CHARLES OXLEY

v. Docket Nos. 96-45-001

96-45-002

96-45-003

SUMMERS COUNTY BOARD OF EDUCATION

95-45-448

DECISION

The grievant, Charles Oxley, is employed by the Summers County Board of Education (Board) as a teacher at Talcott Elementary School. He served as Principal of the Summers County Career Center from the beginning of the 1991-92 school year until the end of the 1992-93 school year, when he lost the post in a reduction-in-force of administrators, and was assigned to his current teaching position. He filed a grievance over that action on May 7, 1993. Between December 1993, and June 1995, the grievant made unsuccessful applications for four other administrative posts; he filed a grievance on each rejection. The claims were denied at the lower levels and reached Level IV between April 1994 and October 1995. At the grievant's request, evidentiary proceedings were postponed pending his and a family member's recovery from health problems. Hearings in the cases were not held until March 29, 1996. Proposed findings of fact and conclusions of law were not received in all cases until March 5, 1997. (See footnote 1) In Oxley v. Summers County Bd. of Educ., Docket No. 95-45-123 (Feb. 13, 1997), the grievant prevailed on his claim that the process by which he was removed from the Career Center principalship during the Board's Spring 1993 reduction-in-force was contrary to portions of W.Va. Code §18A-4-7a which govern such actions. The Career Center's closure at the end of the 1993-94 school year precluded his reinstatement to the position; the Board was directed to compensate him for the loss of pay, and credit him with an additional year of administrative seniority. For purposes of clarity, and, because they are, to some

extent, interrelated, the claims over the grievant's attempts to obtain other administrative posts, as styled above, are consolidated here for decision. (See footnote 2) The claims are identified by the position sought.

Several issues common to most, if not all cases, can be discussed and/or resolved initially. First, it is undisputed that the following portion of W.Va. Code §18A-4-7a controlled the appointments in issue:

> 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. In judging qualifications, consideration shall be given to each of the following: Appropriate certification and/or licensure; amount of experience relevant to the position or, in the case of a classroom teaching position, the amount of teaching experience in the subject area; 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 conductedpursuant to [§18A-2-12]; and other measures or indicators upon which the relative qualifications of the applicant may fairly be judged.

The statute requires county boards of education to make decisions on the selection of administrators on the basis of the "applicant with the highest qualifications." A board must review and consider the "factors" listed, but, unlike appointments to teaching positions, is not required to afford them "equal weight." Generally, the review of an unsuccessful applicant's protest is limited to an inquiry into whether the statutory criteria were accurately assessed for each applicant, and whether favoritism, discrimination, or other improper motive played a role in the selection process. Amick v. Nicholas County Bd. of Educ., Docket No. 95-34-037 (Aug. 23, 1995).

While the review requires a close examination of what credentials were or should have been assessed, it does not permit the administrative law judge to intrude upon subjective assessments of the applicant's qualifications or substitute his or her own assessment for the county board's. Amick. The standard rarely, if ever, requires a finding that one applicant is more qualified than another.

Next, throughout the cases, the grievant either implies or asserts outright that there is a direct connection between the holdings and/or relief granted in Oxley, supra, and his non-selection for the posts in issue; the connection is not clearly explained. He seems to suggest that had he not been displaced from the Career Center at the end of the 1992-93 school year, he would have obtained some preferred status when it closed a year later. The grievant also insinuates that Harry Keaton, the administrator who displaced him and was an applicant for two of the posts in question, was afforded some unfair advantage.The undersigned has examined the evidence in the cases closely and can

find no link, direct or otherwise, to any of the findings or holdings in Oxley. To the extent that the grievant asserts that the additional year of seniority he would have accrued as an administrator at the Career Center would have made him a more viable candidate, the argument is without merit. The pertinent portion of W.Va. Code §18A-4-7a requires consideration of administrative experience but not administrative seniority. It is clear that the grievant understood the distinction when he filed the complaints.

There is also no statutory provision on the reduction-in-force of administrators which would have afforded the grievant favored treatment in his bids for other administrative posts, had he been Principal of the Career Center when it closed. From all indications, the grievant would not have had sufficient administrative seniority to displace any other secondary administrator. The evidence in Oxley established that the decision to permit Mr. Keaton to bump into the Career Center post was based on a misinterpretation of law. There is no evidence in any of the cases which establishes that Mr. Keaton had an unfair advantage over the grievant or was otherwise favored in any manner. The grievant's arguments on these points are not further noted or addressed herein. (See footnote 3)

Finally, it is well worth noting that most, if not all, of the arguments addressed herein were not raised by the grievant until the Level IV hearings, where he was represented by counsel. On all but one grievance, the statement of his claim was merely "[s]eniority and qualifications." The remaining complaint essentially added "[f]avoritism, harassment and discrimination." The appeals to Level IV were the same. Further, neither the grievant nor his union representatives at the lower levels provided clarification of his claims despite that Board counsel consistently asked for it. At times during the grievant's testimony at the various Level II hearings, it appeared that he was purposely evading counsel's attempts to determine the basis for the grievances. The grievant presented very little evidence at the lower levels, none of which even tends to establish any impropriety on the Board's part. It is fair to say that it was not until the Level IV hearings, and perhaps later, that the Board learned what the grievant's legal positions in the cases would be. Further, and more importantly, his pleadings and much of the evidence presented in the cases bears out that when the grievant filed at Level I, he had no reasonable basis for believing that the Board had acted unlawfully in any of the appointments. It can be inferred that he had other motive and/or intended to use the grievance procedure to obtain information which might lead to a viable claim. Arguably, the holding in Hess v. HHR, 432 S.E.2d 27 (W.Va. 1993), to the effect that issues not litigated at the lower levels

are not cognizable at Level IV, is dispositive of all claims advanced herein.

Assistant Principal of Summers County Middle School (96-45-001)

Background

The minimum requirements listed in the January 24, 1994 vacancy announcement for this position were as follows:

1. The Assistant Principal shall possess the knowledge and the ability to work effectively and cooperatively with the county administrative staff, the school staff, students, and parents.

2. The assistant principal shall assist the instructional leader in the school and shall work to implement the goals and objectives of the school and the Summers County Board of Education.

3. The assistant principal shall have a record of achievement in organizing and supervising school programs including pupil and professional activities.

4. The assistant principal shall hold a Professional Certificate for teaching with appropriate endorsements.

5. The assistant principal shall have completed two years of successful experience as a teacher or administrator in grades 6-8; shall hold a Masters Degree in Educational Administration or a related educational field with administrative experience; a Principal's Certificate in grades k-8, 1-9, 5-12 or 7-12 and a Middle Childhood Endorsement or a graduate level class in Middle School Administration.

6. In addition the assistant principal shall meet all requirements for the principalship according to the North Central Association of Colleges and Secondary Schools.

Three persons, including the grievant, made timely applications and met these standards. (See footnote 4) A committee comprised of Superintendent of Schools Charles Rhodes, SummersCounty Middle School (SCMS) Principal Sarah Brown, and Curriculum and Attendance Director James Irwin conducted interviews of the grievant, Vickie Hinerman and Douglas Harvey. The applicants were numerically ranked during the interviews according to their responses to the same six open-ended

questions relevant to the management of a middle school. It is undisputed that overall, the committee found Ms. Hinerman's responses more to its liking than the grievant's responses. Using a 1 and 0 scoring system, the committee awarded her 5 points and the grievant 3; it appears that Mr. Harvey's 0 scores on all interview questions essentially eliminated him from further consideration.

The committee also comparatively assessed the applicants' degree levels, licensure, total number of college hours in education administration, evaluations, administrative experience and the extent of their “relevant specialized training.”, (See footnote 5) Using the same or similar 1 and 0 approach, the committee ranked the grievant lower than Ms. Hinerman in the last two categories. Ms. Hinerman was awarded 5 out of the 6 points possible in this assessment and the grievant received 4. These scores were added to the number of points awarded on their interview responses to give Ms. Hinerman and the grievant total scores of 10 and 7, respectively. It appears that Superintendent Rhodes did not conduct any independent assessment of the applicants' credentials, and that the committee's numerical rankings were determinative. The record reflects that since the Board employs a relatively low number of administrators, and because teachers seeking first time appointment to an administrative post typically apply a number of times before obtaining one, he is usually familiar with the credentials and even work records of most of the in-county applicants for such positions. On February 14, 1994, the Board accepted the Superintendent's recommendation that Ms. Hinerman be awarded the post. Several months prior to this appointment, Ms. Hinerman had been unsuccessful in her bid for the SCMS Principal post held by Ms. Brown.

At the time he made application for the position, the grievant's only administrative experience was his two years in the Career Center principalship. He had been employed for approximately twenty years as a classroom teacher, five of which were in facilities which were not then designated middle schools but which served students in grade levels 6, 7, and 8. Ms. Hinerman was then credited with fourteen years of administrative experience as a “teaching principal” of Pipestem Elementary School (PES) which served grades Kindergarten through 5, and, for a period, grades Kindergarten through 6.

The grievant held Masters Degrees in vocational and secondary education administration, and had completed additional graduate classes, several of which were related to middle school administration. Ms. Hinerman held a Masters' degree in elementary education administration; it appears that she had completed few, if any, additional hours. The committee's score sheet reflects that the grievant was awarded a 1 in the “Amount of Course Work in Administration” category, and Ms. Hinerman was

assigned a 0. There is also no dispute that the grievant and Ms. Hinerman had both attended numerous workshops, seminars and training sessions on education administration, and that several were specifically focused on middle school management. The record is not clear on how this "specialized training" aspect of their credentials was assessed by the committee. The scoring sheet reflects that, in this area, the grievant received 0 and Ms. Hinerman was awarded 1.

The grievant was fully certified as an administrator for vocational, secondary and middle schools. He met the "Middle Childhood Endorsement" certification requirement in the posting. Ms. Hinerman also held a principal's certificate, presumably for elementary education, and met the alternative "graduate level class in Middle School Administration" requirement in the posting. The committee awarded each a 1 score in the area, "Appropriate Licensure and Certification." All candidates received a 1 in the evaluations category.

Argument

The grievant asserts that Ms. Hinerman was "coached" prior to her interview, and that the committee slanted its scoring to favor her. He also claims that Superintendent Rhodes advised her prior to the interviews that she would receive the post. The grievant takes exception with the scoring in both the "specialized training" and "degree level" assessment areas, despite that he and Ms. Hinerman both received 1 scores in the latter. The Board disputes that Ms. Hinerman was assisted in the interviews or promised the post prior to the conclusion of the selection process; it contends that the statutory criteria were accurately assessed.

Findings and Conclusions

Former SCMS teacher Roy Cooper recounted at Level IV, that he was a party to a conversation, apparently in early or mid-March 1994, with Ms. Hinerman in which she angrily made statements to the effect that Superintendent Rhodes had told her how to "present herself" prior to her interview for the SCMS Principal post, which was ultimately awarded to Ms. Brown. Mr. Cooper recalled that Ms. Hinerman, through her mannerisms and/or words, indicated that she felt betrayed by the Superintendent; he did not recollect that Ms. Hinerman made any mention of the SCMS Assistant Principal position.

Lila Oxley, the grievant's wife, testified that Ms. Hinerman told her in early January 1994, that she was "done dirty" on the SCMS Principal post. Ms. Oxley was certain that on January 15, 1994, Ms.

Hinerman also advised her that she had been promised the SCMS Assistant Principal position. Ms. Hinerman and Superintendent Rhodes categorically denied Ms. Oxley's and Mr. Cooper's assertions. Superintendent Rhodes recalled that his cousin, one of Ms. Hinerman's best friends, had approached him, presumably regarding her application for the SCMS Assistant Principal position, and that he advised his relative that Ms. Hinerman should answer the interview questions to the best of her ability. Ms. Hinerman recalled that Ms. Oxley had indicated to her that she should retain her PES post and not make application for the SCMS Assistant Principal position. According to Ms. Hinerman, she did not fully understand Ms. Oxley's explanation that in a reduction-in-force of administrators, she would then be eligible to displace or “bump” Ms. Brown from the SCMS Principal position.

Obviously, Mr. Cooper's revelations regarding Ms. Hinerman's comments on the Principal post, if accepted, provide little support for the grievant's claim that Superintendent Rhodes assisted her in her application for the Assistant Principal position. While all four witnesses seemed forthright in their testimony, Ms. Hinerman and Superintendent Rhodes appeared more credible, if only slightly so. It is accepted that Superintendent Rhodes did not “coach” Ms. Hinerman or promise her the position prior to the committee's assessment.

The grievant's arguments regarding the degree level and specialized training criteria require only brief discussion. The evidence does not support his contentions on either criteria. Superintendent Rhodes credibly represented that he could not recall the process by which the committee assessed the extent of the two candidates' specialized training. The applicants' accounts of various education-related seminars and workshops they have attended, as set forth in their resumes, is the only evidence of record on the issue. Acomparative assessment does not reveal any wide disparity in the numbers attended; it is not possible to tell whether one training session was more advanced than another. It would not be unreasonable for the committee to conclude that, in this area, the applicants were evenly matched or that either one was slightly ahead of the other. There was no error shown in the committee's decision to award the point in that category to Ms. Hinerman. The grievant's claim that he should have outscored Ms. Hinerman in the degree level criterion is apparently predicated on his additional graduate hours. Since he was the high scorer on the “Amount of Course Work in Administration,” and the record otherwise reflects that the committee was aware of and assessed his additional education, the grievant, in effect, seeks to have his additional hours

counted twice. He cites no authority which required such scoring. It is clear that the committee accurately assessed and considered his and Ms. Hinerman's credentials in the degree level and course work assessment areas.

Finally, because the outcome of the selection process was so heavily dependent upon numbers, there are several mathematics-related problems in the committee's scoring system worth noting. While the committee took a one-point per question scoring approach to the interview responses, i.e., the applicant providing the best answer received a 1, and the remaining two applicants received no points, the final score sheet reflects that on two questions, both the grievant and Ms. Hinerman received points. It appears that any deviation from an all or nothing system is inherently inconsistent. Here, the interview scores were distorted to the extent that points gained in the ties on two questions were equated with points awarded on the remaining four questions.The distortion was of greater significance because of the committee's decision to give the interview scores greater significance in the assessment. By adding the interview score totals with the totals awarded on the remaining seven criteria to reach an overall score, the committee equated a point assigned for a good or the best response to an interview question with a point for having the greatest administrative experience.

It does not appear that deviations from the 1 and 0 system in other areas had any noticeable effect. The degree level, appropriate licensure, and evaluations criteria, where the applicants were properly determined to be equal, were not areas in which a relative assessment of the applicants was required.

The inconsistencies did not, however, distort the scoring so significantly that the grievant is entitled to relief. It is relatively clear from the committee's calculations that, as expected, the contest between the two candidates was ultimately decided in the key areas of administrative experience, education, and interviews. As noted, committee members consistently rated Ms. Hinerman's interview responses better than or equal to the grievant's responses. Adjustments in the grievant's favor on the two questions on which they tied would not give him a higher total score than Ms. Hinerman. It is undisputed that the grievant was properly credited with having the greatest “Amount of Course Work in Administration,” and Ms. Hinerman was properly credited with having the greatest “Amount of Experience Relevant to Principal,” Since the grievant made no showing that the assessment was substantially flawed in these areas, he has failed to show a violation of W.Va. Code §18A-4-7a.Summarized, a preponderance of the evidence establishes that the grievant's extensive education

placed him in close competition for the post, but that the committee reasonably found that Ms. Hinerman's considerable experience as a teaching principal at PES and her interview responses, made her the more qualified candidate. Inconsistencies in the scoring skewed the committee's calculations somewhat, but the scores assigned to the applicants accurately reflected their relative qualifications for the position.

Accordingly, the grievance is **DENIED**.

Assistant Principal of Summers County High School (96-45-002)

Background

This position was posted December 22, 1993, with the following minimum requirements.

1. The Assistant Principal shall possess the knowledge and ability to work effectively and cooperatively with the county administrative staff, the school staff, students and parents.
2. He/she shall be the instructional leader as well as the administrative leader in the school and shall work to implement the goals and objectives of the school and the Summers County Board of Education.
3. He/she shall have a record of achievement in organizing and supervising school programs including pupil and professional activities.
4. He/she shall hold a Professional Certificate for teaching with appropriate endorsements.
5. He/she shall have completed two years of successful experience as a teacher or administrator in grades 7-12; and a vocational administrator's certificate in grades 5-Adult.
6. In addition he/she shall meet the requirements for the principalship according to the North Central Association of Colleges and Secondary Schools.

Superintendent Rhodes determined that the grievant and applicants Mike Allen, Steve Jones, Garnette Crowder, Harry Keaton, and Steve Pack met the above requirements. The interview committee was comprised of Superintendent Rhodes, Summers County High School (SCHS) Principal James Withrow, SCHS teachers Joan Coleman and Patricia Mick, and Dan Hartwell, a parent whose children were students at the school. Using the same 1 and 0 system, the committee interviewed the applicants and assigned them scores in the six objective criteria and their responses

to seven interview questions. (See footnote 6) The scoring was as follows.

	Allen	Jones	Crowder	Keaton	Grievant	Pack
1. Appropriate certification and or license	1	1	1	1	1	1
2. Amount of experience relevant to Assistant Principal	1	0	0	0	0	0
3. Amount of Course Work School administration Secondary Level	0	0	0	0	1	0
4. Degree Level	1	1	1	1	1	1
5. Relevant specialized training	0	0	1	0	0	0
6. Satisfactory evaluations (last two years)	1	1	1	1	1	1
7. Interview Questions:						
Question 1	0	1	0	0	0	

0

Question 2 0 0 0 0 0

1

Question 3 0 0 0 0 0

1

Question 4 0 0 0 0 0

1

Question 5 0 0 0 0 0

1

Question 6 0 0 0 0 0

1

Question 7 0 1 0 0 0

0

TOTALS 4 5 4 3 4

8

As can be seen from the calculations, this committee also added the interview question scores with the scores on the remaining criteria to reach an overall ranking, thereby affording considerable weight to the interview segment of the appraisal. Superintendent Rhodes considered the committee's numerical rankings as dispositive, and did not conduct a further assessment. On February 14, 1994, the Board accepted his recommendation that Mr. Pack be awarded the post.

It is undisputed that all candidates had Masters Degrees in Education Administration, had satisfactory evaluations over the preceding two school years, and held either permanent or “provisional” vocational administrative certification. It is also undisputed that at the time of the posting, Mr. Pack had not acquired any “official” administrative experience, but, for two or three years during his tenure as a teacher at SCHS, was a designated “student advisor,” a position which

required that he devote at least one-half of his time to duties which could properly be characterized as those of an assistant principal. He obtained the post through a competitive selection process, but was not paid an administrator's salary.

Argument

The grievant asserts that "[t]he successful applicant was not qualified for the position by the plain terms of the position advertisement." He appears to also assert that sinceperformance in an interview is not specifically listed as a criterion in W.Va. Code §18A-4- 7a, the Board was prohibited from relying on the applicants' interview scores. The grievant at least implies that the all or nothing effect of the 1 and 0 scoring system for the seven objective factors was improper, but does not explain why.

The Board responds that Mr. Pack held the certifications listed in the posting. The Board asserts that the statute permits assessment of "other measures or indicators upon which the relative qualifications of the applicants may fairly be judged," and that the interview responses fell within this criterion. The Board claims that the 1 and 0 scoring system produced an accurate numerical comparison of the applicants' credentials.

Findings and Conclusions

The grievant's claims are specious. He does not explain and the undersigned can discern no reason why interview responses are not valid, "other" indicators of qualifications. Prior Level IV decisions have consistently held that they are. See, e.g., Elkins v. Boone County Bd. of Educ., Docket No. 95-03-415 (Dec. 28, 1995). Since the grievant conceded, through his Level IV testimony, that the interview questions were related to the duties of the post in issue, and that his interview was otherwise a fair one, he has shown no impropriety in what was a very important, and perhaps determinative, facet of the selection process.

The grievant's assertion that Mr. Pack did not meet the requirements of the posting is apparently based on the "provisional" nature of his vocational administrative certificate. The uncontroverted evidence of record, however, is that, under regulations of the West Virginia Department of Education (DOE), any person who has completed the education necessary for an administrative certificate but has not yet been placed in an administrativepost, is issued the certificate "provisionally." It appears that the employee must serve in an administrative post for two to three years before DOE will convert the license to "permanent" status. There is no evidence whatsoever that there is any qualitative difference in the two types of certificates. It is accepted that Mr. Pack fulfilled the posting's license

requirement.

The 1 and 0 scoring system is restrictive to the extent that it does not allow the assessor to assign points in such a way to reflect slight or wide disparities in the applicants' credentials in areas where a relative ranking is typically needed. Evidently, this is the basis for the grievant's claim that the system produced inaccurate results. He notes that he “was given no points for the amount of experience relevant to principal,” and contends that this score “was a clear subjective denial of the fact that he had [two years service as Principal of the Summers County Career Center].”

The grievant's argument obviously ignores that in the committee's ranking system, scores are not graduated, and that 1 and 0 were not intended to represent the number of years an applicant had served as an administrator. A 1 score in the experience, specialized training and course work categories was merely an indication that a particular candidate's credentials in those areas placed him above the remaining candidates. The grievant does not dispute that Mr. Allen had the most administrative experience of all applicants.

Since the grievant does not take exception with other portions of the selection process, and a preponderance of the evidence establishes that the scores assigned by the committee accurately reflected the applicants' credentials, he has failed to show that the Board did not properly consider the factors set forth in W.Va. Code §18A-4-7a. Summarized, the record demonstrates that the considerable weight afforded the interviews,and Mr. Pack's ability to consistently provide the best responses, enabled him to overcome the higher scores obtained by more experienced applicants in the remaining criteria.

Accordingly, the grievance is **DENIED**.

Summers County High School Special Populations Coordinator (96-45-003)

Background

This position was posted March 25, 1994, with the following minimum requirements.

1. Certification in one of the Special Education Areas or as a School Principal K-12.

2. Administrative experience K-12.

3. Experience with the Special Education process.

4. Successful experience in developing and implementing support plans for special needs

students in vocational education.

5. Successful experience working with collaborative plans that provide assistance for vocational students in the delivery of special education, rehabilitation services, and business/industry work experiences.

6. Good communication skills.

7. Grant writing experience.

8. Experience working with diverse groups of individuals.

It is somewhat difficult to categorize the position. It is clear from the job description attached to the posting that the incumbent would work with students who have been identified as requiring special education and are also enrolled in a secondary vocational program. The post seems “principal-like” only to the extent that it does not involve student instruction; the specifications noticeably do not list the types of duties normally associatedwith an administrative post. Nevertheless, it appears that, to a large extent, the candidates were assessed as if the position was a principal or assistant principal position.

Out of the seven original applicants for the job, the grievant, Karen Eagle, William Fox, Harry Keaton, and Stephen Jones were granted interviews. The record does not reflect who, besides Superintendent Rhodes, served on the assessment committee. The final scoring was as follows:

	Eagle	Fox	Keaton	Jones	Oxley
1. Appropriate Licensure and Certification	1	1	1	1	1
2. Amount of Experience					
Relevant to Principal	0	0	1	0	0
3. Amount of Course Work Relevant to Position	0	0	0	0	1
4. Degree Level	1	1	1	1	1

5. Relevant Specialized Training	0	0	1	0	1
6. Satisfactory Evaluations (last 2 years)		1	1	1	1	1
7. Any other Measures of Indicators that Provide Evidence of Applicants Qualifications for this job					
Interview Questions:					
Question 1	0	0	1	0	0
Question 2	1	0	1	0	0
Question 3	1	1	1	1	1
Question 4	1	0	1	1	1
Question 5	0	0	1	0	0
TOTALS	**7**	**5**	**11**	**6**	**8**

Again, the scores were determinative of the outcome. On April 14, 1994, the Board accepted Superintendent Rhodes' recommendation that Mr. Keaton be awarded the post. At the time of the appointment, Mr. Keaton was on a transfer list as a result of the closure of the Summers County Career Center, where he served as principal for one year. Like the otherapplicants, he held administrative certification for grades K through 12, and a Masters Degree in Education Administration. He had accrued approximately eighteen years of administrative experience with the Board in a variety of positions, including Supervisor of Elementary Education, Federal Programs Director, and Principal of Bellepoint and Sandstone Elementary Schools. Mr. Keaton also had three years' teaching experience on the elementary and/or middle school level.

There does not seem to be any dispute that both the grievant and Mr. Keaton had experience in the “Special Education process,” had developed grant proposals, and had worked, either on a teaching or administrative level, with programs for special education students enrolled in vocational programs. As discussed, it was Mr. Keaton who displaced or “bumped” the grievant from the Career Center post in the Board's 1993 reduction-in-force of administrators.

Argument

The grievant repeats his claims that his 0 score in the administrative experience was inaccurate and that it was improper to consider the applicants' performance in the interviews. The Board denies any impropriety in the selection process and asserts that Mr. Keaton was awarded the post solely on the basis of the committee's assessment of the applicants' relative qualifications.

Findings and Conclusions

For the reasons discussed in the previous decision, the undersigned summarily finds that the grievant's claims regarding his score in the administrative experience criterion and the committee's reliance on the interviews are without merit. There is no evidence of record which even tends to support that the scoring on any criterion was improperly slanted or that the committee was predisposed to favor Mr. Keaton in any manner. Aside from the distortions caused by the assignment of more than one point per question in the interview portion of the assessment and in the specialized training criterion, there is also no evidence that any of the scores were inaccurate. Adjustments in the figures to correct any inconsistencies caused by “ties” in these two areas would not place him above Mr. Keaton in the final rankings. (See footnote 7)

The grievant failed to establish that the selection process for the Special Populations Coordinator position was flawed in any significant aspect. A preponderance of the evidence demonstrates rather clearly that the committee accurately and fairly assessed the criteria set forth in W.Va. Code §18A-4-7a, and reasonably determined that Mr. Keaton was the most qualified applicant.

Accordingly, the grievance is **DENIED**.

Assistant Principal of Summers County High School (96-45-448)

Background

In Spring 1995, for reasons which are not clear, the Board lost all or part of its “Carl Perkins Fund” support for Mr. Keaton's Special Populations Coordinator position at SCHS. (See footnote 8) In keeping with a resolution or “commitment” to maintain three administrators at the school, the Board subsequently decided to create a second SCHS assistant principalship. Mr. Keaton was on the transfer list when it was posted on June 7, 1995. There is no dispute that the grievant, Garnette Crowder and Mr. Keaton made applications and met the minimum qualifications listed in the posting. It is also undisputed that there was no assessment committee or numerical scoring. Believing himself

thoroughly familiar with the applicants' qualifications, Superintendent Rhodes did not conduct interviews; it appears that he did not hesitate to conclude that Mr. Keaton was the most qualified candidate. In June or early July, the Board accepted the Superintendent's recommendation that he be awarded the post. **Argument**

Here, the grievant simply maintains that he was more qualified than Mr. Keaton. He does not take exception with Superintendent Rhodes' decision not to interview. The only specific claim he advances on the assessment of the applicants' credentials is that the Superintendent, apparently intentionally, ignored that he had served one more year as aprincipal of a secondary school than Mr. Keaton. The Board responds that the grievant failed to produce any evidence at any level which would support that Mr. Keaton's appointment did not fully comport with the requirements of W.Va. Code §18A-4-7a.

Findings and Conclusions

There is not the least evidence in the case which suggests that Superintendent Rhodes was not thoroughly familiar with the applicants' credentials and work records, or that he failed to accurately assess any aspect of their qualifications. As discussed, it is not the aim of the review in the case to second-guess the varying weight he may have assigned to different credentials in his determinations. Amick, supra. It was certainly not unreasonable for the Superintendent to conclude that Mr. Keaton was the more qualified candidate for the same reasons he was determined to be the most qualified applicant for the Special Populations Coordinator job.

Obviously, the grievant's one additional year of secondary administrative experience was not a reasonable basis for finding him the most qualified candidate. Even if it were found that Superintendent Rhodes overlooked or misjudged this aspect of his and Mr. Keaton's qualifications, it would not follow that he erred in finding that, overall, Mr. Keaton had considerably more relevant administrative experience. There was no violation of Code §18A-4-7a shown.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or the Circuit Court of Summers 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 andState 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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JERRY A. WRIGHT

ADMINISTRATIVE LAW JUDGE

Dated: April 30, 1997

Footnote: 1

The Board met the stipulated deadline of April 30, 1996, and objected strenuously to the grievant's February 4, 1997 submission. Counsel voiced even stronger objection when the grievant submitted revised proposals on or about March 7, 1997. Without addressing in detail the merits of the objections, the revisions, and the reasons offered for the delay in filing, the undersigned finds that the Board's protests were well-founded. As can be seen from the outcome in the cases, however, if the grievant raised claims in his written argument which could be construed as additional to those made in counsel's oral arguments at the Level IV hearing, they were without merit.

Footnote: 2

The parties stipulated at the onset of the Level IV hearings, that evidence presented in the cases, particularly the testimony and documentation regarding the credentials of the applicants for the various posts in issue, should be considered cumulative, i.e., if relevant, evidence presented in one case should be considered in other cases.

Footnote: 3

It is also noted that the grievant appears to make a similar "cause and effect" argument based on Oxley v. Bd. of Educ. of County of Summers, 438 S.E.2d 602 (W.Va. 1993), a case in which the West Virginia Supreme Court of Appeals determined that he should have been successful in a 1989 bid for the Career Center principalship. The grievant had already obtained the post through a bidding process when the decision was issued. The grievant asserts that he gained another year of "administrative seniority" in the decision, and implies that the committee improperly ignored that seniority. He also suggests that the committee's failure to consider the Court's holdings had "other" consequences relevant to the hiring decisions. The undersigned summarily finds that there is no connection whatsoever between the Court's ruling and the appointments to any of the posts in issue herein.

Footnote: 4

The "North Central Association standards" requirement was listed in the announcements for all positions discussed herein. The parties did not address the issue in the presentation of evidence or their legal arguments. It is assumed that all applicants met the standards. There is also no contention on the Board's part that the grievant or other candidate did not meet the first three, more subjective, requirements.

Footnote: 5

The Board essentially "split" the coursework and degree level criterion into two assessment areas, i.e., degree level and amount of coursework, and "academic achievement" was evaluated in the course work criteria. It appears that the committee did not have grade transcripts for all applicants for all course work, and that grades did not play a large role in the overall assessments. The grievant does not take exception to this approach, but does make arguments regarding the scoring on particular criteria.

Footnote: 6

There were originally ten questions. For various reasons, the committee eliminated three questions prior to the interviews. The chart above reconfigures the committee's score sheet somewhat, i.e., questions designated on the sheet as 4 and 6 are labeled 5 and 7.

Footnote: 7

The undersigned's calculations were as follows. If, consistent with an all or nothing approach, only one point per question was to be awarded, an applicant should have received a .20 score on those questions where the committee considered all candidates tied. A score of .25 would be assigned to each of the four applicants whose responses were deemed equal on one question, and each of the two candidates who tied on one question would receive a .5 score. With the same adjustments in the specialized training criteria scores, Mr. Keaton and the grievant would achieve overall scores of 6.65 and 5.15, respectively.

Footnote: 8

The source of the funding is not further identified or explained in the record. It is assumed that the Carl Perkins Fund is a private or public foundation which provides monies for secondary vocational programs.