CYNTHIA SPILLERS, Grievant,

v. Docket No. 95-05-299

BROOKE COUNTY BOARD OF EDUCATION, Respondent,

and

RICHARD WHITEHEAD, Intervenor.

D E C I S I O N

Grievant Cynthia Spillers, a high-school guidance counselor for Brooke County Board of Education (BCBE), alleges a violation of W.Va. Code 18A-4-7a in that she was not selected for a principal's position at Beech Bottom Primary School (BBP). BCBE denies wrongdoing and claims it selected and hired the most qualified person for the job at BBP. A level four hearing was conducted August 17, 1995, at which time the parties supplement ed the record compiled at the level two hearing.1 The case became mature for decision upon receipt of all of the parties' post-hearing fact/law proposals, September 1, 1995.

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1Of record is the transcript and exhibits of the June 26, 1995 level two hearing.

The underlying facts in this matter are as follows. On April 28, 1995, BCBE posted a position for a Principal at BBP, a K-4 school, effective the 1995-96 school year. The last day to make application was May 4, 1995. In general, BCBE utilizes a standard application form which should be filled in with appro priate requested data, such as, the applicant's certifications, experience, and degrees held, but nothing prevents an applicant

from either expanding upon the asked-for information in the form or supplementing the application form with a separately-prepared resume.

In any event, listed under qualifications on the posting for the BBP principal's job was a requirement that the applicant "show evidence" of "[a]t least a master's degree from an accred ited institution, with a major in administration and/or supervi sion, with a West Virginia Principal Certification for Grades K-8." Four persons applied, including Grievant, who was the most senior applicant, but she did not possess a principal's certificate at the time of the posting. Martha Baker, a non-em ployee with the most teaching experience, but who also did not then possess a principal's certificate, John Lyonett, and Richard Whitehead, the successful candidate, were the other three applicants. Mr. Whitehead supplemented his application with expanded information on available blank lines.

A selection team comprised of Title I Director David Leavitt, Special Education Director Everett Mace and Assistant Superintendent Philip Darmelio reviewed the applications and interviewed the four candidates on May 8, 1995. After discussion about the information received via the application materials and interviews, the team members, by consensus, advanced the name of Mr. Whitehead as their recommendation for the BBP principal's position, on or about May 9, 1995. T.32. According to Mr. Darmelio, the team focused on the qualifi cations listed on the job description as part of the selection process. Mr. Whitehead, a middle-school industrial arts teach er, was determined by the team to be the most qualified candi date because he possessed the requisite certificate and an earned masters degree in education administration. In addition,

he had for fifteen years taught "age-appropriate" fifth and sixth grade students, such teaching considered, at least by the team, to be in the realm of the "elementary" school develop mental level as opposed to the "secondary" school developmental level. Finally, the team felt he had also demonstrated leader ship capabilities and relevant experiences via extensive in volvement with extracurricular and other professional activi ties, such as, serving as head coach for the track team, working with school booster organizations and related community groups, budgeting in conjunction with his industrial arts class es/program, and scheduling duty rosters and other activities at his school.

Mr. Darmelio further explained that the team felt Grievant was not as well qualified for the position because her profes sional experience for twenty-some years involved the seventh through twelfth grades, not the elementary or primary grades, and because she held a masters degree in counseling, not in education administration. Mr. Darmelio also stated that, when Grievant appeared for her interview, he understood she was not then certified as a principal, even though she informed him at that time that she had completed the requisite course work and was in the process of preparing the necessary paperwork for principal/administrative certification. Mr. Darmelio explained that, in the past, other uncertified candidates had been hired on their word they were eligible for licensure, but later failed to qualify.

After the interview, Grievant, perhaps aware of Mr. Darmelio's concern about her lack of an administrator's certifi cate, produced a letter, dated May 10, 1995, from a State Department of Education (DOE) certification coordinator. The

letter stated that, if Grievant completed "an administrative program at a university in Ohio . . . which leads to certification in Ohio," she would be eligible for the West Virginia administrative certificate as she had previously satisfied some other DOE requirements.2

Meanwhile, Mr. Whitehead's name was advanced to Superintendent William Harvey as the selection team's recommendation. Mr. Harvey concurred and placed Mr. Whitehead's name on BCBE's agenda as his nomination for its consideration at an upcoming meeting. However, one BCBE member, long-time former educator

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2The record indicates that, although Grievant had completed course work at the University of Dayton (Ohio) and additional DOE requirements some time ago, she had not yet applied for the West Virginia principal's license at the time of the interview for the BBP principal's position.

and principal Anthony Paesano, was not satisfied with the proposed nomination. As a result, another board member, Keith Donley, suggested that the selection team present more information about its recommendation.

In response to BCBE's request, the selection team prepared a "matrix." Mr. Darmelio explained that he believed the use of a matrix was not necessary when hiring administrators, but that a matrix was used in the school system to fill teaching positions. In any event, the matrix that the team utilized listed seven factors or areas of consideration, generally, certification, degree level, seniority, evaluations, teaching experience, principal's experience and specialized training.3 Each of the four candidates was listed on the matrix. A point was awarded

to each candidate if the factor was met, or, in the case of two of the factors, seniority and teaching experience, a single point was awarded to the applicant who prevailed in those particular areas.

Ms. Baker was accorded the sole point for teaching experi ence, as she exceeded all others in that area, and a point for training, for a total of two points. Mr. Lyonett attained three points, in certification, evaluations and training. Grievant was also accorded three points, one being the sole point for

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3The actual titles listed on the matrix were: "Appropriate Certification and/or Licensure, Degree Level in Required Certification Area," "Seniority," "Satisfactory Evaluations Two Previous Years," "Total Amount of Teaching Experience," "Existence of Principal Experience in the Required Area of Certification," and "Relevant Specialized Training in the Job as Stated in Job Description."

seniority, as she had the most seniority of all of the appli cants, and one each for evaluations and training. Mr. Whitehead was given four points, one each for certification, evaluations, training and degree level. The reason the team gave Mr. Whitehead the sole point for degree level was because he was the only candidate who had completed a masters degree in education administration, a qualification listed on the posting. The completed matrix was ultimately given to BCBE's members.

In the meantime, on May 19, 1995, Grievant completed her application for a principal's certificate in West Virginia and apparently forwarded the application, countersigned by Mr. Harvey, to the University of Dayton, the school in the State of

Ohio where she completed a non-degree granting graduate program in education administration, for further authorization.

Grievant thereafter received a fax at 3:00 p.m. on May 22, 1995, from the registrar's office at the University of Dayton which stated that she had to complete a "N.T.E." examination as the final step to qualify for administrative certification in Ohio.

Grievant also learned from DOE at 3:20 p.m. on the afternoon of May 22, 1995, that her West Virginia Principal's certificate would be issued.4

BCBE's members were to act on Mr. Whitehead's nomination during an evening board meeting scheduled for May 22, 1995.

4Grievant's administrative certificate, effective May 19, 1995, the day she completed and signed her application for certification, was received by Mr. Harvey on or about May 30, 1995.

Earlier that day Mr. Harvey's office received a call from a DOE certification coordinator who verified that Grievant's applica tion materials for the principal's certificate were in receipt and were being processed for immediate issuance. This informa tion was relayed to BCBE's members at the time of the board meeting. By a four to one vote during that meeting, BCBE acted favorably on Mr. Harvey's nomination of Mr. Whitehead for employment as the principal at BBP.

The parties agree that, in accordance with W.Va. Code 18A-4-7a, the employment of professional personnel must be based on qualifications, with the most qualified person receiv ing the job. Moreover, Code 18A-4-7a lists some specific factors to be used to determine the qualifications of applicants

for both classroom teaching positions and administrative posi
tions. For example, in judging the qualifications of candidates
for a principal position,
consideration must be given to each of the following:
Appropriate certification and/or licensure; the amount
of experience relevant to the position . . . ; the
amount of course work and/or degree level in the rele
vant field and degree level generally; academic
achievement; relevant specialized training; past
performance evaluations . . .; and other measures or
indicators upon which the relative qualifications of
the applicant may be fairly judged. [Emphasis added.]

There is no requirement that the factors be given equal weight.
A second set of factors, each of which must be weighted equally,
is applicable when the position to be filled is a classroom
teaching position, and at least one of the applicants is perma
nently employed within the school system. In the instant case,
the set of factors utilized by the selection team in preparing a
matrix to "score" the various applicants for the principal's
position was the second set of factors.
However, Grievant does not object to the team's use of a
matrix after the selection was made, nor does she object to the
fact that the second set of factors was used to prepare and
score the matrix. In fact, Grievant's primary argument that she
is the most qualified applicant and, therefore, entitled to the
principal's job in question, is focused almost entirely upon
that matrix. In Grievant's view, because the matrix was pre
pared for and reviewed by BCBE before acting upon the recommen
dation for Mr. Whitehead's employment, the factors that were set
forth on the matrix must be construed as the sole basis for any

hiring decision. Grievant further maintains that, because BCBE's decision to employ Mr. Whitehead was based on an incor rectly scored matrix, the selection process was fatally flawed, and the decision to hire Mr. Whitehead must be set aside. It is Grievant's contention that, had the matrix been properly scored, she would have prevailed with the most points, thus, she is entitled to instatement.

Grievant contends that Ms. Baker should not have been considered at all because she had not completed all the course work to be certified as a principal. Grievant's entire theory about the scoring of the matrix is as follows: In addition to the three points already given Grievant, she should have the point for the most teaching experience awarded to Ms. Baker, and another point for certification. Moreover, the point Mr. Whitehead received for degree level should probably be hers because Mr. Whitehead did not have a degree "in the required certification area." This is so, in Grievant's view, because the principal's position at BBP involves grades K-4, and her masters degree in counseling is for grades K-12, while Mr. Whitehead's masters degree in education administration is for grades 7-12. Altogether, she should have five or six points instead of three, and Mr. Whitehead should have only three points instead of four.

Both BCBE and Intervenor dispute Grievant's argument that, prior to any vote on the principal's position, BCBE's members considered only the matrix following discussion. In fact, the record clearly indicates that they considered "other" factors, including information that all of the candidates had performed well at their interview.

Simply put, Grievant did not prove by a preponderance of

the evidence that the selection process was fatally flawed, and that, but for the flaw, she would have been chosen for the principal's job. Grievant's particular claims will be ad dressed. Grievant asserted in her level four brief that she, but not Mr. Whitehead, had course work in "elementary educa tion." Grievant did not explain the source of her information regarding Mr. Whitehead's course work, and there is nothing in the record to substantiate her allegation.

Grievant also failed to offer any expert evidence, either from any educational literature or via expert testimony, that "there are significant developmental differences between primary and middle school students." Even if that were true, there is still a much wider age gap between the high school students (grades 9-12) with whom Grievant works and primary students (grades K-4), than the middle school students (grades 5-8) with whom Mr. Whitehead works and primary students. Thus, Mr. Whitehead's teaching experience in a middle school with middle school age students would be somewhat more relevant than Grievant's experience with high school age students in a high-school setting.

Grievant also noted that she, as well as Mr. Whitehead, had coaching experience, but that "coaching experience does not necessarily qualify a person to perform the leadership responsi bilities required by a primary school." Again, Grievant served as an assistant coach for one year, not as a head coach with complete responsibility for an athletic team for several years. Thus, it is entirely likely that Mr. Whitehead has gleaned some leadership benefits from his head coaching experiences. Additionally, Grievant's contention that she, but not Mr. Whitehead, possessed a degree "in the required certification

area" is not accurate. The posting required at least a masters degree with a major in (education) administration or supervi sion. There was no mention in the posting of a grade level.

While Grievant completed graduate courses which enabled her to obtain an administrative certificate, she apparently did not complete any degree-granting program in education adminis tration. She made no claim that she held a masters degree in education administration or supervision, only that she held a masters degree in counseling, K-12.

It is true that there is no indication in the record that the selection team considered both Grievant's and Intervenor's "amount of course work . . . in the relevant field and degree level generally" or their "academic achievement," as required by the first set of factors in 18A-4-7a.5 However, Grievant did not raise an issue that the selection team used the wrong set of factors or omitted any required factors in its deliberations. Moreover, Grievant presented no evidence on this matter.

In summary, in order for Grievant to prevail in this case, she must establish by a preponderance of the evidence that "the selection process was so significantly flawed that he/she might reasonably have been the successful applicant if the process had been conducted in a proper fashion." Hanlon v. Logan County Bd. of Educ., Docket No. 93-23-502 (Dec. 29, 1994); Jones v. Board of Trustees/W. Va. University, Docket No. 90-BOT-283 (Mar. 28, 1991). Grievant has not met her burden of proof or shown that she was the most qualified applicant for the principal's job in question under Code 18A-4-7a.

In addition to the foregoing, the following findings of fact and conclusions of law are made.

5In may be that BCBE did not possess copies of all of Grievant's transcripts. While Grievant admitted some copies of transcripts of graduate courses into the evidence at level four, some of these documents, a few labeled "Unofficial Copy" from the University of Dayton, had been transmitted to her via fax, and were illegible. The copies were so bad, it was impossible to discern the courses taken or the date the courses were taken and completed. Grievant bears the responsibility of keeping her academic records current with BCBE, and transcripts from the University of Dayton should have been properly filed when the courses were completed.

Findings of Fact

1. On April 28, 1995, BCBE posted a position for Princi pal at Beech Bottom Primary School (BBP) for the 1995-96 school year. Four persons applied, including Grievant and Richard Whitehead.

2. None of the applicants for the BBP principalship had any prior experience as a principal and two applicants, includ ing Grievant, did not possess a principal's certificate at the time of the posting. Although Grievant apparently had satisfied course work and other requirements to become certified as an administrator, she had not applied for such certification by the date of the interview on May 8, 1995.

3. During her interview, Grievant informed the team that she had completed all the requisite course work for certifi cation as a principal and was in the process of completing paperwork to apply.

4. Following the interviews of the four applicants, a selection team determined that Mr. Whitehead was the most qualified candidate, primarily based on the fact that Mr.

Whitehead already possessed the proper certification and/or license; held a masters degree in education administration, a qualification listed on the posting, had prolonged teaching experience with students in what they viewed as the elementary school developmental area, and exceeded the other applicants in meaningful, relative experiences other than actual experience as a principal.

5. The team's recommendation for Mr. Whitehead's employ ment was given to Superintendent William Harvey on May 9, 1995. Mr. Harvey accepted the team's recommendation, and placed the proposed nomination on BCBE's agenda for consideration.

6. Prior to acting on the nomination, BCBE's members asked for more information regarding the candidates.

7. A matrix, developed for and presented to BCBE's members, ranked Mr. Whitehead higher than any other candidates by one point. Mr. Whitehead was given one point each for certification and degree level, while Grievant was not.

8. BCBE was scheduled to meet and consider Mr. Whitehead's nomination on May 22, 1995.

9. On May 10, 1995, Grievant presented DOE documentation to the selection team that, if certain educational requirements had been met in another state, she would be eligible for certi fication as a principal in West Virginia.

10. On May 19, 1995, Grievant completed and signed an application for a West Virginia principal's certificate. Mr. Harvey countersigned the document that day. The form was apparently next forwarded to the university in Ohio where Grievant completed a requisite administrative program, and was signed (approved) by an official there on May 22, 1995. At that point, the document, and perhaps copies of transcripts, were

apparently faxed to DOE officials in Charleston, West Virginia at about 3:00 p.m. GR Ex. 2 (8/17/95).

11. At 3:20 p.m. on May 22, 1995, Grievant received a faxed memorandum from DOE, verifying that her principal's certificate would be issued.

12. Mr. Harvey also received DOE verification on May 22, 1995, that Grievant's K-12 principal's certification was forth coming. This information was shared with BCBE's members during the board meeting that evening.

13. At the May 22, 1995, board meeting, BCBE's five members reviewed the matrix and discussed other aspects of the candidates, including representations that all candidates fared well during the interview process. They ultimately voted upon Mr. Whitehead's nomination and, by a four to one vote, approved the employment of Mr. Whitehead as principal at BBP for the 1995-96 school year.

14. There is no evidence of record that Grievant was not nominated and employed as principal on the sole basis that she had not yet received her principal's certificate.

15. One important consideration of the selection team was that Mr. Whitehead's graduate degree program to qualify for his masters degree and for certification as an administrator was in education administration, a qualification listed on the posting.

16. Grievant received a masters degree in counseling and later additionally qualified for an administrative certificate via a graduate-level, non-degree granting administrative train ing program at a school in Ohio, the University of Dayton.

17. On a continuum of grade levels from first through twelve, Mr. Whitehead's teaching experience in a middle school was closer to the elementary-primary grade level than was

Grievant's experience as a counselor at the high school level. In addition, Grievant presented no research or expert evidence about the developmental differences between primary and middle school students.

18. The record does not indicate whether the selection team considered the applicants' "amount of course work . . . in the relevant field and degree level generally" or their "academ ic achievement," as required by 18A-4-7a.

19. There was no evidence that BCBE was in possession of all of Grievant's academic records, including relevant tran scripts from the University of Dayton, at the time the selection team assessed the candidates' credentials.

20. Grievant filed a grievance over her non-selection, but never alleged the selection process was flawed because BCBE utilized the the wrong set of factors in 18A-4-7a in its determinations.

Conclusions of Law

1. County boards of education have substantial discretion in matters relating to the hiring and assignment of school personnel, and they must exercise that discretion 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).

2. W.Va. Code 18A-4-7a requires that a county board of education select the most qualified candidate when an adminis trative position is to be filled.

3. "The grievance procedure, W.Va. Code 18-29-2, et seq., is not intended to be a 'super interview' for unsuccessful job applicants; rather, in this context, it allows an analysis of legal sufficiency of the selection process at the time it

occurred." Stover v. Kanawha County Bd. of Educ., Docket No. 89-20-75 (June 26, 1989).

4. In order to prevail on a non-selection claim, the grievant must "demonstrate that the selection process was so significantly flawed that he/she might reasonably have been the successful applicant if the process had been conducted in a proper fashion." Hanlon v. Logan County Bd. of Educ., Docket No. 93-23-502 (Dec. 29, 1994); Jones v. Board of Trustees/W.Va. University, Docket No. 90-BOT-283 (Mar. 28, 1991).

5. Grievant did not demonstrate that the selection process was so flawed that, but for the flaw, she might have been selected as the successful candidate.

6. Grievant failed to prove by a preponderance of the evidence that she was the most qualified candidate for the principal's position under the appropriate factors in Code 18A-4-7a.

Therefore, this grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Brooke 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: September 29, 1995