CHARLES M. CHRISTIAN,

Grievant,

v. **Docket No. 94-23-173**

LOGAN COUNTY BOARD OF EDUCATION,

Respondent,

and

BRENDA SKIBO,

Intervenor.

D E C I S I O N

Grievant, Mr. Charles Christian (See footnote 1), grieves his non-selection for the position of Assistant Superintendent with the Logan County Board of Education ("LCBOE"). Ms. Brenda Skibo, the successful applicant for the position, intervened in this grievance pursuant to W. Va. Code §18-29-3(u). This grievance was denied at Levels I and II and waived at Level III. The grievance was appealed to Level IV and a hearing was held on December 19, 1994. (See footnote 2) This case became mature for decision on February 10, 1995, following thesubmission of proposed findings of fact and conclusions of law by the parties. (See footnote 3)

Issues

Grievant contends that Ms. Skibo did not meet the posted qualifications for the position. Specifically, Grievant states Ms. Skibo does not have "[f]ive (5) years educational administrative experience or equivalent." Grievant also argues he was the most qualified applicant for the position. At the initiation of the grievance, Grievant requested as relief that the Board place the most qualified applicant in the position. At Level IV Grievant requested Ms. Skibo be removed from the position and that the position be reposted.

Respondent argues Ms. Skibo met the posted qualifications of the position and was the most

qualified applicant for the position.

Findings of Fact

1. On December 2, 1992, Superintendent John Myers (See footnote 4) posted the position of Assistant Superintendent. The qualifications for this position are listed below:

1.

Minimum M.A. Degree,

2.

Professional Administrative Certificate,

3.

Five (5) years educational administrative experience or equivalent.

4.

Ability to recruit faculty, administrative and support personnel,

5.

Knowledge of Federal/State Law and Due Process Procedures,

6.

Ability to write reports for the Superintendent's review, based upon information from staff.

7.

Ability to work cooperatively and effectively with personnel, school administrators, and general public.

8.

Demonstrates administrative competencies necessary for assigned responsibilities.

9.

Demonstrates excellent oral and written communication skills.

Superintendent Myers has listed job postings with "equivalent experience" in the past to broaden the field of potential applicants.

2. The Assistant Superintendent was to be actively involved in personnel matters and computerizing the central office. The individual selected needed to have knowledge of the law governing accreditation, personnel issues, and evaluation techniques.

3. Multiple candidates applied and all appropriate candidates were interviewed by Superintendent Myers, including Grievant and Ms. Skibo. All interviews followed the same process. The applicants were given a list of written interview questions to think about and given time to "jot down" answers prior to the interview. The questions and answers were then discussed with the applicants, and they were encouraged to present information about themselves, their goals, and their abilities.

4. At the time of the interview, Ms. Skibo had been the Principal of the Vocational-Technical Center for four and a half years. She had the salary classification of a Masters plus 45. Her degrees included a Bachelor's and Master's degree in BusinessEducation, a Master's in Business Administration and she had completed the course work for a Master's in Vocational Administration. She had taught for eighteen years and was the Head of the Business Department for eight years while at Logan High School. Ms. Skibo had course work and personal experience in the areas of personnel, labor law, management, and evaluation. Her school had no problems with accreditation, and vocational education was one of the areas DOE had informed Superintendent Myers was in satisfactory condition. Ms. Skibo clearly met all posted qualifications of the position, with the exception of Number 3.

5. At the time of the interview, Grievant had a salary classification of a Master's plus 30, and had a Master's degree in Administration. Grievant had taught at all grade levels and had been

principal at Amherstale Elementary School for nineteen years. He met all the minimum qualifications for the position.

6. At the end of the initial interviews, Ms. Skibo was Superintendent Myers' top candidate for the position. Grievant was not in the top five candidates.

7. Because Superintendent Myers was unsure whether Ms. Skibo met the administrative experience requirement, he conducted a second interview. He also asked Ms. Skibo to detail the course work in her MBA.

9. After this second interview Superintendent Myers decided Ms. Skibo met the administrative experience requirement and recommended her for the position. Superintendent Marockie approved this recommendation.

Discussion

This grievance concerns two issues. One, did the successful applicant, Ms. Skibo, meet the minimum qualifications for the position of Assistant Superintendent. Two, if Ms. Skibo did meet these qualifications, was she more qualified than Grievant.

The qualification at issue is "[f]ive (5) years educational administrative experience or equivalent." Ms. Skibo had served as principal at the Ralph Willis Vocational School for four and a half years. The question then becomes, does Ms. Skibo have six months of equivalent experience?

Superintendent Myers testified at length about this question and how he resolved the issue to his satisfaction. His testimony, plus his contemporaneous notes, clarify how he went about this process.

During his second interview with Ms. Skibo, she clarified her duties as head of the Business Department (See footnote 5) for eight years. During these eight years, Ms. Skibo helped schedule classes, had input into the evaluation of eight teachers, coordinated paperwork, conducted inventories, and coordinated the spending of a small, yearly budget. After receiving this information Superintendent Myers gave Ms. Skibo eight months of supervisory credit for her eight years as department head. Superintendent Myers conceded that this computation was somewhat subjective.

Also during this second interview, Superintendent Myers clarified Ms. Skibo's work in housing construction. Ms. Skibo, her husband, and another couple incorporated a business to produce five houses on a small piece of land. Ms. Skibo testified she supervised this construction after school and during the summer. She hired the construction supervisor, directed his work, made sure employees

were on the job, interacted with the buyers, directed the construction crew to make changes as needed, and was the individual called by the supervisor if problems arose. Her supervisory responsibility included firing one of the construction supervisor employees. Ms. Skibo also ordered the necessary interior supplies.

This project lasted approximately two years, and Superintendent Myers credited Ms. Skibo with eight months of administrative experience for this supervisory work. Superintendent Myers also noted Ms. Skibo had many supplemental, administrative days, outside her regular contract. He did not give her administrative credit for these, with the exception of the two months she had served as a Principal of the vocational school in 1991.

Grievant attempted to demonstrate Ms. Skibo was untruthful about her construction experience. As Ms. Skibo's testimony was unrebutted, this attempt must fail and the undersigned finds Ms. Skibo's testimony to be credible.

After clarifying Ms. Skibo's administrative experience, Superintendent Myers found Ms. Skibo more than met the experience requirement. He stated at hearing he would not have hired her ifshe had not. Grievant attempted to demonstrate Superintendent Myers was unaware of Ms. Skibo's housing and department head experience and had only considered these after this grievance was filed. Superintendent Myers' notes taken contemporaneously with both interviews demonstrate these allegations are false.

Superintendent Myers' crediting Ms. Skibo with the above experience to attain the five years of experience is not arbitrary and capricious. The posting stated equivalent experience would be considered and it was. These experiences involved administration of projects and supervision of employees. Clearly, these types of skills are administrative in nature and are easily transferrable to an educational setting. Whether another individual may have given the same amount of credit for these experiences is not at issue, since Ms. Skibo only lacked six months, and the total of these equivalent experiences can easily be seen to equal at least six months. Accordingly, Ms. Skibo met the posted qualifications for the position.

The next issue is whether Grievant is more qualified for the position than Ms. Skibo. W. Va. Code §18A-4-7a states "[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." Additionally, county boards of education have substantial discretion in matters relating

to the hiring of school personnel as long as the decisions are in the best interest of the school and not arbitrary andcapricious. Dillon v. Bd. of Educ. of the County of Wyoming, 351 S.E.2d 58 (W. Va. 1986).

The need in Logan County Schools was for an Assistant Superintendent well versed in the areas of personnel, labor law, accreditation, computerization of records, and evaluation. Ms. Skibo had course work and experience in all these areas. By his own admission, Grievant needed to improve his knowledge and abilities in the area of personnel and legal aspects. At no time did Grievant indicate he had any computer skills or abilities. Given the multiple problems in Logan County at the time of this selection, and the skills and abilities of the successful applicant, it cannot be found to have been an abuse of discretion to hire Ms. Skibo, or to have decided Ms. Skibo was more qualified than the Grievant.

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

Conclusions of Law

1. In a non-selection grievance, the Grievant has the burden of proving his case by a preponderance of the evidence. 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 the hiring of school personnel as long as the actions are in the best interests of the school and are not arbitrary and capricious. Dillon, supra.

3. "The grievance procedure, W. Va. Code §§18-29-2, et seq., is not intended to be a 'super interview' for unsuccessful jobapplicants; rather, in this context, it allows for 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. "As in all selection cases, a determination of whom is the most qualified results in [a] subjective decision-making process." Harper v. Mingo County Bd. of Educ., Docket No. 93-29-064 (Sept. 27, 1993).

5. "Although the arbitrary and capricious standard of review of agency decisions requires searching and careful inquiry into the facts, the ultimate scope of the review is narrow, and [an ALJ] may not substitute [her] judgment for that of the Board." Harper, supra.

6. An Administrative Law Judge's subjective assessment of qualifications is largely irrelevant, if both candidates, as here, are minimally qualified. Id. at 2.

7. Superintendent Myers' finding that Ms. Skibo's other administrative experiences were equivalent to at least six months of educational, administrative experience was not arbitrary and capricious.

8. A board of education is free to determine the weight to be applied to the qualifications necessary for an administrative position as long as it does not abuse its discretion. Blair v. Lincoln County Bd. of Educ., Docket No. 92-22-009 (July 31, 1991). In this case Superintendent Myers, with the approval ofSuperintendent Marockie, acted within his discretion in stressing the need for expertise in the areas previously noted.

9. Grievant has failed to demonstrate by a preponderance of the evidence that he was more qualified for the position than the successful applicant or that Superintendent Myers abused his discretion when he selected the successful applicant for the position.

Accordingly, this grievance is **DENIED**.

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

JANIS I. REYNOLDS

Administrative Law Judge

Dated: March 31, 1995

Footnote: 1When filed below this grievance also included Mr. Moss Burgess, who elected not to proceed to Level IV.

Footnote: 2This grievance was filed in January, 1993, and was appealed to Level IV on May 4, 1994. Since there were no complaints about this extended length of time, the undersigned made no inquiry.

Footnote: 3LCBOE elected not to submit this material.

Footnote: 4Mr. Myers was placed in the position of Superintendent in August, 1992 by the State Department of Education ("DOE") as part of its takeover of the Logan County School System. At this time the DOE is in charge of the areas of personnel, academic curriculum, finances and curricular instruction. Superintendent Myers reports directly to Dr. Henry Marockie, the State Superintendent, and receives approval from him for his actions in these areas.

Footnote: 5Testimony of Mr. Burgess at Level IV revealed that the duties of other department chairs are not this demanding and frequently require little time or effort.