DELMER BLANKENSHIP,

Grievant,

v.

DOCKET NO. 96-29-365

MINGO COUNTY BOARD OF EDUCATION,

Respondent,

and

MARICA WHITE,

Intervenor.

D E C I S I O N

Grievant, Delmer Blankenship, filed this grievance on July 30, 1996, protesting his non-selection as Principal of Gilbert High School. The successful applicant, Marica White, intervened at level two pursuant to W. Va. Code § 18-29-4(u). Following an adverse decision at level two, Grievant appealed to level four on August 22, 1996. The grievance was submitted on the record and, following a lengthy delay in the transcription of the level two hearing, became mature for decision on March 31, 1997. (See footnote 1)

SUMMARY OF THE EVIDENCE

Grievant's Exhibits

1. Certificate of Completion, ABE Professional Development Module, June 30, 1994.
2. Certificate of Participation, RESA II Peer Mediation Conference, September 26, 1995.

3.

West Virginia Principals' Leadership Academy, Summer 1996.

4.

Academic Achievement Awards, 1990-1996.

5.

Grievant's Personnel Records and Educational Transcripts

Respondent's Exhibits

1. Superintendent Everett Conn's July 25, 1996, Seven Points Hiring Matrix
2.

Jim Mays' July 25, 1996, Seven Points Hiring Matrix

3. Steven Cantees' July 25, 1996, Seven Points Hiring Matrix

Intervenor's Exhibits

1. Intervenor's Curriculum Vitae

Testimony

Grievant testified in his own behalf. The Board offered the testimony of Marica White, Everett Conn, Jim Mays, and Steven Cantees.

ISSUE

The issue is whether the Mingo County Board of Education ("Board") violated W. Va. Code § 18A-4-7a when it selected Intervenor Marica White over Grievant as the Principal of Gilbert High School. Grievant alleges he is the most qualified applicant for the position, and the Board violated W. Va. Code § 18A-4-7a in selecting Intervenor. Based upon the following findings of fact and discussion, I do not find the Board erred in selecting Intervenor to be Principal at Gilbert High School.

FINDINGS OF FACT

I find, by a preponderance of the evidence, the following:

1. Grievant is currently employed as a classroom teacher for the Board at Cline Grade School, and has been employed by the Board for 20 years.

2. Intervenor is currently employed as Principal of Gilbert High School. She has been employed by the Board for approximately 5-1/2 years.

3. In or about July 1996, the Board posted the vacant position of Principal, Gilbert High School.

4. Grievant and Intervenor, as well as others, applied for the position.

5. A selection committee consisting of Superintendent Everett Conn, Assistant Superintendent Jim Mays, and then-Principal of Gilbert High School, Steve Cantees, met to review the applications.

6. The selection committee had each applicant's personnel file available to them to review. The members of the committee have known both Grievant and Intervenor professionally and personally for over 20 years. No interviews were given.

7. The first set of factors in W. Va. Code § 18A-4-7a was utilized in the selection process. The committee members gave one point to the candidate they considered the most qualified in each factor.

8. Grievant has a B.A. in Elementary Education, and a Master's plus 45 in Administration. He has a 3.33 grade point average.

9. Grievant has 17 years' experience with the Board as an elementary school principal. 10. Grievant took various classes in Administration which would apply to either an elementary or secondary school.

11. Grievant has attended various conferences in leadership training, professional development, and WVEIS computer training.

12. Grievant has taught Adult Basic Education classes, with students ranging from ages 16 through 60.

13. Intervenor has a B.A. in Business Education; a Master's in Comprehensive Business Grades 7-12; a Master's in Education Administration, elementary and secondary; and a PhD. in Vocational and Business Education K-12. She has a 3.85 grade point average.

14. Intervenor has 3-1/2 years' experience with the Board as an elementary school principal.

15. Intervenor taught at Southern West Virginia Community College; taught undergraduate senior level courses at Marshall University; taught business courses at the University of Kentucky; and did her doctoral research at the University of Kentucky in data processing.

16. Intervenor was self-employed as a public accountant in Gilbert, West Virginia, for 15 years. 17. Each member of the selection committee individually filled out a "Seven Points Hiring - Other Than Classroom Teachers 18A-4-7a" matrix for the top three applicants, Grievant, Intervenor and Marcella Charles. (See footnote 2)

18. The Seven Points Hiring matrix lists the seven criteria set forth in W. Va. Code § 18A-4-7a for the selection of professional personnel other than classroom teachers.

19. Upon completion of the individual matrices, the committee combined the results of the scoring to determine the successful applicant.

20. Based upon the total scoring, Intervenor was selected as Principal of Gilbert High School.

DISCUSSION

County boards of education have substantial discretion in matters relating to the hiring of school personnel and they must exercise that discretion only in 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). When hiring professional personnel, boards must exercise their discretionary authority by reviewing the candidates' qualifications under the first set of factors contained in W. Va. Code § 18A-4-7a (1992). Boards are free to determine the weight which is to be applied to each of the first set of factors listed in Section 7a in assessing candidates' qualifications. Suan v. Lewis County Bd. of Educ., Docket No. 91-21-074 (Aug. 28, 1991); See, Blair v. Lincoln County Bd. ofEduc., Docket No. 92-22-009 (Apr. 10, 1992). Seniority is not a factor in the selection. Jones v. Monroe County Bd. of Educ., 441 S.E.2d 367 (W. Va. 1994).

W. Va. Code § 18A-4-7a provides, in pertinent part:

> 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 . . ., 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 conducted pursuant to . . . [§ 18A-2-12], . . . and other measures or indicators upon which the relative qualifications of the applicant may fairly be judged.

The selection committee gave one point per factor to the candidate they considered most qualified in each category, and then totaled the scores. Superintendent Conn awarded Intervenor 5 points and Grievant received 2. Assistant Superintendent Mays awarded Intervenor 6 points and Grievant received 2. Mr. Cantees awarded Intervenor 7 points and Grievant received 3.

Grievant and Intervenor received points from each committee member in “appropriate certification and/or licensure”, and “past performance evaluations”. Mr. Cantees gave Grievant one point in “amount of experience relevant to the position”. Mr. Cantees credited experience gained as an elementary principal in that category. The other two gentlemen did not give credit to either Grievant or Intervenor for their elementary principal experience.

Intervenor received points from each committee member in the areas of “degree level”, “academic achievement”, and “other measures or indicators”. Mr. Mays and Mr.Cantees gave her a point in “relevant specialized training”, but Superintendent Conn did not.

While, objectively, no one factor was given more weight than any other, each of the committee members knew the applicants both professionally and personally for over 20 years. They took into account Intervenor's experience in business and finance, which they believed was relevant to the job of principal of a high school. They were impressed by her knowledge of computer systems, especially in light of the fact that Gilbert High School was targeted to participate in a pilot program introducing Internet and computer imaging capabilities into schools in southern West Virginia. In addition, the members felt she had significant experience teaching college age students, which would be more related to teaching high school students than elementary experience. Mr. Conn and Mr. Mays noted on their matrix sheets that Intervenor was very active in church and community activities, but both gentlemen testified that this factor did not enter into their deliberations and was not relevant to the criteria set forth in the Code.

The committee members were generally aware that Grievant taught Adult Basic Education courses, but did not consider this experience to outweigh Intervenor's in relation to teaching adult students. The members commended Grievant on his success in his particular elementary schools, especially relating to test scores, but also did not feel this outweighed the many benefits Intervenor had to offer.

Grievant alleges the selection process was flawed because the committee members did not

conduct interviews or otherwise solicit information from the applicants regarding their qualifications. There is nothing in the statute which requires a selection committeeto conduct interviews of candidates. While Grievant asserts that the committee was not aware of many of his accomplishments because they did not interview him, this does not render the selection process flawed. The committee had the personnel files before them, as well as their considerable personal knowledge of the candidates. Grievant, at some point, knew that no interviews were going to be given. If he wished the committee to have more information about his accomplishments than was reflected in his personnel file, it was his responsibility to provide that information. While job screeners have certain facilitative responsibilities, applicants have a like duty to inform them of any experience or credentials believed pertinent to the position. See Stover v. Kanawha County Bd. of Educ., Docket No. 89-20-75 (June 26, 1989). That a grievant did not do so while given full opportunity cannot be considered a flaw in the selection process on the Board's part. Green v. Mason County Bd. of Educ., Docket No. 91-26-176 (July 26, 1991).

In any event, it is clear from the evidence that the committee was fully aware of Grievant's accomplishments at his elementary schools and somewhat aware of his Adult Basic Education teaching experience. They testified they would not have credited his attendance at certain mandatory leadership conferences, and the RESA computer training class, as “relevant specialized training”, because all administrators have to complete those courses, and therefore, they are not “specialized”. The evidence demonstrates that even if the members had credited Grievant with relevant specialized training, that alone would not have tipped the scale in his favor.

Grievant also alleges that the committee members failed to give him any credit for his years of seniority with the Board. However, the statute is clear and unambiguous thatseniority plays no part in the selection of professional personnel other than classroom teachers.

Although the arbitrary and capricious standard of review of administrative agency decisions requires a searching and careful inquiry into the facts, the ultimate scope of review is narrow, and the undersigned may not substitute her judgment for that of the Board. 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, an agency's action is determined to be arbitrary

and capricious if the agency 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). This certainly is not the case here. The Board determined that Intervenor was overwhelmingly the most qualified for the position of Principal of Gilbert High School, and Grievant has failed to prove that her selection was arbitrary and capricious in light of the probative evidence.

CONCLUSIONS OF LAW

1. In order to prevail, Grievant must establish the truth of his allegations by a preponderance of the evidence. Black v. Cabell County Bd. of Educ., Docket No. 06-88- 238 (Jan. 31, 1989). 2. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. Nevertheless, this discretion must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious. State ex. rel. Melchiori v. Board of Educ., 425 S.E.2d 251 (W. Va. 1992); Dillon v. Bd. of Educ., 351 S.E.2d 58 (W. Va. 1986).

3. Grievant has failed to establish a violation of W. Va. Code § 18A-4-7a or prove by a preponderance of the evidence that the Board, or any agent thereof, abused its discretion by acting arbitrarily or capriciously in the selection process utilized to fill the position in question.

Accordingly, this grievance is **DENIED**.

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.

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MARY JO SWARTZ

Administrative Law Judge

Dated: June 18, 1997

Footnote: 1

The record consists of the level two transcript and exhibits, and the level two decision rendered on August 14, 1996, by the Superintendent's designee, Johnny W. Fullen.

Footnote: 2

Ms. Charles' qualifications will not be addressed in this discussion as Grievant is only contesting his non-selection vis-a-vis Intervenor.