

BILLIE LOWE,

Grievant,

v.

Docket No. 95-29-446

MINGO COUNTY BOARD OF EDUCATION,

Respondent,

and

LINDA NAGY,

Intervenor.

DECISION

Grievant, Billie Lowe, appealed two grievances to Level IV after receiving denials at all lower levels. [\(See footnote 1\)](#) Grievant grieves her non-selection for a teaching position at Gilbert Grade School ("GGS"). She also grieves her currently assigned duties at Gilbert Middle School ("GMS"). She states the Mingo County Board of Education ("MCBOE") violated W. Va. Code §18A-4-7a when it failed to select her for the GGS position, and violated W. Va. Code §§18A-4-7a, 18A-2-2, and 18A-2-7 when it changed her assignment at the beginning of the 1995-96 school year. Level IV hearings were held on December 5 and 11, 1995. This case became mature for decision on January 3, 1996, the deadline for the submission of proposed findings of fact and conclusions of law.

Issues

First, Grievant argues she is more qualified for the GGS position than the successful applicant, Intervenor Linda Nagy. She states MCBOE did not properly follow W. Va. Code §18A-4-7a when it evaluated the applicants. Second, Grievant argues she should not be assigned to teach sixth grade music because she is not certified to teach choral music, and because she should only be assigned library duties. In the alternative, Grievant argues if she is to be assigned teaching duties she should only be assigned to teach social studies.

MCBOE contends it properly followed W. Va. Code §18A-4-7a in selecting

Intervenor for the position at GGS. MCBOE also argues Grievant is teaching general music, not choral music, and with her certification in Elementary Education, 1-8, she is properly certified to teach this course. Originally, MCBOE argued Grievant was hired as a part-time librarian/part-time teacher at GMS. During the Level II hearing, Grievant submitted into evidence a letter dated April 13, 1990, from Superintendent Everett Conn, apparently clarifying some questions from Grievant about her status after her transfer to GMS. This letter states Grievant is to be a part-time social studies teacher/part-time librarian at GMS. A copy of this letter was not sent to the principal at GMS, Ms. Burma Hatfield, thus she did not know that Grievant's part-time teaching assignment had been clarified. Assistant Superintendent John Fullen was also unaware of this letter until the Level II grievance hearing. Grievant did not inform Principal Hatfield of this letter at the time of her assignment to the music duties.

Discussion

I. Selection

County boards of education have substantial discretion in matters relating to the hiring of school personnel. The exercise of that discretion must be within the best interests of the schools, and in a manner which is neither arbitrary nor capricious. See Hyre v. Upshur County Bd. of Educ., 412 S.E.2d 265 (W. Va. 1991). The West Virginia Supreme Court recently expanded this discretion "to matters involving curricular programs and the qualification and placement of personnel implementing those programs." Cowan v. Harrison County Bd. of Educ., 465 S.E.2d 648, 652. With regard to the hiring for a classroom teaching position, boards of education must exercise their discretionary authority by considering the "qualifying factors" set forth in W. Va. Code §18A-4-7a (1992). That Code Section requires that each factor be weighted equally.

Because both Grievant and Intervenor were permanently employed, the "second set of criteria" found in 7a is applicable to this case, and reads as follows: 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; 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.

The arbitrary and capricious standard of review of county board of education decisions requires a searching and careful inquiry into the facts; however, the scope of review is narrow, and the undersigned may not substitute her judgment for that of the board of education. See generally, Harrison v. Ginsberg, 286 S.E.2d 276 (W. Va. 1982). The Grievance Board cannot perform the role of a "super- interviewer" in matters relating to the selection of candidates for vacant positions. Stover v. Kanawha County Bd. of Educ., Docket No. 89-20-75 (June 26, 1989); Harper v. Mingo County Bd. of Educ., Docket No. 93-29-064 (Sept. 27, 1993). Generally, a board of education's action is arbitrary and capricious if it did not rely on factors that were intended to be considered, entirely ignored important aspects of the problem, explained its decision in a manner contrary to the evidence before it, or reached a decision that is so implausible that it cannot be ascribed to a difference of view. Bedford County Memorial Hosp. v. Health and Human Serv., 769 F.2d 1017 (4th Cir.

1985). Grievant states she is more qualified to fill the position of second grade teacher at GGS than Intervenor. Grievant contends Mr. Fullen and Mr. Conn did not properly assess certain sections of the W. Va. Code §18A-4-7a matrix. She requests the undersigned to look closely at only two specific areas, degree level and existence of teaching experience, and to accept the scoring in the other areas as correct. MCBOE and Intervenor request the undersigned to examine all the evidence it had at the time of the selection, and to reassess all seven areas.

The position was posted as an elementary teacher. MCBOE found both candidates to be properly certified. The undersigned agrees with this finding. MCBOE found Grievant to have more teaching experience. Both Grievant and Intervenor had the same number of years with MCBOE, but Grievant had worked three additional years in Wyoming County. Again, the undersigned agrees with this finding.

Intervenor received preference, or a point, in the area of degree level in the required certification level because she has a Masters +30 in elementary education, and Grievant has only a Bachelors +15. This finding by MCBOE is correct. Worrell v. Mercer County Bd. of Educ., Docket No. 94-27-054 (Feb. 24, 1995). Both applicants had received overall satisfactory ratings for the two previous years so they both properly received points in this area. Also, all parties agreed that both applicants had the same amount of seniority with MCBOE, thus they both received points in this category. MCBOE gave Intervenor a point in the area of existence of teaching experience in the required certification area because she had more years and more recent experience at the elementary level. This finding is contrary to the holding in Richmond v. Raleigh County Bd. of Educ., Docket No. 92-41-363 (May 27, 1993). In Richmond, Administrative Law Judge Tarr found the word "existence" was not a quantitative word, and either a teacher had or did not have this experience. Thus, the undersigned finds that both candidates should have received a check in this area of the matrix.

The last category at issue is the area of specialized training. Grievant argues this category should not be re-examined because both candidates received a check in this area. Mr. Fullen testified he rated this category incorrectly, and this area should be re-evaluated as well. At the time of the assessment of the two candidates for the position, Mr. Fullen's assistant called Grievant and Intervenor to ask them if they had any specialized training they wished to have the Board consider during the selection process. Grievant stated she was confused by this request and asked to talk to Mr. Fullen. Mr. Fullen explained the request to Grievant and indicated what material was needed, and that Intervenor had sent these materials and that hers were quite good. Grievant stated she was not going to send this material, and that she was going to call her representative as she thought she should receive the position because she had more seniority. [\(See footnote 2\)](#) Grievant did not send this information, and never indicated at any time that she had any specialized training for the position.

At the Level IV hearing, MCBOE submitted into evidence the materials Intervenor had given to the Board prior to the selection. On the matrix, Assistant Superintendent

Fullen rated both applicants as having specialized training, but placed a question mark beside Grievant's check because he was unsure what to do about Grievant's failure to respond to his request. He stated he was trying to be fair and thought Grievant probably had some specialized training. Mr. Fullen also testified Mr. Conn asked him about this rating and went along with Mr. Fullen and gave Grievant a check. Also at the Level IV hearing, Mr. Fullen indicated he now thought this practice was unfair to Intervenor, and he should not have rated the candidates as equal in this category as they clearly were not. Also at the Level IV hearing, Intervenor argued these materials should be fairly considered.

W. Va. Code §18A-4-7a requires a county board to fill a classroom teaching position by assessing and giving equal weight to the seven areas discussed above, if one or more of the applicants is permanently employed. Since both of these applicants were permanently employed by MCBOE, all of the factors involved in the decision-making process should have been carefully considered and equally weighted. Sisk v. Mercer County Bd. of Educ., Docket No. 95-27-113 (Sept. 25, 1995). Therefore, in keeping with this statutory mandate, the undersigned is required to examine all seven factors in reviewing MCBOE's decision.

In reviewing the area of specialized training, Intervenor must receive preference over Grievant. Unfortunately, Grievant's refusal to submit this data leaves the undersigned in the position of not knowing if Grievant had specialized training or not. Because there is no data in this area for Grievant, and because Intervenor's data is impressive, the check or point in this area must be given to Intervenor.

A review of the above-discussion indicates Grievant receives five points and Intervenor receives six. Accordingly, MCBOE's decision to hire Intervenor is upheld as she is the "most qualified," as defined by W. Va. Code §18A-4-7a. Worrell, supra.

II. Teaching duties

The issue of Grievant's teaching duties is confusing because, while Grievant has always been assigned to GMS as a part-time teacher/part-time librarian, Principal Hatfield was able, until the 1995-96 school year, to accede to Grievant's wishes and utilize her only as a librarian. With the decrease in teachers, and change at the

beginning of the school year from a junior high school to a middle school, Principal Hatfield no longer had the luxury of having a full-time librarian and was forced to assign Grievant teaching duties. She offered Grievant a choice between teaching general music or art to sixth graders, two classes Grievant is certified to teach with her Elementary Education, 1-8 certification. These classes appear to have a light teaching and preparation load. At the beginning of the 1995-96 school year, Principal Hatfield thought Grievant was assigned to GMS as a part-time teacher/part-time librarian and was available to teach any course for which she was certified. Principal Hatfield was not aware of Mr. Conn's letter to Grievant that either clarified or changed Grievant's assignment on transfer. Further, Grievant apparently did not inform Principal Hatfield of the 1990 letter when she was told her assignment for the 1995-96 school year would include teaching either music or art. The fact that Grievant had been able to have her preference and was not required to teach the prior school years has no bearing on her current assignment, as her representative seems to imply. She was hired and on notice that she could be asked to teach social studies at any time the need arose. If Principal Hatfield had been informed of Grievant's status at the first of the year, schedules for the year could have been rearranged, and Grievant would never have been assigned the music duties. Her other assigned teaching duties, such as advising and hall duty, are correct in light of her contract.

Be that as it may, it is clear Grievant is currently misassigned in light of Superintendent Conn's 1990 letter. Given that this issue is resolved in Grievant's favor so late in the school year, there are few remedies which would be appropriate, and still be in the interests of the students at GMS. Grievant may remain teaching music until the end of the school year. Providing there are no RIF's or transfers which affect Grievant's position, she would next year be assigned to teach social studies part-time, as well as assuming other similar duties expected of all other GMSteachers, such as advising, and the usual variety of lunch and hall duties, as long as these duties comprise approximately half of her time. Of course, the parties may have other alternatives to resolve this misassignment, and if all parties agree to a proposed solution, they may adopt a solution outside the option discussed above. Since Grievant

is certified in the area she is teaching, sixth grade general music, contrary to her assertions, it is possible for her to continue in this assignment.

The above-discussion will be supplemented by the following Findings of Fact and Conclusions of Law.

Findings of Fact

1. Grievant is currently assigned as a part-time social studies teacher/part-time librarian at GMS.

2. In filling the position at GGS, Grievant should have been given credit for elementary teaching experience, and thus would have been equal to the successful applicant in this area.

3. In filling the position at GGS, Intervenor should have received credit for her specialized training and thus should have received a point in this area. Grievant, who chose not to submit any information for this area, should not have received a point in specialized training.

4. The rest of the matrix, as reflected in Grievant's Exhibit #1, correctly reflects the applicants' scores. 5. For the 1995-96 school year, Grievant has been improperly assigned to teach music. Although Grievant is certified to teach the class, she was informed by Superintendent Conn by letter dated April 13, 1990, that she was assigned to GMS as a part-time social studies teacher/part-time librarian.

6. There is no finding of bad faith on the part of Principal Hatfield in assigning Grievant to the music duties as she was never informed by either the Superintendent or Grievant that her assignment had been changed and/or clarified.

Conclusions of Law

1. The factor in W. Va. Code §18A-4-7a, "existence of teaching experience", is not a quantitative term. This factor is to assess whether an applicant has the required experience. Richmond v. Raleigh County Bd. of Educ., Docket No. 92-41- 363 (May 27, 1993).

2. All factors in W. Va. Code §18A-4-7a must be given equal weight when, as

here, one or more of the applicants is permanently employed by the board. Worrell v. Mercer County Bd. of Educ., Docket No. 94-27-054 (Feb. 24, 1995).

3. A teacher cannot be required to teach subjects outside of her assigned content area. See Midkiff v. Wayne County Bd. of Educ., Docket No. 90-50-406 (Mar. 13, 1991).

4. MCBOE improperly assigned Grievant to teach sixth grade music without her consent.

Accordingly, this grievance is **GRANTED**, in part, and **DENIED**, in part. The selection of Intervenor for the position at GGS did not violate W. Va. Code §18A-4- 7a. The assignment of Grievant to teach music was incorrect and may be corrected in the way outlined in the above-decision or by another method to which all parties agree.

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.

JANIS I. REYNOLDS

Administrative Law Judge

Dated: April 26, 1996

[Footnote: 1](#)

It is unclear from the record below when these two grievances were consolidated.

[Footnote: 2](#)

As indicated above this assumption was incorrect.