NOEL R. NAPIER, .

.

Grievant, .

.

v. . Docket No. 95-23-102

.

LOGAN COUNTY BOARD OF EDUCATION, .

.

Respondent. .

D E C I S I O N

Noel R. Napier (Grievant) alleges a violation of W. Va. Code § 18A-4-7a when Respondent Logan County Board of Education (LCBE) failed to select him for the position of Assistant Principal at LCBE's Logan High School (LHS). This grievance was initiated at Level I on September 6, 1994. Following a hearing at Level II, this grievance was denied by Brenda Skibo, Assistant Superintendent, on February 27, 1995. Grievant waived Level III in accordance with W. Va. Code § 18-29-4(c), appealing to Level IV on March 8, 1995. An evidentiary hearing was conducted in this Board's office in Charleston, West Virginia, on May 8, 1995. The parties elected to submit post-hearing briefs and this matter became mature for decision on June 8, 1995.

Grievant originally described his grievance as follows:

> I am filing this grievance under 18A-4-7A of West Virginia school law. I feel I should have been awardedthe Assistant Principal's position at Logan High School. To satisfy this grievance, I ask the position be awarded to me.

The following Findings of Fact pertinent to resolution of this matter have been derived from the record, including the transcript of the Level II hearing, the testimony of the witnesses who appeared at Level IV, and documentary evidence admitted at both levels.

FINDINGS OF FACT

1. Grievant is employed by the Logan County Board of Education (LCBE) as a teacher at Ralph R. Willis Vocational Center.

2. Grievant applied for a posted position of Assistant Principal at LCBE's Logan High School (LHS).

3. Grievant and the successful applicant, John Queen, were among seven or eight applicants for the position, all of whom were interviewed by LHS Principal Wilma Zigmond.

4. Ms. Zigmond asked the same questions of each applicant during the interview, providing the questions in writing to each applicant shortly before the interview.

5. Both Grievant and Mr. Queen met the minimum qualifications for the position (a masters degree, appropriate certification and three years' teaching experience) (See R Ex 4).

6. Grievant's degree level is a masters plus 45 hours. His masters degree is in Vocational-Technical Education. Mr. Queen likewise has a masters plus 45 hours. His masters degree is in Educational Administration.

7. Ms. Zigmond sought to balance her administrative skills with an individual with strong disciplinary skills.

8. Mr. Queen had experience as a Dean of Students at LHS and worked extensively with recent high school graduates as a non-commissioned officer in the National Guard. In addition, Mr. Queen held various coaching positions, as assistant or head coach in multiple sports.

9. Based on her previous experience at LHS with Mr. Queen, Ms. Zigmond believed that he was fair and maintained effective working relationships with both students and staff.

10. Grievant has extensive experience working with students who are potential dropouts. Such students tend to have more disciplinary problems, generally requiring additional motivation and remedial education.

11. Grievant was recognized as Logan County's Teacher of the Year in 1992.

DISCUSSION

W. Va. Code § 18A-4-7a provides:

> 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, or, in the case of a classroom teaching position, the amount of teaching experience in the subject area; 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 be fairly judged.

* * *

This Grievance Board has determined that the foregoing language permits county boards of education to determine the weight to be applied to each of the factors listed above in assessing a candidate's qualifications for administrative positions, so long as they do not abuse their discretion. Hughes v. Lincoln County Bd. of Educ., Docket No. 94-22-543 (Jan. 27, 1995); Blair v. Lincoln County Bd. of Educ., Docket No. 92-22-009 (July 31, 1992).

Grievant asserts that Ms. Zigmond and LCBE did not consider the academic achievement or relative specialized training of the applicants, two of the specific criteria listed in § 18A-4-7a. However, the record does not support Grievant's assertions. Ms. Zigmond testified that this information was "available" to her before and after the interviews in the applicant's personnel files. She stated that her interview questions were worded to allow the candidates to discuss whatever qualifications or experience they believed qualified them for the position. The fact that Ms. Zigmond did not remember the specific questions she asked the applicants, or that she did not recall asking a question to elicit information which was readily available, does not establish that certain criteria were not considered in the selection process.

Grievant further claims that Ms. Zigmond's testimony that she considered Mr. Queen's reputation for fairness and effective working relationships established while serving as the interim Dean of Students and as School Suspension Instructor at LHS demonstrates that LCBE improperly relied upon "community acceptance" as a basis for its decision. In Milam v. Kanawha County Board of Education,Docket No. 20-87-270-1 (May 2, 1988), this Grievance Board dealt with "community acceptance" as a factor in filling an administrative vacancy. There, the applicants for a high school principal's position were interviewed by a five-person committee. While the panel found two applicants nearly equal in qualifications for the position based on the criteria contained in W. Va. Code § 18A-4-7a, one of them was not awarded the position based on a determination that he lacked "community acceptance." Based upon a finding that this factor "was not related to the qualifications of

the applicants but merely reflected the personal opinions of a limited number of persons in the ... community," the selection at issue was remanded for re-evaluation.

The instant matter is not governed by the holding in Milam. (See footnote 1) Here, Ms. Zigmond simply indicated that Mr. Queen had developed a favorable reputation at LHS performing similar duties to those which she expected of an assistant principal: handling discipline and attendance matters. In context, her testimony represented an effort to demonstrate that Mr. Queen not only had the type of experience she was seeking, but he was known to her to be very effective in this role, based upon her knowledge of his performance in a related capacity at LHS. Under these circumstances, such considerations do not violate the criteria set forth in W. Va. Code§ 18A-4-7a, nor do they represent an arbitrary or capricious basis for selecting Mr. Queen over Grievant.

Consistent with the foregoing discussion, the following conclusions of law are made in this matter.

CONCLUSIONS OF LAW

1. Grievant is required to prove the allegations of his complaint by a preponderance of the evidence. Black v. Cabell County Bd. of Educ., Docket No. 06-88-238 (Jan. 31, 1989); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988).

2. A county board of education must make decisions on the selection of professional personnel other than classroom teachers on the basis of the highest 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. County boards have wide discretion in choosing administrators once they have reviewed the criteria in W. Va. Code § 18A-4-7a. Hughes v. Lincoln County Bd. of Educ., Docket No. 94-22-543 (Jan. 27, 1995); Marsh v. Wyoming County Bd. of Educ., Docket No. 94-55-022 (Sept. 1, 1994). See Pockl v. Ohio County Bd. of Educ., 406 S.E.2d 687 (W. Va. 1991).

3. Grievant has failed to establish that he was more qualified than the successful applicant for the position in issue or otherwise demonstrate that Respondent either abused its discretion or failed to comply with the requirements of W. Va. Code § 18A-4-7a.

Accordingly, this Grievance is **DENIED** .

Any party may appeal this decision to the Circuit Court of Logan County or 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.

LEWIS G. BREWER

ADMINISTRATIVE LAW JUDGE

Dated: July 31, 1995

Footnote: 1Wigal v. Pocahontas County Bd. of Educ., Docket No. 38-86-069-2 (Oct. 15, 1987), cited by Grievant for the same proposition, is not applicable as it involves community "notoriety" in the context of a dismissal for off-duty misconduct under W. Va. Code § 18A-2-8.