HARRY C. ALT,

Grievant,

v. DOCKET NO. 97-28-015

MINERAL COUNTY BOARD OF EDUCATION,

Respondent,

DECISION

Harry C. Alt, Grievant, filed this grievance on November 18, 1996, against his employer, the Mineral County Board of Education (Respondent). He alleges Respondent violated W. Va. Code §18A-4-7a when Mr. Joseph Riley, the successful applicant, was selected for the Assistant Principal position at Frankfort High School (FHS). As relief, Grievant wants to be placed in that position, and to be awarded appropriate back-pay, seniority, and benefits.

Grievant was denied relief at the lower levels of the grievance procedure. Grievant appealed to Level IV on January 10, 1997. At Level IV, the parties agreed to submit the case on the record developed at the lower levels of the grievance procedure, with the right to file proposed findings of fact and conclusions of law. This case became mature for decision on February 25, 1997, with receipt of Grievant's proposed findings of fact and conclusions of law. The following Findings of Fact were derived from the record.

FINDINGS OF FACT

1. Grievant is employed as a teacher at Keyser High School by Respondent. 2. Respondent posted an Assistant Principal position at FHS. The application deadline was September 25, 1996.

3. Grievant, Mr. Riley, and five other applicants applied for the position.

4. All of the applicants possessed the appropriate certification, and were interviewed by Respondent.

5. No applicant had any administrative seniority.

6. Grievant was the only applicant who had not earned a masters degree in administration.

Grievant's masters degree is in math.

7. Neither Grievant nor Mr. Riley were credited with having any “relevant specialized training” pursuant to W. Va. Code §18A-4- 7a. Both had good evaluations.

8. Grievant had twenty-two years, and Mr. Riley had fifteen years, of teaching experience and seniority.

9. Mr. Riley was recommended for the Assistant Principal position because he was familiar with the programs and operations at FHS, because he has a rapport with FHS faculty, FHS students, and Principal Robert Woy, and because he could step into the position and begin immediately.

DISCUSSION

Grievant asserts that Respondent improperly considered Mr. Riley's familiarity with FHS and the community. The position in question became vacant during the school year, and Respondent desired a professional who could “step into that position at that moment”. Level II, Tr. at 13. 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 boards of education to hire ”professional personnel other than classroom teachers on the basis of the applicant with the highest qualifications.” When judging their qualifications, a county board of education 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 criteria were assessed by the interviewing team. The interviewing team included Superintendent Charles Kalbaugh, Assistant Superintendent Pat Mason, and Frankfort High School Principal Rob Woy.

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, 177 W.Va. 145, 351 S.E.2d 58 (1986). Additionally, a county board of education is free to determine the weight to apply to each of the above-stated factors when assessing an applicant'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

(July31, 1992). Once a county board of education 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).

The “other factors” Grievant complains about were experience directly related to different operations and practices used at FHS. Respondent considered Mr. Riley's prior experience at FHS. Mr. Riley's experience relates directly to some of the FHS's daily operations. At FHS, Mr. Riley has been the girls' basketball coach, boys' basketball coach, has an excellent understanding of administering athletic events, has worked closely with the special education teachers in a collaborative situation, has been involved in FHS's “High Schools at Work” initiative, (See footnote 1) has an excellent rapport with FHS students, and has a good working relationship with Principal Woy and FHS faculty. Mr. Riley is also a lifelong resident of the Frankfort Community.

Grievant failed to prove by a preponderance of the evidence that Respondent's consideration of the above factors was a violation of W. Va. Code §18A-4-7a. “Nothing in the language of [W. Va. Code §18A-4-7a] restricts this area of measures or indicators, as long as they are 'relative qualifications.'” Elkins v. Boone County Bd. of Educ., Docket No. 95-03-415 (Dec. 28, 1995). In fact, W. Va. Code §18A-4-7a contemplates that county boards of education may look beyond certificates, academic training, andlength 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).

Although Grievant has never been a faculty member at FHS, (See footnote 2) Mr. Riley was not selected merely because he was a FHS faculty member. Mr. Riley was selected from a pool of applicants which consisted of another FHS faculty member. Respondent reasonably determined Mr. Riley was the best qualified applicant for the FHS assistant principal position. Grievant failed to prove by preponderance of the evidence that Respondent violated W. Va. Code §18A-4-7a, or that Grievant ranked higher than Mr. Riley on the factors Respondent applied to each applicant.

In addition to the foregoing findings of fact and narration, it is appropriate to make the following conclusions of law.

CONCLUSIONS OF LAW

1. In a nondisciplinary action, Grievant has the burden of proving his case by a preponderance of the evidence. Gwilliam v. Preston County Bd. of Educ., Docket No. 95-39-255 (Dec. 22, 1995).

2. 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, 177 W.Va. 145, 351 S.E.2d 58 (1986). 3. A board of education is free to determine the weight to apply to W. Va. Code §18A-4-7a factors when assessing a candidate'squalifications 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).

4. 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).

5. “Nothing in the language of [W. Va. Code §18A-4-7a] restricts this area of measures or indicators, as long as they are 'relative qualifications.'” Elkins v. Boone County Bd. of Educ., Docket No. 95-03-415 (Dec. 28, 1995).

6. 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).

7. Grievant failed to prove, by a preponderance of the evidence, that Respondent violated W. Va. Code §18A-4-7a, or that Respondent's decision to post and fill the position in question in the manner it did was arbitrary and capricious or not in the best interests of its schools.

Accordingly, the grievance is **DENIED**.

Any party may appeal this DECISION to the Circuit of Kanawha County or to the Circuit Court of Mineral County and such appealmust 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 are 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.

DATED: 8/25/97 _____

JEFFREY N. WEATHERHOLT

ADMINISTRATIVE LAW JUDGE

Footnote: 1

The record fails to disclose any further information concerning this project.

Footnote: 2

See Level II, Tr. at 8.