

DANA SMITH,

Grievant,

v. DOCKET NO. 96-22-166

LINCOLN COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Dana Smith, filed this grievance on or about June 5, 1995, as follows:

Improper posting and consideration of qualifications for Treas. Bus. Manager. MBA more relevant for manager/Administrative position. CPA more relevant to accounting position. There are qualified persons in the system w/experience that should have been considered and awarded the job. 18A-4-7a.

Grievant seeks reposting of the position with proper consideration of qualifications, experience and seniority.

Following adverse decisions at the lower levels, Grievant appealed to level four on April 29, 1996. Hearing was held on June 13, 1996, and this case became mature for decision on July 11, 1996, the deadline for the parties' submission of proposed findings of fact and conclusions of law.

The material facts are not in dispute and are set forth in the following findings of fact.

Findings of Fact

1. Grievant is currently employed by Respondent Lincoln County Board of Education as Maintenance Director.
2. Grievant holds a Master's Degree in Business Administration and has been employed by Respondent for 12 years.
3. Respondent posted the position of Business Manager/Treasurer on April 4, 1995, along with

a job description which listed numerous qualifications, including "Master's or Bachelor's Degree in Business Management and Finance, Accounting, or other related fields. CPA preferred."

4. Respondent reposted the above position on April 26, 1995, with a corrected job description which changed the "CPA preferred" qualification to "CPA required."

5. Grievant applied for the Business Manager/Treasurer position following the first posting, and again after the second posting.

6. Ms. Birdie Gandee, who a CPA (Certified Public Accountant), was the successful applicant for the position.

7. Grievant did not receive an interview for the position because he did not meet the minimum qualifications of the posting.

Discussion

Grievant alleges Respondent's requirement of a CPA for the Business Manager/Treasurer was arbitrary and capricious and violated the selection provisions of W. Va. Code § 18A-4-7a. [\(See footnote 1\)](#) Grievant believes that a Master's Degree in Business Administration is at least equivalent to and probably more relevant to the position than a Certified Public Accountant, and challenges Respondent's authority to require that specialty. Grievant alleges the CPA requirement is not reasonably necessary to meet the responsibilities of the position. Grievant also alleges he is more qualified than Ms. Birdie and should have been selected for the position. Because of the ultimate outcome of this case, it is unnecessary to discuss the relative qualifications of the two applicants.

County boards of education have substantial discretion in matters relating to the hiring of school personnel, and they must exercise their discretion only within the best interests of the schools and in a manner which is neither arbitrary nor capricious. Hyre v. Uphsurs County Bd. of Educ., 412 S.E.2d 265 (W. Va. 1991); Dillon v. Bd. of Educ. of the County of Wyoming, 351 S.E.2d 58 (W. Va. 1986). The standard enunciated in Dillon has been expanded to matters involving curricular programs and the qualification and placement of personnel implementing those programs. See Cowen v. Harrison County Bd. of Educ., 465 S.E.2d 648 (W. Va. 1995). W. Va. Code § 18A-4-7a provides that 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, and that any special criteria or skills that are required by the position shall be specifically stated in the job description and

directly related to the performance of the job.

Superintendent Dallas Kelley testified at level four that the board believed, because of the financial difficulties it was facing, that it would be preferable to have a CPA in the Business Manager/Treasurer position. Mr. Kelley testified that the board hoped that someone qualified as a CPA, who also had a background in school finance, would apply for the position, but in any event, the CPA was a necessity. The board believed that hiring a professional with an accounting and auditing background was preferable for this position, as opposed to an applicant with a general business management background. Superintendent Kelley testified that three CPA's applied for the position. Two of those individuals were interviewed and Ms. Gandee was selected for the position. Grievant was not interviewed because he did not meet the minimum qualifications of the posting.

Certification requirements unnecessarily listed in a posted position are unfair and indicative of an arbitrary employment process. Rash v. Wayne County Bd. of Educ., Docket No. 50-87-263-1 (June 7, 1988). The purpose of the job posting requirements of W. Va. Code § 18A-4-7a is undermined when a board of education imposes requirements that are not reasonably necessary to meet the responsibilities of the vacant position. See Robinson v. Wyoming County Bd. of Educ., Docket No. 90-55-137 (June 22, 1990).

Grievant has not presented any evidence other than his assertion that an MBA is equal to or more relevant to the posted position than a CPA to support his allegation that the CPA requirement is not reasonably necessary to meet the responsibilities of the position of Business Manager/Treasurer. County boards of education have a duty to ensure delivery and maintenance of a "thorough and efficient system of free schools" in West Virginia, and the undersigned does not find that Respondent's requirement of a CPA for a Business Manager/Treasurer position, a position which undisputedly involves many areas of school finance, is arbitrary and capricious. See Cowen, supra.

Conclusions of Law

1. County boards of education have substantial discretion in matters relating to the hiring of school personnel, and they must exercise their discretion only within the best interests of the schools and in a manner which is neither arbitrary nor capricious. Hyre v. Upshur County Bd. of Educ., 412 S.E.2d 265 (W. Va. 1991); Dillon v. Bd. of Educ. of the County of Wyoming, 351 S.E.2d 58 (W. Va. 1986).

2. The standard enunciated in Dillon has been expanded to matters involving curricular programs and the qualification and placement of personnel implementing those programs. Cowen v. Harrison County Bd. of Educ., 465 S.E.2d 648 (W. Va. 1995)(wherein the W. Va. Supreme Court of Appeals affirmed that county boards of education have a duty to ensure delivery and maintenance of a "thorough and efficient system of free schools" in West Virginia, citing Pauley v. Bailey, 324 S.E.2d 128 (W. Va. 1984)).

3. W. Va. Code § 18A-4-7a provides that 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, and that any special criteria or skills that are required by the position shall be specifically stated in the job description and directly related to the performance of the job.

4. Certification requirements unnecessarily listed in a posted position are unfair and indicative of an arbitrary employment process. Rash v. Wayne County Bd. of Educ., Docket No. 50-87-263-1 (June 7, 1988). The purpose of the job posting requirements of W. Va. Code § 18A-4-7a is undermined when a board of education imposes requirements that are not reasonably necessary to meet the responsibilities of the vacant position. See Robinson v. Wyoming County Bd. of Educ., Docket No. 90-55-137 (June 22, 1990).

5. Grievant has failed to prove by a preponderance of the evidence that the requirement for a CPA for the position of Business Manager/Treasurer was not reasonably necessary to meet the responsibilities of 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 Lincoln 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.

MARY JO SWARTZ

Administrative Law Judge

Dated: September 4, 1996

[Footnote: 1](#)

Grievant does not allege the posting and reposting of the position was a violation of any rule, law or statute.