DAVID BELL,

Grievant,

v. **Docket No. 97-22-013**

LINCOLN COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

y In accordance with W. Va. Code §§ 18-29-1, et seq., David Bell (Grievant) filed this grievance against Respondent Lincoln County Board of Education (LCBE) on September 9, 1996. Grievant contends LCBE violated W. Va. Code § 18A-4-7a when it selected another professional employee to fill the position of Principal at LCBE's Hamlin Junior/Senior High School (HHS). Following a hearing at Level II, this grievance was denied by the Superintendent's designee, Donna Martin, on January 2, 1997. Grievant waived Level III in accordance with W. Va. Code § 18-29-4(c), appealing to Level IV on January 8, 1997. An evidentiary hearing was conducted in this Board's office in Charleston, West Virginia, on February 6, 1997. The parties elected to submit post- hearing briefs, and this matter became mature for decision on March 3, 1997. The following Findings of Fact pertinent to resolution of this matter have been determined based upon a preponderance of the credible evidence of record, including the transcript of the Level II hearing, the testimony of the witnesses who appeared at Level IV, and documentary evidence admitted at both levels.

FINDINGS OF FACT

1. Grievant is employed by the Lincoln County Board of Education (LCBE) as Principal of Duval High School (DHS).

2. Grievant applied for a posted position of Principal at LCBE's Hamlin Junior- Senior High School

(HHS).

3. Grievant and the successful applicant, Dwight Colburn, were among three applicants who were considered for the position. The other unsuccessful applicant, Charles McCann, is principal of Hamlin Elementary School, which is located on the same campus as HHS.

4. LCBE Superintendent Dallas Kelley selected Mr. Colburn for the position without interviewing the applicants. However, as Superintendent Kelly had been serving as Superintendent for four years, he was familiar with the qualifications of each of the applicants.

5. Grievant has a bachelor's degree in social studies and secondary education, and a master's degree in secondary education. In addition, he has over 45 hours of college credit beyond a master's degree. LT HT at 6. Grievant has a superintendent's certificate which authorizes him to serve as a principal. 6. Grievant has a total of eight years' experience as a principal and eight years' experience as an assistant principal. He has attended numerous workshops and seminars relating to school administration and serves as a mentor principal.

7. At the time he applied for the HHS principal's vacancy, Mr. Colburn was serving as assistant principal at HHS. He had previously served as Grievant's assistant principal at DHS. Mr. Colburn has three years' experience as an assistant principal and no experience as a principal. He has a provisional administrative certificate which authorized him to serve as a principal at the junior and senior high school level. Mr. Colburn has a master's degree in mathematics, and at least 45 hours of college credit beyond a master's degree. He had an undergraduate grade point average of 3.36, and a graduate school grade point average of 3.81.

8. In selecting a new principal for HHS after the beginning of the school year, Superintendent Kelley noted that Grievant's selection would require hiring a replacement at DHS, the larger of the two high schools. Superintendent Kelley determined that Mr. Colburn's selection as HHS principal, leaving Grievant as principal at DHS, would be least disruptive for the students and faculty at the two schools.

9. Each applicant, including Grievant and Mr. Colburn, met the minimum qualifications for the HHS principal's position. All applicants had received satisfactory evaluations for the past two years.

10. LCBE legal counsel Charles Damron was not consulted in the process of selecting Mr. Colburn as HHS principal.

DISCUSSION

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving each element of his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.19 (1996); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code § 18-29-6.

Filling vacancies for school principals and assistant principals is accomplished under the more flexible standards contained in the so-called "first set of factors" in W. Va. Code § 18A-4-7a:

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

* * *

"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." Syl Pt. 3, Dillon v. Bd. of Educ., 177 W. Va. 145, 351 S.E.2d 58 (1986). Consistent with Dillon, W. Va. Code § 18A-4-7a permits county boards of education to determine the weight to be applied to each of the factors listed above in assessing a candidate's qualifications for administrative positions, so longas they do not abuse their discretion. E.g., 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). See Pockl v. Ohio County Bd. of Educ., 185. W. Va. 256, 406 S.E.2d 687 (1991).

Grievant contends that, considering his greater experience as a principal and administrator, LCBE's decision to select Mr. Colburn for the HHS principal's position was an abuse of discretion. Grievant also alleges that the decision not to select him was motivated by a desire to retaliate for his opposition to school consolidation proposed by Superintendent Kelley. Similarly, Grievant argues that

the selection was tainted by a political feud with Charles Damron, LCBE's legal counsel. However, there is no credible evidence of record that Mr. Damron was consulted in the process of selecting Mr. Colburn for the HHS principal vacancy. Accordingly, Grievant failed to demonstrate that any animosity between himself and Mr. Damron was a factor in his nonselection for the contested position.

Superintendent Kelley's stated rationale for selecting Mr. Colburn rather than Grievant was specifically predicated upon the best interests of the students at the schools involved, and was not demonstrated to be pretextual. Superintendent Kelley noted that Grievant could continue to capably manage DHS, while Mr. Colburn would be able to seek guidance from Mr. McCann at Hamlin Elementary, if necessary. He considered Grievant's qualifications could be applied best by remaining as principal at the larger school. Indeed, Grievant acknowledged that his pay would be less at HHS, because he would be supervising fewer teachers. Grievant's stated reasons for seeking the HHS position included that HHS is closer to his home, and his children attend that school. In these circumstances, Superintendent Kelley's determination that the interests of the affected LCBE students served by the respective schools would benefit from leaving Grievant in his current position while promoting Mr. Colburn to HHS principal is consistent with the discretion delegated to the school boards in filling such positions. See Pockl, supra.

Although Grievant and Superintendent Kelley may have disagreed about school consolidation, there was no credible evidence that such disagreements were improperly considered in this hiring decision, or in any other aspect of their professional relationship. While another individual might have selected Grievant for the HHS position because of his superior experience as a principal and school administrator, the arbitrary and capricious standard of review does not permit an administrative law judge to simply substitute his judgment for that of the school board. Bradley v. Bd. of Directors, Docket No. 96-BOD-030 (Jan. 28, 1997). See Harper v. Mingo County Bd. of Educ., Docket No. 93-29-064 (Sept. 27, 1993). See generally, Bedford County Memorial Hosp. v. Health & Human Serv., 769 F.2d 1017 (4th Cir. 1985); Staton v. Wyoming County Bd. of Educ., 184 W. Va. 369, 400 S.E.2d 613 (1990). Grievant failed to establish that LCBE's decision was founded upon impermissible factors, or constituted an abuse of the discretion extended school boards when making such professional determinations.

Consistent with the foregoing discussion, the following conclusions of law are made in this matter.

CONCLUSIONS OF LAW

1. In a nondisciplinary grievance, the grievant has the burden of proving each element of his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.19 (1996); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code § 18-29-6.

2. A county board of education must make decisions on the selection of professional personnel other than classroom teachers on the basis of the highest qualifications. In making its selection, the board must give consideration to appropriate certification, experience relevant to the position, course work and degree level in the relevant field, degree level generally, academic achievement, relevant specialized training, past performance evaluations and other measures or indicators upon which the relative qualifications of the applicants may be fairly judged. County boards have wide discretion in choosing administrators once they have reviewed the criteria in W. Va. Code § 18A-4- 7a. Hughes v. Lincoln County Bd. of Educ., Docket No. 94-22-543 (Jan. 27, 1995); Marsh v. Wyoming County Bd. of Educ., Docket No. 94-55-022 (Sept. 1, 1994). See Pockl v. Ohio County Bd. of Educ., 406 S.E.2d 687 (W. Va. 1991).

3. Grievant failed to establish that he was more qualified than the successful applicant for the position in issue or otherwise demonstrate that Respondent either abused its discretion or failed to comply with the requirements of W. Va. Code § 18A-4-7a. See Pockl, supra.

Accordingly, this Grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Lincoln County or the Circuit Court of Kanawha 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.

LEWIS G. BREWER

ADMINISTRATIVE LAW JUDGE

Dated: July 28, 1997