ELAINE MAUCK

v. Docket No. 97-02-231

BERKELEY COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant Elaine Mauck, employed as a teacher by the Berkeley County Board of Education (Board), initiated grievance proceedings on or about April 9, 1997, when she alleged, “I applied for the posted position of Director of Food Services and was not selected. A person with less qualification was selected.” For relief, Grievant requested instatement to the position. The grievance was denied at levels one and two, Grievant waived consideration at level three in accordance with W. Va. Code §18-29-4(c), and advanced her appeal to level four on June 16, 1997. An evidentiary hearing was conducted in Martinsburg, at the parties' joint request, on October 16, 1997, and the case became mature for decision with the filing of proposed findings of fact and conclusions of law on or before November 3, 1997.

The material facts of this grievance are not in dispute and may be set forth as the following formal findings of fact.

Findings of Fact

1. Grievant has been employed by the Berkeley County Board of Education since 1969, and is presently assigned as a physical education teacher at Hedgesville Middle School.

2. On February 17, 1997, the Board posted a vacancy for the position of Director of Food Services. Qualifications for the position were 1) a Bachelor's degree in home economics, nutrition, or dietetics, 2) experience in food service management, business management, classroom teaching in nutrition, or membership in the Nutrition Education Training Cadre, 3) ability todemonstrate the benefits of proper nutrition and diet, and 4) the ability to relate well with others. This assignment was previously classified as a service personnel position; however, the W. Va. Department of Education

Policy 4321.1 now requires the incumbent have a baccalaureate degree, and it is a professional position.

3. Twelve individuals, including Grievant, submitted applications for the position. Three of the applicants were ruled not qualified, and one withdrew her name from consideration, leaving eight individuals who were interviewed for the position.

4. An interview committee composed of James Welton, Assistant Superintendent in charge of food services; Jack Cornell, Marlowe Elementary School Principal; Edith Brown, outgoing Director of Food Services; and Gladys Pitzer, Head Cook at Martinsburg High School, conducted interviews on March 9, 10, and 11, 1997.

5. Prior to the interviews, each committee member was provided with the applicants' letters of application and resumes.

6. The committee followed a preset interview schedule which allocated each applicant one hour of time, although not all interviews lasted the entire amount of time. The members presented the applicants with six (6) prescripted questions. Spontaneous follow-up questions were permitted, and the applicants were allowed to pose their own questions, make a presentation, or otherwise present material for the committee to evaluate.

7. Grievant was interviewed on the second day. At that time she presented each committee member with a packet of information designed to illustrate her qualifications.

8. The committee members were not given a point system, matrix, or other type of numerical tool to evaluate the applicants. Each used his or her own methods to rank the top threecandidates. Mr. Welton stated that he simply ranked his choices based upon his opinion of the best candidate. Mr. Cornell used the most formal method, assigning a twenty (20) point value to each question, and then dropping the lowest score to allow each applicant “an opportunity of one lousy question” and leaving a profile of one hundred (100). He additionally granted Grievant five (5) additional points for being an in-county candidate, and the successful applicant an additional two (2) points for being an in-state candidate. Ms. Brown testified that she based her rankings on the applicants' qualifications, resumes, and the impression they made during their interviews. Ms. Pitzer stated that she had mentally applied a point system of one (1) to ten (10) when evaluating the applicants.

9. Each committee member compiled a list of his or her top three (3) applicants; however, it was understood that Mr. Welton would make the final selection. Kathy Yost, ranked first by three (3)

members after another applicant withdrew, and third by one member, was recommended, and approved by the Board, for the position.

10. Grievant was not ranked as one of the top three applicants by any committee member.

11. Grievant's qualifications for the position include: a B. A. degree in physical education, health, and mathematics; M. S. degree in physical education; twenty-eight (28) years as a health and physical education teacher in Berkeley County, presently serving as chair of health and physical education; active membership in the State Nutrition Education and Training Cadre since 1990; attendance at numerous workshops involving nutrition and diet; presenter of numerous workshops in Berkeley County Schools regarding nutrition; secondary physical education teacher of the year - 1992; among the top five nominees for Berkeley County teacher of the year in 1987, 88,90, 91, and 1992.

12. The successful applicant's qualifications include: B.A. degree in vocational home economics; M. A. degree in education - Reading Specialist; twenty-two (22) years experience as a teacher, twelve (12) of which were in nutrition and food service; active membership in the State Nutrition Education and Training Cadre since 1985; attendance at numerous workshops and presenter of yearly workshops in Morgan County, one in Berkeley County, and for the State Department of Education, including a three-day food science workshop for fifty (50) West Virginia teachers, as well as a sports nutrition workshop for eighty-three (83) teachers at an adult, technical and vocational conference; author of sports nutrition curriculum and an adult weight control curriculum; assisted in writing two other nutrition curricula; author and project coordinator of West Virginia food science curriculum for the state; analyzed menus using Lunch-byte computer program; attendance at a culinary academy course at the Greenbrier resort; West Virginia home economics teacher of the year - 1993; Morgan County teacher of the year - 1991; and top ten finalist for national home economics teacher of the year - 1993.

Discussion

Because this grievance does not involve a disciplinary matter, Grievant has the burden of proving each element of her 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); Bell v. Lincoln County Bd. of

Educ., Docket No. 97-22-013 (July 28, 1997); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997). See W. Va. Code §18-29-6.

Filling vacancies for professional administrative personnel is accomplished under the more flexible standards of the so-called "first set of factors" set forth 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 long as 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 argues that the Board's decision to appoint Ms. Yost to the position was improper, arbitrary and capricious because the committee members failed to evaluate the depth and breadth of her qualifications which establish her as the most qualified applicant.

Grievant first asserts that contrary to the Board's determination, she does meet the minimumqualifications for the position. She notes that the Board's requirement for a baccalaureate degree in home economics, nutrition, or dietetics, exceeds those set forth in W. Va. Board of Education Policy 4321.1, which requires that "[a] qualified county director of nutrition shall have a minimum of a baccalaureate degree in professional education or in home economics, nutrition,

dietetics, or equivalent experience. . . ."

At level four Grievant reviewed her education, noting that she is completing a doctoral degree in physiology, and her experience, including her role as administrator of Silver Age Services, a personal care home which she and her spouse own, which serves eight (8) to ten (10) elderly, special needs, clients. Grievant explained that she was responsible for the food service aspect of this business. Grievant's testimony regarding her interview was somewhat inconsistent in that she stated that she did not believe she was given an opportunity to expound upon her qualifications, and that she believed at least two (2) members of the committee were familiar with her background. She recalled providing the members with the information packets, and that they advised her that they did not need any additional information. Grievant stated that she also did not ask any questions in that she was familiar with the position, and that the interview lasted approximately thirty (30) minutes.

It is the Board's position that it may set higher than the minimum mandates for the position by requiring that applicants possess certification in specific areas which it believes are better suited to the position because there exists a direct relationship to food services. The Board further asserts that Grievant's qualifications are not greater than those of the successful applicant, and that it did not violate W. Va. Code §18A-4-7a, or act in an arbitrary and capricious manner when it appointed Ms. Yost as Director of Food Services.

While Grievant is clearly knowledgeable regarding nutrition, the record establishes that Ms.Yost exceeds Grievant in both the quality and quantity of education and experience directly relating to food services. Further, it was Grievant's responsibility to bring any relevant information to the committee members' attention. Her reliance on their familiarity with her was perhaps misplaced. In any event, by her own admission, Grievant had approximately thirty (30) minutes to apprise the committee of her qualifications, but did not choose to do so. Based upon the evidence presented, it cannot be determined that Grievant proved by a preponderance of the evidence that the Board's decision was improperly made under W. Va. Code §18A-4-7a, or was arbitrary and capricious.

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

Conclusions of Law

1. In a nondisciplinary grievance, the grievant has the burden of proving each element of her

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. The grievance procedure is not intended to be a “super interview” for unsuccessful applicants; rather, it allows an analysis of the legal sufficiency of the selection process at the time it occurred. Holmes v. Berkeley County Bd. of Educ., Docket No. 96-02-070 (Jan. 13, 1998); Stover v. Kanawha County Bd. of Educ., Docket No. 89-20-75 (June 26, 1989).

4. Although the arbitrary and capricious standard of review of administrative 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 a board of education. Goodwin v. Kanawha County Bd. of Educ., Docket No. 93-20-260 (Mar. 14, 1994).

5. Grievant failed to establish that she was more qualified than the successful applicant for the position of Director of Food Services, or otherwise demonstrate that the Board either acted in an arbitrary and capricious manner or failed to comply with the requirements of W. Va. Code §18A-4-7a.

Accordingly, the grievance is **DENIED**.

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

Date: January 30, 1998 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE