SANDRA SAUNDERS,

Grievant,

v.

DOCKET NO. 97-06-149

CABELL COUNTY BOARD OF EDUCATION,

Respondent,

and

EARLENE ADKINS and KATHY McCOY,

Intervenors.

D E C I S I O N

Grievant, Sandra Saunders, filed the following grievance protesting her non- selection for one of two administrative positions, on October 4, 1996:

> Violations of WV Code 18A-4-7a in regard to the posted positions for supervisors with regard to the grievant's non-selection for the three positions for which she applied. The grievant was the most senior and most qualified applicant for the posted positions. Further violations of WV Code 18-29-2, section m, discrimination, with regard to her non-selection and elimination as a supervisor. Relief sought is to be awarded one of the positions for which she is most qualified and any loss of compension (sic) due. (See footnote 1)

Following denial of the grievance at level one, a level two hearing was conducted on December 3 and 10, 1996. Linda Curtis, the Superintendent's designee, denied the grievance by decision dated February 24, 1997, and the Cabell County Board of Education ("Board") waived participation at level three. Grievant appealed to level four on March 21, 1997, and hearing was held in the Grievance Board's Charleston, West Virginia, office on August 18, 1997. This matter became mature for decision on October 1, 1997, the deadline for the parties' submission of proposed findings of fact and

conclusions of law.

SUMMARY OF EVIDENCE

Level Two Agreed Exhibits

Exs. 1-3 -

Grievance documents

Level Two Respondent's Exhibits

Ex. 1 -

Interview Schedule; Instructions for Interviewing Candidates; Sample Questions Supervisory

Ex. 2 -

Interview Notes

Ex. 3 -

April 30 - May 6, 1996 Job Posting - Administrative Vacancies; Educational Supervisor - Special Education Job Description

Ex. 4 -

June 24 - June 28, 1996 Job Posting - Administrative Vacancies; Coordinator of Federal Programs Job Description

Ex. 5 -

July 1, 1996 Board of Education Agenda

Ex. 6 -

Resume of Sandie Saunders

Ex. 7 -

Resumes of Earlene Adkins and Kathy McCoy

Ex. 8 -

Resume of Sandra Sargent

Ex. 9 -

Interview Questions for Coordinator, Federal Programs position

Ex. 10 -

Handwritten Notes taken during interview of Sandra Saunders for Coordinator, Federal Programs position

Ex. 11 -

Handwritten Notes taken during interview of Sandy Sargent for Coordinator, Federal Programs position

Ex. 12 -

Matrix for Coordinator of Federal Programs position

Ex. 13 -

Matrix for Posted Positions

Ex. 14 -

Billy Adams' notes of informal conference dated September 11, 1996

Level Four Joint Exhibits

Ex. 1 -

Professional Administrative Certificates for Sandra Saunders, Earlene Adkins, and Kathy McCoy

Respondent's Exhibits

Ex. 1 -

Special Codes for Professional Certificates

Testimony

Grievant testified in her own behalf, and offered the testimony of Mary Campbell, Kathy McCoy, Sandra Sargent, Earlene Adkins, Jerry Hurley, Bill Adams, Charlie Barnett, Bill Smith, and Linda Curtis. Respondent offered the testimony of Jerry Hurley, Bill Smith, Mary Campbell, Charlie Barnett, Bill Adams, Richard Jefferson, David Roach, and Richard Fillmore.

ISSUE

The issue is whether Grievant has proven by a preponderance of the evidence that she is more qualified than the successful applicants for the Special Education Supervisor positions, or whether the selection process was so flawed as to be arbitrary and capricious. For the reasons set forth below, I find that she has not.

FINDINGS OF FACT

I find, by a preponderance of the evidence, the following facts.

1. For the period of April 30 through May 6, 1996, the Board posted notice of vacancies in two positions titled “Central Office - Supervisor, Special Education.”

2. Grievant was among the applicants for the positions, all of whom were interviewed by a screening committee appointed by Assistant Superintendent William Smith. The committee consisted of school principals Mary Campbell, Jerry Hurley, and Myron Bales. After reviewing the candidates' resumes and personnel files, this committeeunanimously recommended that the Superintendent nominate applicants Kathy McCoy and Earlene Adkins as the most qualified applicants to fill the positions.

3. The members of the screening committee (except for Mr. Bales, who had retired from his position and was not available) articulated legitimate grounds for considering the successful candidates to be more qualified than Grievant for the posted positions. They also established that the committee's procedures, including the interviews, were fairly conducted. Further, the members testified emphatically and without contradiction that they were not influenced in their deliberations, directly or indirectly, by the Superintendent or Assistant Superintendent David Roach.

4. The screening committee's recommendations were scrutinized by the Board's Personnel

Director, Linda Curtis, who analyzed the candidates' qualifications by preparing a written matrix. LII R. Ex. 14. The analysis satisfied the Personnel Director that the recommendations were justified under the qualification criteria set forth in W. Va. Code § 18A-4-7a. She reasonably concluded that the successful candidates and Grievant had equivalent certifications, degree levels, and academic achievement; that Ms. Adkins had more experience than Grievant; that Ms. Adkins and Ms. McCoy's experience was more relevant to the positions than Grievants'; that Ms. Adkins and Ms. McCoy prevailed over Grievant in specialized special education training; that Ms. Adkins and Ms. McCoy had better evaluations than Grievant; and that the screening committee accurately determined that the successful candidates would be able to get along better with parents and administrators.

5. Along with Assistant Superintendent Smith, who agreed with the choices, Personnel Director Curtis relayed the recommendations to the Superintendent. TheSuperintendent ultimately recommended to the Board that it appoint Ms. Adkins and Ms. McCoy. On July 1, 1996, the Board appointed Intervenors Adkins and McCoy to fill the positions.

6. Except to rely on her greater seniority over Ms. McCoy as an employee of the Board, Grievant advanced no persuasive evidence to show that she was more qualified than the successful applicants.

7. Grievant produced no evidence to show that the interview committee's processes or Personnel Director Curtis' analysis was flawed.

8. Although the evidence did show that Grievant had had difficulties getting along with parents and administrators and the successful candidates were better at working with people, there was no evidence to show that the reason Grievant was not selected was that the members of the screening committee and Personnel Director Curtis “don't like her much”, or that Personnel Director Curtis “made up the matrix as an excuse.”

9. Apart from her own unsubstantiated speculation to the contrary, Grievant offered no evidence to show that the Superintendent or Assistant Superintendent Roach influenced the committee's recommendations in any way.

10. The successful applicants for the positions were more qualified than Grievant; the selection process was fair and unflawed; and the choice of the other candidates over Grievant was based upon permissible criteria rather than any discrimination.

DISCUSSION

Grievant asserts that the Board failed to properly consider her qualifications under W. Va. Code § 18A-4-7a, and that the process utilized for selection was so flawed as to be arbitrary and capricious. W. Va. Code § 18A-4-7a sets forth the criteria to be used in filling administrative positions. That Section directs county boards of education to hire "professional personnel other than classroom teachers on the basis of the applicant with the highest qualifications." Further, "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 . . . and other measures or indicators upon which the relative qualifications of the applicant may be fairly judged.

W. Va. Code § 18A-4-7a.

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 (July 31, 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 standard of review in cases brought by unsuccessful candidates for administrative posts generally entails an inquiry into whether the criteria set forth in W. Va. Code § 18A-4-7a were accurately assessed for each applicant; whether favoritism and/or discrimination played a role in the selection process;and whether flaws in the process were so significant that the outcome might reasonably have been different. Stover v. Kanawha County Bd. of Educ., Docket No. 89-20-75 (June 26, 1989). Ultimately, it must be decided whether the Board abused its considerable discretion in personnel matters. See Dillon, supra; Amick v. Nicholas County Bd. of Educ., Docket No. 95-34-037

(Aug. 23, 1995).

Grievant contends that the qualification criteria set forth in W. Va. Code § 18A-4-7a must be given priority consideration in the same order that they appear in the statute. There is nothing in the statute to evidence such an intent by the Legislature, and instead, it is clear that a county board has broad discretion to determine the weight to be afforded a particular criterion. Christian v. Logan County Bd. of Educ., Docket No. 94-23-173 (Mar. 31, 1995).

Grievant further contends that a qualitative, rather than quantitative analysis, is required of each criterion, specifically: appropriate certification and/or licensure; amount of course work and/or degree level; and academic achievement. Grievant contends her certification is better than the successful applicants, that her course work is more superior than the successful applicants, and that her academic achievement is greater than theirs. Ms. Curtis testified that the Board looks at these factors quantitatively, that is, it merely looks to see whether the candidates possess the minimum certification required by the posting; looks at their degree level; and looks at their academic achievement. In this case, all candidates met the minimum certification requirements; all candidates possessed a Master's Degree plus 45 hours; and all candidates had above a 3.0 grade point average. No further analysis of these factors was performed by the Board. Grievant has not proven the Board violated any statute, policy, rule or regulation in assessing these criteria in a quantitative, rather than qualitative, manner. As previously noted, the Board has wide discretion in matters involving the selection of administrative personnel, and has no obligation to assign any particular weight to any one criterion. The Board's method of evaluating the licensure, degree level, and academic achievement factors was not flawed, or arbitrary and capricious. Further, 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. Alt v. Mineral County Bd. of Educ., Docket No. 97-28-015 (Aug. 25, 1997); Anderson v. Wyoming County Bd. of Educ., Docket No. 93-55-183 (Sept. 30, 1993).

Grievant further contends that she has more relevant specialized training than the successful candidates, as evidenced by the length of her resume compared to the other applicants. The screening committee, as well as Ms. Curtis, had the applicants' resumes and personnel files available, and the committee interviewed each applicant for approximately 30 minutes, utilizing the same questions for each applicant. The committee members and Ms. Curtis testified that it was an extremely difficult choice, because all of the applicants had many years of service with the Board in

administrative positions, and all of the applicants had a quantity of specialized training relevant to the special education supervisor positions. Nevertheless, it is clear the committee, as well as Ms. Curtis, considered the area of relevant specialized training in making their decision.

With respect to administrative positions, all W. Va. Code § 18A-4-7a mandates is that consideration be given to the enumerated criterion. It does not establish that any particular weight be given to any one criterion. It does not establish a written matrix beprepared assigning numerical scores to the criterion. It merely states that those factors must be considered. Grievant has presented no evidence to show that any of the enumerated criterion were not considered. Indeed, the testimony of the committee members, Ms. Curtis, and the Superintendent demonstrated that all of the enumerated factors were considered, and that, while the ultimate selection of Ms. McCoy and Ms. Adkins as successful applicants for the two positions was a difficult decision, they nevertheless were unanimously recommended for the positions over Grievant.

Finally, Grievant alleges it was error for the Board to delegate the selection process to the Superintendent, who then delegated the screening process to the interview committee. There is simply no authority to support Grievant's contention in this regard. In fact, W. Va. Code § 18-4-10 vests with the Superintendent the authority to “[n]ominate all personnel to be employed” by the Board, and provides that “no such person or persons shall be employed except on the nomination of the county superintendent;”. Likewise, there is no authority to suggest the Superintendent may not appoint an interview or screening committee to interview candidates for a position, which then makes a recommendation to the Superintendent.

CONCLUSIONS OF LAW

1. In a nondisciplinary action, Grievant has the burden of proving her 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 bestinterest 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'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 (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 for an administrative position. Alt v. Mineral County Bd. of Educ., Docket No. 97-28-015 (Aug. 25, 1997); 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, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Cabell 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: December 29, 1997

Footnote: 1 *Grievant originally protested her non-selection for three supervisor positions, but subsequently withdrew her grievance with respect to the Coordinator of Federal Programs position. Sandra Sargent, the successful applicant for that position, also subsequently withdrew her request to intervene in this grievance.*