MARGARETTE SWIMM

v. Docket No. 94-55-023

WYOMING COUNTY BOARD OF EDUCATION

DECISION

The grievant, Margarette Swimm, is employed by the Wyoming County Board of Education (Board) as a librarian. 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 Board submitted proposed findings of fact and conclusions of law by March 29, 1993. The grievant declined to submit proposals.

FACTS

There is no dispute over the facts of the case. The record developed at Level II 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 1) 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 the applicant's comprehension of instructions, writing ability, and knowledge of Board policy related to the complaint. (See footnote 2)

5) During her interview, the grievant advised Mr. Blackwell that she was considering retirement in January 1994.

6) After reviewing the results of the tests and interviews, Mr. Blackwell determined that the grievant did not demonstrate the depth of knowledge of matters relating to education administration he was seeking and that she did not follow the directions contained in the test. He also concluded that the possibility of the grievant's retirement was a factor which detracted from her suitability for the position.

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 key 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 thirty years, nearly all of which were served as a librarian. She holds a Masters degree in Library Science and teaching certificates in English, grades 7 through 12, Elementary Education, grades 1 through 8 and library science, grades kindergarten through 12. The grievant also possesses superintendent, supervisor, vocational administration and principalcertificates. The grievant has never served as an administrator in the education field. (See footnote 3)

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 also had never served in an administrative capacity in any school system.

11) Upon the grievant's request, Mr. Blackwell furnished her a list of reasons as to why she was not selected and suggestions for improving her credentials. (See footnote 4) The reasons given were those contained in finding number 6.

ARGUMENT

The grievant's legal position is rather ambiguous. (See footnote 5) At the Level II hearing, her

representative asserted that the grievant feels that she was "more qualified under West Virginia Code 18A-4-7a" than the successful candidate. Neither the representative nor the grievant, during her testimony, elaborated on this statement. The Board simply maintains that the position was filled in accordance with the mandates of W.Va. 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) 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 statutory mandates of W.Va. Code §18A-4-7a. The record clearly and convincingly establishes that the Board fulfilled all statutory requirements 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.

_____

JERRY A. WRIGHT

CHIEF ADMINISTRATIVE LAW JUDGE

Dated: August 12, 1994

Footnote: 1W.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: 2The 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: 3At the Level II hearing, the grievant testified that during her tenure as librarian and multi-media specialist at Baileysville High School, she "did all the scheduling for five years, all of the attendance for five years, all the grade reports for five years," and asserted that these duties were those of an administrator. No other evidence regarding these responsibilities was adduced at the hearing and it is therefore difficult to make definitive findings on whether they were administrative in nature. Since the record further reflects that Mr. Blackwell was aware of the duties and took all aspects of the applicants' experience into consideration, such findings are not necessary.

Footnote: 4The request and response were pursuant to W.Va. Code §18A-4-7a which, in pertinent part, provides, "If the applicant with the most seniority is not selected for the position, upon the request of the applicant a written statement of reasons shall be given to the applicant with suggestions for improving the applicant's qualifications." Since Mr. Blackwell's response was not admitted into the record, its contents are inferred from his testimony.

Footnote: 5As previously noted, the grievant did not submit proposed findings of fact and conclusions of law.