BRYAN ELKINS,

Grievant,

v. **Docket No. 95-03-415**

BOONE COUNTY BOARD OF EDUCATION,

Respondent,

and

CAROL HAGER,

Intervenor.

D E C I S I O N

Grievant, Bryan Elkins, grieves his non-selection for the principal's position at Madison Middle School ("MMS") and contends the Boone County Board of Education ("BCBOE") violated W. Va. Code §18A-4-7a when it selected Carol Hager (See footnote 1) for the position. Grievant requests instatement into the position. This grievance was denied at Level II and waived at Level III. A Level IV hearing was held on November 28, 1995, and this case became mature for decision on that date.

Grievant contends he is the best qualified individual for the position because of his experience at the junior high level and hisseniority or greater length of experience. (See footnote 2) BCBOE argues it did not abuse its discretion in filling this administrative position, and that Ms. Hager was the best qualified candidate.

Grievant has twenty-seven years of total experience with ten of those years in teaching and seventeen years in administration as an elementary and junior high principal. He has a Masters +45, an earned administrative certificate as an elementary principal, 1-9, and satisfactory past performance evaluations. Grievant's undergraduate grade point average ("GPA") was 2.92 and his graduate GPA was 3.86. He has never taught or been an administrator in a middle school.

Ms. Hager has twenty-one years total experience, with five years as a teacher and sixteen years in administration. Her administrative experience includes three years as a reading supervisor and the last thirteen years as an elementary principal. Ms. Hager has a Masters +45, an earned

administrative certificate as an elementary principal, K-8, an earned certificate as a Supervisor of Reading, and satisfactory past performance evaluations. Ms. Hager's graduate GPA for Elementary Principal was a 3.94, her GPA for her Supervisor of Reading was 3.94, her GPA for her Master's in Reading was 4.0, and her undergraduate GPA was 3.8. Ms. Hager has never taught or been an administrator in a middle school setting.

These two candidates were considered equal in the first five areas Superintendent Gary Sumpter assessed: 1) appropriate certification or licensure; 2) experience relevant to the position; 3) amount of course work or degree level in relevant field and degree level generally; 4) relevant specialized training; and 5) past performance evaluations. Superintendent Sumpter did not rank the candidates on academic achievement but did have both their resumes which stated their GPA's. If he had ranked the candidates in this area, the best Grievant could have hoped for would be that he and Ms. Hager would be considered equal.

Superintendent Sumpter selected a committee to interview the candidates and to identify the individual, who demonstrated in the interview the most knowledge about the middle school concept, and who presented themselves well. Both interviewers ranked Ms. Hager number one. One interviewer ranked Grievant second and the other interviewer ranked Grievant third. In assessing the candidates, Superintendent Sumpter decided to add the category of "Seniority" to the matrix as well as assessing the candidates for special achievements under the "Other Measures or Indicators Category."

Grievant received a check in the category of "Seniority" and received a score of six checks. Ms. Hager received a check for "Best Interview" and in the "Other Measures" category for a total of seven checks and was selected for the position. Superintendent Sumpter gave Ms. Hager a check for "Other Measures" because her school had received awards as a National School of Excellence and as a West Virginia Blue Ribbon School. He felt this demonstrated excellent leadership capabilities.

Issues

Grievant contends he should have received the position because he had greater seniority, and because he had greater experience relative to the position, as he served as principal of a junior high school for four years. He also argues it was unfair to credit Ms. Hager for her awards because these qualifications were not listed on the job posting. In the alternative, he agrees he should have received

equal credit for participating in the "School-Wide Program." BCBOE argued they chose the best candidate for the position, and that Ms. Hager's credentials and experiences are impressive and cannot be ignored. BCBOE also argued it did not abuse the considerable discretion it is allowed in filling an administrative position.

Discussion

W. Va. Code §18A-4-7a sets forth the criteria to be used in filling an administrative position. W. Va. Code §18A-4-7a directs county board of educations to hire "professional personnel other than classroom teachers on the basis of the applicant with the highest qualifications." When judging their qualifications, a board is to consider the following:

Appropriate certification and/or licensure; amount of experience relevant to the position . . . 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 . . . and other measures or indicators upon which the relative qualifications of the applicant may fairly be judged.

W. Va. Code §18A-4-7a.

These are the criteria assessed by Superintendent Sumpter. Other measures and indicators he chose to assess were leadership, seniorityand knowledge of the middle school concept as demonstrated in the interview. Nothing in the language of the above-cited code section restricts this area of measures or indicators, as long as they are "relative qualifications." Indeed, W. Va. Code §18A-4-7a contemplates that county boards may look beyond certificates, academic training, and length of experience in assessing the relative qualifications of the applicants. Anderson v. Wyoming County Bd. of Educ., Docket No. 93-55-183 (Sept. 30, 1993).

It is well settled that county boards of education have substantial discretion in matters relating to the hiring of school personnel as long as their decisions are in the best interest of the school and are not arbitrary and capricious. Dillon v. Bd. of Educ. of County of Wyoming, 351 S.E.2d 58 (W. Va. 1986). Additionally, a board of education is free to determine the weight to apply to each of the above-stated factors when assessing a candidate's qualifications for an administrative position, as long as this substantial discretion is not abused. 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). Once a board reviews the criteria, it has "wide discretion in choosing administrators . . .".

March v. Wyoming County Bd. of Educ., Docket No. 94-55-022 (Sept. 1, 1994). Further, it has already been determined by this Board that an applicant's greater experience in education administration does not necessarily entitle him to an administrative position. Id.

Having set out the appropriate standards by which to review BCBOE's decision, it is necessary to discuss one of Grievant's contentions in a little more detail. Grievant states his participation in the School-Wide Program for the last two years should be seen as equal to the National School of Excellence and West Virginia Blue Ribbon School Awards and should have been counted in his favor in the scoring. There are two problems with this argument.

First, Grievant did not mention his participation in this program to the interviewers or on his resume. Additionally, Superintendent Sumpter was a new superintendent and could not know all of Grievant's activities. This Grievance Board has previously held that an applicant is responsible for notifying a county board of education of his qualifications, special abilities, and recent developments. Hoover v. Pendleton County Bd. of Educ., Docket No. 95-36-425 (Oct. 19, 1995).

Second, the record clearly reveals the initiative, time, and effort required to be a National School of Excellence or a West Virginia Blue Ribbon School far exceeds that required to participate in the School-Wide Program. Ms. Hager took the initiative upon her transfer to Lory-Julian Elementary School in 1987 to seek National School of Excellence and West Virginia Blue Ribbon School status to improve the school's and the community's self-esteem. Her first actions were to improve the school's test scores so the school would be eligible to apply. She continued through this lengthy and time-consuming process which required leadership and dedication from her and commitment and extra work from her entire staff.

The School-Wide Program is a method of receiving Federal funding to be spent on all children in the school, not just the identified, eligible children. Grievant was asked to participate and he did. Extra work and commitment were required from Grievant and his staff, but not at the level required for a National School of Excellence or a West Virginia Blue Ribbon School. Although Grievant's program has been successful and is improving, he has met only 80% of his goals. When Grievant was asked why he did not attempt the National School of Excellence or West Virginia Blue Ribbon School process, he at first stated he did not know about it until recently, then changed his testimony to say he knew about these programs, but had "never checked it out."

Grievant's argument that he has more applicable experience for the position because he was a

junior high school principal must also fail. The position was in a middle school, with its different class organization, age groups, and teaching methods and strategies. Neither candidate has middle school experience.

Reviewing the record as a whole, it is clear Ms. Hager was the most qualified applicant for the position, and BCBOE did not abuse its substantial discretion in selecting her for the position.

The above discussion will be supplemented with the following findings of fact and conclusions of law.

Findings of Fact

1. BCBOE ranked Grievant and the successful applicant equally in the areas of appropriate certification, relevant experience, degreeand course work level, specialized training, and past performance evaluations.

2. Grievant received a check for seniority and Ms. Hager received two checks; one for leadership qualities and one for the "best interview."

3. Although Ms. Hager had the best academic achievement record, Superintendent Sumpter did not rate the candidates in this area.

4. Neither Superintendent Sumpter nor the interviewers knew about Grievant's participation in the School-Wide Program. Even if Superintendent Sumpter had known about Grievant's participation in this program, his participation does not rise to level of initiative, creativity, and commitment necessary to become a National School of Excellence or West Virginia Blue Ribbon School.

Conclusions of Law

1. In a non-selection action, the grievant has the burden of proving his case by a preponderance of the evidence. Tenny v. Barbour County Bd. of Educ., Docket No. 89-01-576 (May 30, 1990).

2. County boards 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 v. Bd. of Educ. of County of Wyoming, 351 S.E.2d 58 (W. Va. 1986).

3. In filling an administrative position, county boards have broad discretion to determine the weight to afford each criterion. Identified under W. Va. Code §18A-4-7a. Amick v. Nicholas County

Bd. of Educ., Docket No. 95-34-037 (Aug. 23, 1995).

4. The goal in filling an administrative position is to hire the best qualified applicant for the position. Pockl v. Ohio County Bd. of Educ., 406 S.E.2d 687, 690 (W. Va. 1991).

5. Grievant has failed to demonstrate he was more qualified than the successful applicant for the position in question, that Respondent 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 Kanawha County or to the Circuit Court of Boone 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: December 28, 1995

Footnote: 1Ms. Hager requested to intervene at the Level IV hearing. The parties did not object, and this motion was granted.

Footnote: 2The job posting for this administrative position incorrectly listed the classroom teacher criteria as the criteria on which the candidates would be selected. BCBOE corrected this error prior to interviewing and rating the candidates. Grievant raised this issue at the Level IV hearing, and the undersigned ruled this error to be harmless as the proper criteria were applied for the position.