JAMES E. AMICK

v. Docket No. 95-34-037

NICHOLAS COUNTY BOARD OF EDUCATION

DECISION

The grievant, James Amick, formerly Principal of Nettie Elementary School, (See footnote 1) filed this grievance November 28, 1994, protesting his non-selection for the post of Principal of Panther Elementary School (PES). His supervisor was without authority to grant relief, and the grievance was denied at Level II following a hearing held January 12, 1995. The Nicholas County Board of Education (Board), at Level III, declined to address the matter, and appeal to Level IV was made January 27, 1995. A hearing was held March 2, 1995, (See footnote 2) and the parties submitted proposed findings of fact and conclusions of law by April 3, 1995.

Much of what precipitated the complaint is not in dispute. During the 1993-94 school year the Board voted to close Nettie,Canvas and Leivasy Elementary Schools and construct PES to serve the combined student population of those communities. (See footnote 3) On May 18, 1994, the Board advertised the PES principalship. The posting for the position listed, as minimum requirements, "Masters Degree in Elementary Administration; Elementary Certification (K-6 or 1-6)." Three years elementary teaching experience and five years administrative experience were listed as "preferred" qualifications. Attached to the posting was a set of four broadly worded questions which the applicants were to answer and submit with their resumes. A job description which set forth in detail the nature of the duties of the position was also appended to the posting.

Nine persons, including the grievant and Charles Frazee, former Principal of Leivasy Elementary School, made timely applications. Superintendent of Schools William Grizzell, who had then served only a year in that post, (See footnote 4) familiarized himself with the candidates by reviewing their personnel files, resumes and responses to the posting questions. (See footnote 5) He then appointed an interview committee consisting of himself, Director of Student Services Luther Baker and the teacher Chairpersons of the facultysenates of the three schools which were to be consolidated into PES.

Prior to the interviews, Superintendent Grizzell furnished the other committee members the applicants' resumes and written responses to the questions. He advised the members that he would utilize their assessment of the candidates but reminded them that he was required to make the final decision. During the interviews, which lasted approximately fifteen minutes, Superintendent Grizzell asked each applicant the same fifteen open-ended questions and then allowed other committee members to pose questions of their own. The applicants were also afforded time to expound on their qualifications and explain why they should be chosen for the job.

At the conclusion of the interviews, members advised Superintendent Grizzell verbally of their impressions of the applicants and, at least generally, placed them in ranked order. Mr. Grizzell took no further action for several weeks. Concluding that the decision would be a close one and that complaints might be filed, he asked the committee members to submit written rankings of the interviewees on a scale of 1 to 7 with 1 being their top choice.

Upon receipt of the committee's rankings, Superintendent Grizzell incorporated them into a matrix in which he assigned numerical scores to each candidate in the areas of appropriate certification and/or licensure; total administrative experience; degree level in the required certification; specialized training directly related to the performance of the job; receiving anoverall rating of satisfactory in evaluations over the previous two years; and personal interview rating. In late August, at Mr. Grizzell's request, he and the grievant met and discussed several of the grievant's responses to questions posed in his interview. Mr. Grizzell held similar supplementary discussions with applicants Frazee and Keith Butcher.

Mr. Frazee was the highest scorer in Superintendent Grizzell's matrix calculations with a total of 13 points. The grievant's score of 12 placed him second. The Board ultimately accepted the superintendent's recommendation that Mr. Frazee be awarded the position.

The parties agree that the hiring decision fell within the purview of W.Va. Code §18A-4-7a, which, in relevant part, 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. 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 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. If one or more permanently employed instructional personnel apply for a classroom teaching position and meet the standards set forth in the job posting, the county board of education shall make decisions affecting the filling of such positions on the basis of the following criteria: Appropriate certification and/or licensure; total amount of teaching experience; the existence of teaching experience in the required certification area; degreelevel in the required certification area; specialized training directly related to the performance of the job as stated in the job description; receiving an overall rating of satisfactory in evaluations over the previous two years; and seniority. Consideration shall be given to each criterion with each criterion being given equal weight. 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.

They also agree that, since the job was an administrative post, the statute's "first set" of criteria listed were applicable and that the superintendent was not mandated to give each criterion "equal weight." Further, the parties acknowledge numerous Grievance Board holdings to the effect that when filling a position other than a classroom teaching one, a county board may assign any weight to a particular criterion as long as each is given consideration and the overall assessment of credentials is a fair one. (See footnote 6) The Board maintains that Superintendent Grizzell complied with these holdings and that his decision was made "on the basis of the applicant with the highest qualifications."

The grievant asserts that Mr. Grizzell actually conducted the assessment of candidates under the statute's "second set" of criteria and that, per the holdings in Basler v. Putnam County Bd. of Educ., Docket No. 93-40-215 (April 27, 1994), he bound himself and the Board to weigh each criterion equally. According to thegrievant, the manner in which the superintendent assigned values to particular facets of the applicants' qualifications was seriously flawed and did not reach that result. Further, the grievant asserts that Mr. Grizzell erred by considering the "specialized training" of the applicants when the job description for the position required none. He also contends that, in any event, the scoring in this category was also flawed. (See footnote 7) For the reasons discussed below, the undersigned concludes that the Board must prevail.

The grievant overlooks significant findings and conclusions in Basler which readily distinguish it from the present case. There, the Putnam County Board of Education had formally adopted a policy whereby equal weight would be given the seven criteria listed in the first portion of Code §18A-4-7a

in all hiring decisions. Id. at 7. The Administrative Law Judge found that the approach was "not inherently inconsistent with the duty imposed upon the Board by Code §18A-4-7a," and proceeded to analyze the mathematical validity of the policy itself, and the manner in which it was applied to the selection process in issue. The final legal holdings in the case were predicated on factual findings that the numerical ratingsystem used in that process did not and could not achieve the stated goal of affording the criteria equal weight.

Here, there was no action on the part of the Nicholas County Board of Education to limit its discretion under the statute in matters relating to the selection of administrative personnel. The undersigned concludes that the superintendent of schools lacked the authority to take such action on his own.

Support for this conclusion is found in Powell v. Brown, 238 S.E.2d 220 (W.Va. 1977). There, the Court found that the State Department of Education had, per policy, given county board of education probationary employees a right which was "generous beyond statutory or constitutional requirements," and that county boards were bound by the policy. The Court was careful to point out, in its ultimate holding in the case, that a governmental body must abide by the rules "it properly establishes to conduct its affairs." Id. at 222, (emphasis added). (See footnote 8) It is at least implicit in this rule that even permissible deviations from statute are the province of the governing body acting in its official capacity and not its agents or officers. Accordingly, it is concluded that Superintendent Grizzell could not, by his actions, obligate the Board to a standard of reviewing the credentials of applicants foran administrative post which was different from that mandated by Code §18A-4-7a.

Moreover, regardless of whether Superintendent Grizzell had the authority to do so, a preponderance of the evidence does not support the grievant's assertion that he conducted his analysis of the candidate's qualifications in accordance with the "second set" of criteria in the statute and its mandate that they be given equal weight. Rather, a close review of his testimony and the documents generated in the selection process reflects that he had conducted a thorough analysis of the applicants' credentials prior to developing the matrix and that, without formally assigning weight to any particular aspect of their qualifications, had determined that the grievant, applicant Keith Butcher and Mr. Frazee were the top candidates.

The record further reflects that the matrix was intended to assist in narrowing the field to one and/or provide some documentation as to how the decision was reached. The Superintendent's

credible Level IV testimony that he at no time considered himself obligated to afford each criterion equal weight is accepted. However, since there was significant reliance on the matrix, the question remains whether Mr. Grizzell's "mathematical methods" were, as the grievant asserts, so unsound that the outcome "might reasonably have been different." See, Stover v. Kanawha County Bd. of Educ., Docket No. 89-20-75 (June 26, 1989). For Basler, supra, also stands for the proposition that the process ofassigning numerical values to credentials may be so skewed as to render the hiring decision arbitrary and capricious.

As previously noted, the grievant takes exception to any consideration of the specialized training of the applicants. He also takes exception generally to the scores in the remaining categories but concedes, and the record supports, that the specialized training ratings and those in the area "Total Administrative experience," are the only two that, if changed or eliminated, would place him ahead of Mr. Frazee in total scores. County boards of education are required to state specifically in the job description for a particular professional post, "Any special criteria or skills that are required by the position" and "directly related to the performance of the job." W.Va. Code §18A-4-7a, ¶10. It is not disputed that Mr. Grizzell equated the applicants' attendance at various workshops and seminars with "specialized training." The grievant asserts that any skills or abilities obtained through such attendance were not specifically noted in the job description and, therefore, should not have been considered. A careful review of the job description attached to the announcement for the job in issue does not support this assertion.

As previously noted, the description provides an extensive, detailed list of the responsibilities of the position. While many are generally worded to encompass leadership, supervisory and administrative skills, others are more focused and clearly place applicants on notice that the job requires abilities in such areasas curriculum development, physical plant safety, and computer technology. One portion provides that the incumbent should assume "Responsibility for his/her own professional growth and development through membership and participation in the affairs of professional organizations, through attendance at regional, state, and national meetings, through enrollment in advanced courses, and the like and encourages staff in same." The undersigned finds that this specific language constitutes notice of "special criteria. . . required by the position," and that Mr. Grizzell's consideration of the extent to which the applicants had engaged in "professional growth and development" in their previous employment with the Board was permitted by the statute.

However, the method by which Superintendent Grizzell numerically assessed this aspect of the candidates' backgrounds was seriously flawed. Despite that the number of seminars or workshops attended varied greatly among the applicants, they were assigned either 1 or 0 in the category. The superintendent's explanation for the scoring method was ambiguous at best and the undersigned is unable to discern any logic in the approach.

The method used to assign points in the "Total Administrative Experience" category is equally puzzling. Here, Mr. Grizzell employed a 1 to 7 scale with 7 being the highest score, yet he awarded only 5 points to the grievant and applicant Jack Daugherty, who both had eighteen years as principals, and were the applicants with the greatest administrative experience. Applicants Dabney Phillips and Romona Beverage received scores of 2 and 1respectively, despite that neither had accrued any experience as an administrator. Mr. Frazee, who had served nine years as a principal, was assigned a 3 in the category.

The undersigned finds, however, that the incongruities in Superintendent Grizzell's methods are insufficient for a finding that he acted arbitrarily or that the outcome of the overall selection process would have been different. Again, Code §18A-4-7a permitted the superintendent wide latitude in assigning weight to the various aspects of the applicants' credentials and the record will not support that the matrix was determinative. Rather, the record as a whole reflects that if a more mathematically sound scoring system had been used, particularly in the assessment of administrative experience, and the scores in the specialized training category were eliminated, the grievant may have achieved, at most, a two point advantage over the successful applicant. Since the record also reflects that Mr. Frazee should have achieved, by virtue of his attendance at an impressive number of workshops and seminars, a higher score than the grievant in the specialized training area, it is not inconceivable that the grievant would have lost all or part of that advantage. Indeed, given the extensive and impressive professional backgrounds of both applicants, they would necessarily be ranked very closely in any "mathematical" scenario. It is clear that Superintendent Grizzell made a close call and that his subjective analysis of the qualifications of the applicants played a role in his decision. The undersigned may not substitute his judgment for the Superintendent's. See Stover, supra.

Finally, it is significant and persuasive that there were no personal ties between the superintendent or other members of the interview committee and any of the applicants; the superintendent had not established close professional ties with any applicant; the interviews were

conducted fairly and impartially; applicants were afforded every opportunity to expound on their credentials; and neither the superintendent nor the other committee members were predisposed to favor a particular candidate in any manner. In short, the record amply supports that the selection process was focused on qualifications and was free of favoritism.

In addition to the foregoing, the undersigned makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1) In June 1994, the Board posted the position of Principal of newly-constructed Panther Elementary School. Seven persons, including the grievant and Charles Frazee, made timely applications.

2) Superintendent of Schools William Grizzell and an interview committee conducted interviews of the applicants in which they were asked the same open-ended questions and afforded the opportunity to expound on their qualifications for the position. The committee subsequently ranked Mr. Frazee as the most qualified applicant.

3) Superintendent Grizzell conducted further discussions with the top three applicants and reviewed their personnel files, resumes and evaluations. He also developed a matrix in which he assigned numerical scores to various aspects of the applicants' credentials. Mr. Frazee achieved the highest total score of all the applicants. The Board ultimately accepted Mr. Grizzell's recommendation that Mr. Frazee be awarded the position.

4) The manner in which Superintendent Grizzell assigned scores to the applicants in the categories "Total Administrative Experience" and "Specialized Training" was not mathematically sound in that the scores did not accurately reflect the relative administrative experience of the applicants and ignored the extent to which some applicants, including the grievant, had obtained specialized training.

5) The matrix played a role in the superintendent's determination as to which candidate was the most qualified but it was not determinative. He also subjectively assessed the applicants' qualifications and afforded varying degrees of weight to the criteria listed on the matrix.

CONCLUSIONS OF LAW

1) A county board must make decisions regarding appointments to administrative posts on the basis of the "applicant with the highest qualifications." In such decisions, the board must consider the following aspects of the applicants' credentials: appropriate certification and/or licensure, amount of experience relevant to the position, the amount of course work and/or degreelevel in the relevant 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 applicants may fairly be judged. W.Va. Code §18A-4-7a, ¶1.

2) A county board of education has broad discretion to determine the weight to be afforded a particular criterion. Christian v. Logan County Bd. of Educ., Docket No. 94-23-173 (March 31, 1995). The standard of review in cases brought by unsuccessful candidates for administrative posts generally entails an inquiry into whether the criteria set forth in Code §18A-4-7a was accurately assessed for each applicant; whether favoritism and/or discrimination played a role in the selection process; and whether flaws in the process were so significant that the outcome might reasonably have been different. Stover, supra. Ultimately, it must be decided whether the board abused its considerable discretion in personnel matters. See, Dillon v. Bd. of Educ. of the County of Wyoming, 351 S.E.2d 58 (W.Va. 1986).

3) A superintendent of schools is without authority to bind a county board of education to a method or procedure for filling administrative posts which is in conflict with the mandates of Code §18A-4-7a. See, Powell v. Brown, 238 S.E.2d 220 (W.Va. 1977). In any event, the grievant herein has failed to prove that Superintendent Grizzell, in assessing the qualifications of the applicants for the position in issue, deviated from the provisions of the statute relating to administrative posts.

4) Boards may consider "special criteria or skills" needed for a particular professional post when such criteria or skills are specifically stated in the job description for the position. W.Va. Code §18A-4-7a ¶10. The grievant herein has failed to prove that the Board violated this provision or that it otherwise acted arbitrarily in giving consideration to the ongoing efforts of the applicants for the post in issue to upgrade their professional administrative skills.

5) While the grievant has demonstrated flaws in the process utilized by Superintendent Grizzell to assess the qualifications of the applicants, the record as a whole does not support that he violated the mandates of Code §18A-4-7a or that he acted arbitrarily and capriciously. The grievant has failed to establish by a preponderance of the evidence that but for the flaws, the outcome of the process

would have been different.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or the Circuit Court of Nicholas 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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JERRY A. WRIGHT

ADMINISTRATIVE LAW JUDGE

Dated: August 23, 1995

Footnote: 1As hereinafter discussed, Nettie Elementary School was closed during the fall of the 1994-95 school year. Because the record in the case was completed in March 1995, it does not reflect what position the grievant now holds.

Footnote: 2At this hearing, the parties merely supplemented the Level II record with additional testimony from Superintendent of Schools William Grizzell.

Footnote: 3The record is unclear as to when the new school would open, but it appears that it was slated to begin serving students after the beginning of the 1994-95 school year.

Footnote: 4Mr. Grizzell has an extensive background in education administration in other counties, including five years as Superintendent of Schools in Morgan County.

Footnote: 5Apparently, all the applicants were employed by the Board.

Footnote: 6See, e.g., Christian v. Logan County Bd. of Educ., Docket No. 94-23-173 (March 31, 1995). As discussed, infra, the standard of review in such cases is that pronounced in Dillon v. Bd. of Educ. of County of Wyoming, 351 S.E.2d 58 (W.Va. 1986), namely whether the county board abused its discretion or acted in a manner which was arbitrary or capricious.

Footnote: 7It is noted that Code §18A-4-7a requires consideration of "academic achievement" and that this was not a category on Superintendent Grizell's matrix. Curiously, the grievant does not take issue with the omission. For that reason and because the record otherwise supports that Superintendent Grizzell most likely reviewed any grade transcripts

contained in the applicants' personnel files prior to making his recommendation, the issue is not addressed herein.

Footnote: 8It appears, however, that there are limitations on the extent to which even the governing body may grant rights which exceed the benefits of the statute. In Williams v. Brown, 437 S.E.2d 775 (W.Va. 1993), the Court held that an employer's handbook could not grant "for cause" dismissal protection to an employee who, by statute, served at the will and pleasure of the employer.