JADA HUNTER

v. **Docket No. 94-29-1063**

MINGO COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Jada Hunter, grieves her non-selection for the principal's position at Williamson Junior High School ("WJHS"). This grievance was denied at Levels I and II and waived at Level III. A Level IV hearing was held on February 21, 1995, and this case became mature for decision on March 30, 1995, after the submission of proposed findings of fact and conclusions of law.

Findings of Fact

The following findings of fact are not disputed:

1. The Mingo County Board of Education ("MCBOE") posted the position of principal for WJHS, and Grievant and the successful applicant (See footnote 1), Mr. Dow Ooten, applied.

2. Mr. Everett Conn, Superintendent of MCBOE recommended Mr. Ooten for the position, and MCBOE approved this selection.

3. Superintendent Conn and Mr. John Fullen, Assistant Superintendent of MCBOE, made this selection after "looking at it from all angles" and "based on their experience record forms." No matrix utilizing the criteria delineated in W. Va. Code §18A-4-7a was utilized. Test. at Level IV.

4. Grievant, a black female (See footnote 2), has a provisional administrative certificate (See footnote 3) with an effective date of July 19, 1991. Grievant's salary classification is Masters +45, as she possesses two Masters degrees, the first in vocational education and the second in educational administration. Her undergraduate grade point average was 2.9 and her graduate grade point average was 3.99 with both degrees. Grievant has taught for nineteen years in both junior and senior high schools and in rural and urban areas. Grievant taught nine years for MCBOE; one of those years as a "regular substitute teacher." For the past five years she has been the Dean of Students at WJHS performing a variety of administrative tasks. Grievant has attended multiple workshops

including seminars on at-risk-students, principal's assessment, and training for career exploration. Grievant has also taken three computer courses and has received training on the RESA program, which is the link between state and county educational systems. Grievant's past performance evaluations are all at the "meets" or "exceeds" expectations level.

5. Grievant has been acting principal at WJHS three times for a total of nine months. During these times she opened school twice, which included developing the master class schedule.

6. Mr. Ooten, a white male, has a permanent administrative certificate with an effective date of July 1, 1990. His salary classification is a Masters +45. (See footnote 4) No evidence was presented on his degrees, when they were obtained, or his grade point average. Mr. Ooten taught elementary school for six years before he became an elementary principal in 1987. He has 6-1/2 years of administrative experience, all in elementary schools. Mr. Ooten began the 1993-94 school year as principal at Dingess Grade School. A Level IV grievance decision placed Mr. Hugh Talbert in that position (See footnote 5), and Mr. Ooten finished that year, from February 28, 1994 on, as a substitute teacher. Mr. Ooten has attended a variety of in-service programs, but no evidence was presented about special training with junior high students or computer courses. Mr. Fullen testified Mr. Ooten's performance evaluations were satisfactory.

7. Mr. Ooten was not knowledgeable about master course scheduling or the RESA program.

8. Grievant has applied for the principal's position at WJHS three times and has not been selected.

9. Grievant's position at WJHS as Dean of Students is a full-time, non-teaching, administrative position. Grievant did not have her Masters degree in administration when she started the position for 1989-90 school year. She received administrative certification in 1991 prior to the beginning of the 1991-92 school year.

10. Grievant's main duties include: discipline, attendance, and student activities. She serves as the Athletic Director of the school and is in charge of the in-school suspension program. Grievant is in charge of community relations and maintaining a working relationship between the school, students, and parents. She usually designs the school's master schedule for all the classes and teachers. Grievant also "makes-up" the bell schedule for different days, which assures students will meet the State's required instructional hours.

11. Grievant's position as Dean of Students is in essence an assistant principal's position.

Many of the Dean of Students positions in the Mingo County School System used to be labelled as Assistant Principal positions.

12. Superintendent Conn did not credit Grievant with any administrative experience for the time she served as Dean of Students as required by Talbert v. Mingo County Bd. of Educ., Docket No. 93-23-166 (Jan. 20, 1994).

Issues

Grievant maintains she was the most qualified applicant for the position in question, and that Superintendent Conn and theMCBOE did not properly assess her qualifications in light of the required criteria in W. Va. Code §18A-4-7a. She also argues her administrative experience was not properly credited.

Respondent argues Mr. Ooten was the most qualified candidate, thus their action in selecting him was not arbitrary and capricious. MCBOE also argues they did not credit Grievant with administrative experience because that issue is currently before this Board at Level IV, and they are hopeful the Talbert decision will be reversed. (See footnote 6)

Discussion

A. ADMINISTRATIVE EXPERIENCE

The first issue to resolve is whether MCBOE properly assessed Grievant's administrative experience. According to Talbert, supra, a Dean of Students could earn administrative experience if the duties he or she performed were those typically assigned to an assistant principal, and if the individual performing these duties possessed an administrative certificate. Id. at 6. Since Mr. Talbert's duties were similar to those of an assistant principal, and he possessed an administrative certificate, he received administrative experience credit for his years as Dean of Students.

Talbert contained a Dean of Student's job description which, in essence, identifies the duties that Grievant, Ms. Hunter, performs.

Grievant testified she worked under the direction of the school principal and took care of such administrative tasks as: discipline, attendance, extra-curricular/athletic activities, parent-school relations, and scheduling. Thus, Grievant's duties are those typically assigned to an assistant principal. Talbert, supra.

Talbert also required deans of students to possess an administrative certification before they could receive administrative credit. Grievant did not possess a masters in administration or certification the first two years she was Dean of Students. She was certified the last three years. Accordingly, Grievant should have been credited with three years of administrative experience at the time of the selection process. Respondent confirmed it did not credit Grievant with this experience (See footnote 7) , thus the selection process was flawed so as to require another review of the candidates' qualifications. Stover v. Kanawha County Bd. of Educ., Docket No. 89-20-75 (June 26, 1989).

B. **QUALIFICATIONS**

W. Va. Code §18A-4-7a identifies seven qualifications to be reviewed when filling a professional, non-classroom teaching position. W. Va. Code §18A-4-7a states in pertinent part:

In judging qualifications, consideration shall be given to each of the following: Appropriate certification and/or licensure; amount of experience relevant to theposition 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 fairly be judged.

Although a county board is allowed to decide what weight to give these factors, all factors must be considered. Blair v. Lincoln County Bd. of Educ., Docket No. 92-22-009 (Apr. 14, 1992).

The testimony reveals the applicants' personnel files were available but it is unclear if they were reviewed. Their transcripts were available, but it is unclear if the course work and academic achievement of the candidates were compared and contrasted and reviewed for relevancy to the position. Assistant Superintendent Fullen did say he and Superintendent Conn decided Mr. Ooten should be the principal "based on the experience record forms." Level IV test. There was no testimony that relevant specialized training or other measures or indicators were considered.

Although MCBOE has substantial discretion in filling a professional personnel position, all factors must be examined. Apparently, MCBOE did not review all seven qualifications when selecting Mr. Ooten to fill the position of principal at WJHS, thus MCBOE violated W. Va. Code §18A-4-7a and abused its discretion, and its decision must be overruled. Blair, supra.

The above-discussion will be supplemented by the following conclusions of law.

Conclusions of Law

1. The Grievant has the burden of proving her case by a preponderance of the evidence in a non-selection case. Tenney v. Barbour County Bd. of Educ., Docket No. 89-01-576 (May 30, 1990).

2. "County boards of education have substantial discretion in matters relating to hiring, assignment, transferring and promotion of school personnel" as long as they exercise this discretion "reasonably, in the best interests of the school, and in a manner which is not arbitrary and capricious." Dillon v. Bd. of Educ. of County of Wyoming, 351 S.E.2d 58 (W. Va. 1986).

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 [the] 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. "'[I]f the grievant can 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,' this Board will require the employer to reevaluate the qualifications of the grievant and the successful applicant." Hanlon v. Logan County Bd. of Educ., Docket No.93-23-502 (Dec. 29, 1994) (citing Jones v. Bd. of Trustees/W. Va. University, Docket No. 90-BOT-283 (Mar. 28, 1991)).

5. MCBOE's failure to credit Grievant with three years of administrative experience for the time she served as Dean ofStudents with an administrative certificate represents a "significant flaw" and requires the Board to remand this grievance to MCBOE to re-evaluate the qualifications of the Grievant and the successful applicant. Talbert v. Mingo County Bd. of Educ., Docket No. 93-23-166 (Jan. 20, 1994); Hanlon v. Logan County Bd. of Educ., Docket No.93-23-502 (Dec. 29, 1994).

6. No evidence was presented that showed that Mr. Ooten exceeded Grievant's qualifications in any of the factors set forth in W. Va. Code §18A-4-7a, nor was it shown that the Respondent considered all of the required factors in making its decision to hire Mr. Ooten.

7. Grievant has proven the Respondent failed to consider all seven factors required by W. Va. Code §18A-4-7a in filling the assistant principal's position at WJHS.

Accordingly, MCBOE is directed to reevaluate the candidates, crediting the Grievant with the appropriate amount of administrative experience, and reviewing all seven factors required by W. Va.

Code §18A-4-7a.

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

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JANIS I. REYNOLDS

Administrative Law Judge

Dated: April 28, 1995

Footnote: 1Mr. Dow Ooten was the successful applicant for this position. There was some question whether he wanted to intervene, but no request for intervention was submitted, and Mr. Ooten informed Respondent's representative that he was aware of the hearing date, had retained counsel, but would not attend the Level IV hearing.

Footnote: 2Grievant made no claims of racial, sexual, or age discrimination.

Footnote: 3Grievant reported she had completed all necessary course work, but could not complete one course and receive a permanent certificate until she was placed in a principal's position.

Footnote: 4The record is silent about Mr. Ooten's administrative certificate prior to July, 1990.

Footnote: 5Talbert v. Mingo County Bd. of Educ., Docket No. 93-23-166 (Jan. 20, 1994).

Footnote: 6The Talbert case was not reversed. See Ward/Cantees v. Mingo County Bd. of Educ., Docket No. 94-29-1134 (Apr. 26, 1995).

Footnote: 7Respondent did credit Grievant with administrative experience for the time she served as acting principal. It is unknown if she had an administrative certification during the time she served in this capacity.