ROBERT DONLIN

v. Docket No. 94-49-1073

UPSHUR COUNTY BOARD OF EDUCATION,

DENSEL S. CROUSO, INTERVENOR

DECISION

Grievant, Robert Donlin, professionally employed by the Upshur County Board of Education (Board), filed a level four grievance appeal on November 21, 1994, in which he alleged a violation of W.Va. Code §18A-4-7a when the Board failed to appoint him to a position at Buckhannon-Upshur High School (BUHS). All parties agreed that the matter could be submitted for decision upon the record developed at level two. Proposed findings of fact and conclusions of law were filed by Grievant and the Board on or before April 5, 1995, at which time the matter became mature for decision.

The facts of this matter are as follows:

1. Grievant was first regularly employed by the Board beginning with the 1993-94 school term, during which he instructed one behaviorally disordered third grader at Union Elementary School. Grievant was assigned to teach a behavior disorder class at Buckhannon-Upshur Middle School for the 1994-95 school year.

2. By posting dated August 25, 1994, the Board announced a vacancy for a Social Studies teacher at BUHS, grades 9-12.

3. Five applications, including Grievant's, were submitted. The individual first selected for the position declined the appointment.

4. After re-posting the position on September 16, 1994, the position was awarded to Densel Crouso. Grievant was ranked second by the selection committee.

5. Grievant is certified in Social Studies, grades 7-12 and behavior disorders, excluding autism, K-12. Mr. Crouso is certified in social studies, grades 5-12.

6. Mr. Crouso was not a regularly employed teacher at the time of his appointment, but had substituted in the position in question.

Grievant sets forth three arguments. His first complaint is that the interview committee misapplied

and misinterpreted W.Va. Code §18A-4-7a when it used outdated language as a guide to evaluate the applicants. Specifically, the wording of the current version of Code §18A-4-7a lists "total amount of teaching experience" as one criterion. The previous version stated "amount of experience relevant to position." Grievant asserts that although he has accrued five and one-half years' experience compared to Intervenor's two hundred and ten days of substitute experience, it is not clear that Grievant was determined to be superior in that area. Grievant argues that he should receive full benefit of his years of experience,regardless of subject area or grade level. When compared with Intervenor, Grievant argues that he is the superior candidate in this area.

The second criterion Grievant asserts was improperly assessed involves the "existence of teaching experience in required certification area." Grievant proposes that both he and Intervenor have substitute experience in the required certification area and that an attempt by the committee to prorate experience or to define the actual number of days experience each had as a substitute is an unnecessary complication which changes the meaning of the statute. Grievant apparently proposes that both he and Intervenor should have been rated equally in this area.

The third criterion in question is that of "specialized training directly related to the performance of the job as stated in the job description." The posting did not include a job description and made no reference to any requirement of specialized training. Grievant's position on this issue is that this criterion has no application to the position in question.

The second issue raised by Grievant is that the Board violated W.Va. Code §18A-4-7a by not allocating equal weight to each of the seven criteria. Grievant asserts that he and Intervenor both possessed the required certification and degree, and had positive performance evaluations, and experience in the required subject matter. Specializedtraining was irrelevant. Because he was the superior candidate in two areas, total experience and seniority, Grievant concludes that the criteria could not have been equally weighted and Intervenor properly awarded the position.

Grievant's third argument is that a statutory violation occurred when the Board considered criteria other than the seven listed in Code §18A-4-7a. Grievant asserts that the Board abused its discretion when it determined Intervenor to be more qualified by virtue of his experience teaching in the position in question. Additional criteria, such as Intervenor's grade college point average were also cited by Grievant as having been improperly considered.

Grievant concludes that the review by the committee was flawed, and that he, the most qualified

applicant, is entitled to the position as a matter of law. For relief, Grievant requests instatement to the social studies position and any difference in pay and/or benefits due him.

The Board asserts that the factors set forth in Code §18A-4-7a, as amended in 1992, were considered and applied to each of the applicants. Dr. Richard Hoover, Assistant Superintendent, also testified at the level two hearing that the factors were weighted equally. Superintendent Lynn E. Westfall noted in the level two decision that Grievant and Intervenor both held the appropriate degree level and certification and/or licensure, and both had satisfactory evaluations. He further noted that Grievant had accrued agreater total amount of teaching experience and seniority. Addressing experience teaching in social studies, Superintendent Westfall discounted Grievant's experience during which he instructed only one special education student. Intervenor clearly was given more credit for having held the position for the first quarter of the 1994-95 school year.

W.Va. Code §18A-4-7a (1993) states in relevant part:

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; degree level 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.

Because no specialized training directly related to the performance of the job was stated in the job description, only six criteria were applicable to this position. It is undisputed that both candidates possessed the appropriate certification and degree levels and both had received satisfactory evaluations of their past performance. Grievant must prevail in the total amount of teaching experience and seniority categories, leaving only teaching experience in therequired certification in question.

Both Grievant and Intervenor have some experience teaching social studies. Grievant's testimony at level two indicates that he occasionally substituted in social studies during the 1988-89 term; that for eight and one-half months during 1989-90 he was assigned to the ALC White School where he taught social studies in addition to English and other subjects. Two years he instructed one traumatic

brain injured student. In the Fall semester of 1992 he substituted in several positions, including some social studies classes. Additionally, he taught social studies one period per day at Union Elementary School in Upshur County in Spring 1993. It appears that he may offer some social studies instruction in his present assignment. Dr. Hoover testified that an attempt was made to prorate this experience and Grievant was credited with seventy days' experience. Intervenor had substituted sixty days. Because Intervenor's experience was at the adolescent programmatic level, he was determined to be more qualified.

Code §18A-4-7a makes no reference to prorating or weighting the quality and quantity of experience possessed by applicants. Richmond v. Raleigh County Bd. of Educ., Docket No. 92-41-363 (May 27, 1993). Clearly, both Grievant and Intervenor have acquired teaching experience in Social Studies. Code §18A-4-7a does require that the criteria be weighted equally. Therefore, even if Intervenor is properlygiven more credit for experience teaching social studies, Grievant must still prevail, having exceeded Intervenor in the areas of total teaching experience and seniority.

In addition to the foregoing facts and discussion it is appropriate to make the following formal conclusions of law.

CONCLUSIONS OF LAW

1. W. Va. Code §18A-4-7a requires that when one or more permanently employed instructional personnel apply for a classroom teaching position, consideration must be given to the applicants' certification, total teaching experience, teaching experience in the required certification area, degree, specialized training, past evaluations, and seniority. Each of the seven criterion shall be given equal weight.

2. Grievant has proven by a preponderance of the evidence that both he and the Intervenor were comparatively qualified in four areas, that he exceeded the successful applicant in at least two areas, and that one criterion did not apply in this matter.

3. Giving equal weight to each of the six applicable criteria, Grievant must be determined more qualified than the Intervenor.

Accordingly, the grievance is GRANTED and the Board Ordered to instate Grievant in the position of social studies teacher at BUHS effective the 1995-96 school year with any backpay and benefits

he may be due.

DATED 5/31/95 SUE KELLER, SENIOR ADMN. LAW JUDGE