Curry are the proper parties to make that determination, not Grievant or even Ms. Robinson, Allison's principal. Finally, the Grievance Board has no legal basis upon which to order that county boards of education establish and fill (full-time) positions deemed unnecessary at Allison or any other school. See Jones v. Ritchie County Bd. of Educ., Docket No. 93-43-429 (May 20, 1994).

Grievant also misapprehended the role of Ms. Robinson in other ways in this controversy. Ms. Robinson, as the newly- seated principal of Allison, has absolutely no independentauthority to select the most qualified applicant for any vacancy at her school unless that task has been expressly granted to her by a higher authority. (See footnote 6) According to W.Va. Code §18-4-10, Mr. Curry is the only administrator who can nominate a candidate for employment before the HCBE. See Jones, supra.

Although Grievant did not focus upon the qualifications aspect of hiring school administrators, under Code §18A-4-7a, the filling of a professional position other than a classroom teacher must be based upon the applicant with the highest qualifications. In this case, Ms. Robinson had expressed a preference for two candidates, Grievant and Ms. Bonnell, for apparently two different reasons, but omitted any mention as to which of them was the most qualified. In the end, after HCBE finally decided that Allison required only a half-time assistant principal, Ms. Robinson's suggestions were considered. Mr. Curry, who made the final determinations as to which applicant was the most qualified, selected the same candidate Ms. Robinson had recommended for the assistant principal's slot in the event the school could not have a full-time person.

In short, Grievant presented no compelling evidence that HCBE acted unreasonably or contrary to Allison's or the school system's interests when it decided to fill only a half-time assistant principal's job at Allison. Grievant never alleged any improprieties with respect to the actual selection process, and none could be found in the record. Finally, Grievant failedto establish that he was the most

qualified applicant for the half-time and/or full-time assistant principal's position or that he was entitled to either job as a matter of law.

In addition to the foregoing, the following conclusions of law are appropriate.

Conclusions of Law

1. It is incumbent upon a grievant to prove all the allegations constituting the grievance by a preponderance of the evidence. 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. Decisions of a county board of education affecting the filling of vacant professional positions other than a classroom teacher must be based upon the applicant with the highest qualifications. W.Va. Code §18A-4-7a.

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. Grievant failed to prove that HCBE abused its discre tion or acted in an arbitrary, capricious or unreasonable manner, contrary to the best interests of the school system, when it determined an employment status and assignment for Allison's assistant principal not in complete conformance with the latest posting for said position. 5. Grievant provided no evidence that he was more quali fied than the successful applicant for the assistant principal's job at Allison; therefore, Grievant failed to establish a violation of Code §18A-4-7a with respect to the employment of a candidate other than himself.

6. Grievant failed to prove under any theory of law that he is entitled to a position as full-time assistant principal at Allison.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Hancock 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: August 25, 1994

Footnote: 1 *Adverse decisions were rendered at levels one and two on March 28 and April 26, 1994, respectively, and HCBE waived consideration on May 9, 1994. Grievant appealed to level four on or about May 20, 1994 and initially asked for a hearing. The hearing, set for June 8, 1994 was cancelled when Grievant subsequently requested a record decision. Grievant tendered fact/law proposals on July 22, 1994. HCBE submitted a letter brief on July 26, 1994, basically reaffirming the position taken at level two.*

Footnote: 2 *On November 17, 1993, posting No. 197 announced a "substitute" assistant principal's position for half-time service at OGMS and half-time service at Allison, and advised that the position could be terminated at the Superintendent's discretion. No one was hired. On January 12, 1994, posting No. 203 announced the split appointment as assistant principal for the two schools in question as an eleven month job. On February 15, 1994, posting No. 206 declared that No. 203 was voided and offered a half-time assis tant principal/head teacher job at Allison for ten and one-half months. At the same time a similar job was posted for OGMS. Thereafter, on March 2, 1994, posting No. 209 voided No. 206 and announced a full-time assistant principal's job for Allison. Grievant focuses his claim on this last posting, No. 209. See Grievant's Exhibits, 1-5.*

It is noted that this series of postings was the topic of another grievance, Brown v. Hancock County Bd. of Educ. Docket No. 94-15-207 (Aug. 24, 1994).

Footnote: 3 *W.Va. Code §18A-4-7a states in pertinent part:*

Boards shall be required to post and date notices of all openings in established, existing or newly created positions in conspicuous working places for all professional personnel to observe for at least five working days. The notice shall be posted within twenty working days of such position openings and shall include the job description. Any special criteria or skills that are required by the position shall be specifically stated in the job description and directly related to the performance of the job.

Footnote: 4 *HCBE opined that, if anyone has reason to object to the change in the job description from full-time to part-time assistant principal, it would be the successful candidate rather than Grievant.*

Footnote: 5 *Grievant cited this portion of the level two transcript, i.e., to Mr. Curry's testimony about the lobbying efforts, apparently as proof that HCBE "ignored what would be best for Allison." Certainly, Grievant presented no independent evidence that Allison's interests were in any way compromised by a decision to have a half-time rather than a full-time*

assistant principal.

Footnote: 6 The record contains no evidence that Mr. Curry or HCBE delegated their authority to Allison's principal to select the most qualified applicant for assistant principal.