BARBARA FLOREN

v. **Docket No. 93-20-305**

KANAWHA COUNTY BOARD OF EDUCATION

D E C I S I O N

Ms. Barbara Floren, a former principal, was a teacher at the time she filed this grievance over her nonselection for the principalship of Nitro Elementary. She complained "KCS did not comply fully with Code 18A-4-7a because they did not use the final criteria . . . 'and the other measures are indicators upon which the relative qualifications of the applicant may be fairly judged.'" She stated if all the criteria had been considered she "would have been the most qualified and received the job." As relief she sought position and back pay.

The grievance was denied at all lower levels. (See footnote 1) At Level IV, Mr. Greg Bailey, Respondent's attorney, questioned whether the grievance was moot since the Grievant had received a principalship on September 20, 1993. Grievant responded that since the Nitro position had a February, 1993 hire date she was still "very much interested in the Nitro Elementary job." Thus, this grievance isnot moot under Harrison v. Cabell County Bd. of Educ., 351 S.E.2d 604 (W. Va. 1986).

The crux of Grievant's argument is that W. Va. Code §18A-4-7a required the Kanawha County Board of Education (hereinafter KCBE) to assess applicants' qualifications using all seven factors listed in the first paragraph. She argues that KCBE did not use the seventh factor "other measures and indicators" and if the Respondent had, then she would have been selected for the position.

At the Level IV hearing the Respondent stipulated the Kanawha County Board did not utilize the seventh criteria in selecting the principal for Nitro Elementary. The Respondent stated that after examining the first six criteria it was not necessary to utilize the seventh as the successful applicant, Ms. Carolyn Meadows, was clearly the most qualified. Further testimony at Level III indicated that the critical factor of the six was Ms. Meadows' administrative experience.

The statute at issue says, 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. Further, the county board shall make decisions affecting the hiring of new 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 or, in the case of the classroom teaching position, the amount of teaching experience in the subject areas; the amount of course work and/or degree level in the relevant field and degree level generally; academic achievement; relevant specialized training; past performanceevaluations 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.

W. Va. Code §18A-4-7a.

The Grievant's argument is, in essence, if the seventh criteria had been considered she would have been selected the position because she has two Masters Degrees, received higher grades in graduate school, and her elementary principalship is of more recent history.

The Respondent argued there is no need to look at the last criteria if one of the candidates is clearly more qualified than the rest, and this option is within the Board's discretion. The Respondent further argued that even if the seventh criteria had been used there is no indication that the outcome would have been different. Finally, the Respondent states the word "may" in the seventh criteria gives a school board the option of using or not using this criteria.

The salient facts are not in dispute.

Findings of Fact

1. At the time this grievance was filed the Grievant, a former principal, was employed as an elementary teacher. She had lost her principalship due to consolidation.
2. On May 11, 1993 KCBE advertised a vacancy for a principal at Nitro Elementary.
3. Grievant was one of five applicants for the job.
4. The Board reviewed the applicants' qualifications using a matrix based on the first six factors identified in W. Va. Code §18A-4-7a. They assessed the applicants in the areas of certification, relevant experience, relevant course work/degree, degree generally, academic achievement, relevant specialized training, and evaluations. KCBE did not utilize the seventh criteria, other measures or indicators as a separate category.

5. The top two candidates for the position were the successful applicant and Ms. Barbara Redman.

6. On February 26, 1993, KCBE awarded the position to Ms. Carolyn Meadows.

7. The Grievant and the successful applicant have the following qualifications:

A. Certification: The successful applicant is certified to teach English 1 through 9, Social Studies 1 through 9, and Elementary Education 1 through 8. The successful applicant has held certification for Elementary Principal/Junior 1 through 9 since August, 1970. She has been certified as a MID/JRHI/SRHI principal since 1991. Grievant is certified to teach Elementary Education 1 through 8, Language Arts 1 through 9, and Special Learning Disabilities K through 12. She has been certified as an Elementary Principal, K through 8 since May, 1988. Her other certifications are identical to the successful applicant.

B. Relevant Experience: The successful applicant has a total of 25 years experience, 15 of which is in administration. She has 6 years of experience as an elementary principal. TheGrievant has 21 years of experience, only 3 years of which were as an administrator. These 3 administrative years were as an elementary principal. The factor weighed most heavily by KCBE for this position was administrative experience.

C. Relevant Course Work/Degree: According to the matrix, both candidates have the relevant course work and degree for the position. The Grievant stated she did not contest this area.

D. Degree Generally: The successful applicant has a Masters plus 15. Her Masters is in Administration. Additionally the successful applicant had attended a variety of special training workshops including the Leadership Academy. The Grievant has a Masters plus 30. She has two Masters Degrees, one in Administration, the other in Special Education. The Grievant also attended the Leadership Academy. KCBE's standard practice is to assess only the degree level and number of hours. Additional degrees at the same level are not considered separately. An additional degree at a higher level would be considered separately.

E. Academic Achievement: In undergraduate school the successful applicant had a 3.38 G.P.A. and was an honors graduate. The Grievant's undergraduate grades were significantly lower at 2.74 G.P.A. In graduate school the Grievant's G.P.A. was 3.79, and the successful applicant's G.P.A. was somewhat lower at a 3.42.

F. Specialized Training: This information was not clearly identified on the matrix. Both Grievant

and successful applicant received a check mark in this area indicating acceptable.

G. Evaluation: Again this area was not discussed and the Grievant stated she did not dispute this area. On the matrix both individuals' names were marked with "exceeds."

8. The selection and recommending committee had personal knowledge of each of the candidates and had evaluated each of them as a principal in the past. Additionally, this committee had resumes, applicant profiles, and copies of the answers the KCBE requires school administrator applicants to complete.

9. After a complete review of the record, it is clear the selecting committee did in fact compare and contrast all the qualifications of the applicants for the position, including the evidence cited by the Grievant as making her more qualified than the successful applicant.

Conclusions of Law

1. W. Va. Code §18A-4-7a states that "[i]n judging qualified applications consideration shall be given to each of the following [criteria] . . .". (Emphasis added.) This language mandates that each of the seven criteria be considered and a board does not have the option of ignoring any of the seven factors. The Board's interpretation that the "may" in the seventh criteria somehow makes this criteria discretionary is totally unsupported by a reading of the entire Code Section. However, a Board, in a particular case, may find there are no other measures or indicators upon "which to judge the relative qualifications of the applicant[s] . . . ." Id.

2. The seventh factor "other measures and indicators" was not considered separately, as such, in the selection process for the principalship at Nitro Elementary.

3. In a nonselection case the Grievant has the burden of proof to demonstrate all elements of her case by a preponderance of the evidence. Black v. Cabell County Bd. of Educ., Docket No. 06-88-238 (Jan. 31, 1989).

4. A county board may weigh the seven criteria in any manner they see fit, as long as they do not abuse their discretion. Green v. Mason County Bd. of Educ., Docket No. 91-26-126 (July 26, 1991).

5. KCBE did not abuse its discretion in weighing the area of administrative experience more heavily than the others. Id.

6. Although the Grievant has proven KCBE did not individually and separately apply the

seventh criteria, the factors Grievant cited: 1) degree level; 2) academic achievement; and 3) recent principalship, that Grievant said could have fallen into this category were known and reviewed by the selecting committee. Blair v. Lincoln County Bd. of Educ., Docket No. 92-22-009 (Apr. 10, 1992).

7. Thus, the KCBEs' failure to utilize separately the seventh criteria in this case is seen as harmless error. Id.

8. The Grievant has not proven by a preponderance of the evidence that the Board erred in awarding the principal position to the successful applicant even though they did not individually apply the seventh factor listed in W. Va. Code §18A-4-7a.

Accordingly, this grievance is **DENIED**.

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

_____

JANIS I. REYNOLDS

Administrative Law Judge

Dated: April 29, 1994

Footnote: 1At the Level IV hearing the lower level record was made part of the appeal to Level IV per W. Va. Code §18-29-6.