GREGORY E. FOLEY,

Grievant,

v. Docket No. 97-14-358

HAMPSHIRE COUNTY BOARD OF EDUCATION,

Respondent, and

NANCY R. BIGGS,

Intervenor.

DECISION

Gregory E. Foley (Grievant), a Custodian IV employed by Respondent Hampshire County Board of Education (HCBE), filed a grievance pursuant to W. Va. Code §§ 18-29-1, et seq., alleging that he had not been selected to fill the position of Coordinator of Purchasing. Grievant argues that he is entitled to the position as the most senior qualified applicant. On June 30, 1997, the grievance was denied at Level I by Principal Jill R. Parker. The grievance was advanced to Level II where an evidentiary hearing was conducted on August 27, 1997. Grievant was represented at this hearing by Mr. John Roush, Attorney for the W.V. School Service Personnel Association. Subsequently, by correspondence dated September 3, 1997, the grievance was denied at Level II by HCBE Hearing Officer Paula O'Brien. The grievance was advanced to Level III where participation was waived by HCBE.

A Level IV Hearing was held on December 15, 1997, before Administrative LawJudge Jeffrey N. Weatherholt. (See footnote 1) Grievant was represented at this hearing by attorney John Roush. Respondent was represented at this hearing by attorney Kimberly Croyle. The successful applicant for the position, Nancy R. Biggs, (Intervenor) intervened at Level IV. This matter became mature for decision on January 26, 1998.

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 and Level IV hearings, and documentary evidence admitted at Levels I through IV.

FINDINGS OF FACT

1. Grievant has been employed as a Custodian by HCBE since August 2, 1978.

2. Intervenor has been employed as a receptionist/executive secretary by HCBE since August 15, 1989.

3. On May 6, 1997, HCBE posted a job vacancy for a Coordinator of Purchasing, with an attached job description.

4. Included in the posting were the following required qualifications:
Specialized training directly related to the performance of the position indicated above, as follows:

Training or experience in business field with special emphasis on accounting and warehousing procedures.

Has ability to work harmoniously with school personnel.

Has ability to deal with public in the purchasing area.

Has computer knowledge and experience.
Must complete WVEIS training and experience.

Understands county and school purchasing procedures.

Legal requirements include: PPD Tuberculin Test and Fingerprinting..

5. In addition, the job description listed 20 "performance responsibilities" associated with the Coordinator of Purchasing position.

6. The Coordinator of Purchasing executes some 3,000 purchase orders per year on WVEIS (West Virginia Educational Information System). HCBE spends between eight and nine million dollars per year.

7. Three persons applied for the position, including Grievant and Intervenor.

8. None of the applicants held the job classification title of Coordinator of Purchasing.

9. Phyllis Starkey, Personnel Director for HCBE, testified that the State Department of Education has not developed a competency test for the position of Coordinator of Purchasing.

10. Ms. Starkey testified that, at the direction of the State Department of Education, HCBE conducted structured interviews with each applicant to determine his or her

qualifications.

11. The interviews were separately conducted by Superintendent Gerald A. Mathias, Finance Director Allen Hott, and Wayne Cummins, then Coordinator of Purchasing.

12. During the interview process, the same questions were asked of each applicant by each of the three interviewers. Each interviewer assigned each applicant a point score for each answer, based upon the degree of knowledge demonstrated by the applicant. The three interviewers' scores were then averaged, resulting in a rating of each applicant.

13. Grievant had adequate time to complete his interview responses.

14. Grievant received an average score of 48.6.

15. Grievant received zero points from two interviewers with regard to training and knowledge of WVEIS relating to writing purchase orders; zero points from two interviewers with respect to previous experience with the bidding process and expressing a knowledge of bidding procedures; and zero points from one interviewer with respect to experience in preparing an administrative budget which indicates allocations to various schools by account numbers and subject matters.

16. Intervenor received an average score of 82.82.

17. Grievant's only formal education in business was the bookkeeping component of his general math class in high school.

18. Grievant's work experience included a part time job in high school where he helped his mother, the store manager, order supplies; helped count inventory items; performed janitorial work; and worked as a sales clerk.

19. Following his graduation from high school in 1975, Grievant worked for a roofing company and was in charge of putting siding on homes and notifying his boss if more siding was needed.

20. At one point during his tenure with the Board of Education, Grievant held a part time job as a sales clerk at a furniture store where he helped with the annual inventory.

21. While an employee of the Board, Grievant participated in a trouble shootingclass with WVEIS, and occasionally entered names of students and other information into WVEIS.

22. Intervenor holds an Associate Degree in Business Management from Potomac State College. She has taken five college classes in accounting and one college course in

warehousing, and is working toward a Bachelor's Degree in Business Administration.

23. Intervenor teaches computer classes for adult basic education at the vocational school and has worked in the accounting department of the local hospital for several years.

24. Intervenor originated purchase orders as a part of her job in the central office of HCBE, and had knowledge of the bidding process used by HCBE, which she acquired as a secretary to the Coordinator of Maintenance.

25. Intervenor worked with vendors as secretary to the Coordinator of Maintenance.

26. Grievant did not take additional classes in the WVEIS system, although such classes were available to him.

27. Mr. Hott believed that although Grievant had the intelligence to become Coordinator of Purchasing with further education and training, Grievant was not qualified for the position at the time of his application. Mr. Hott believed Grievant would need between six months and one year of training in the WVEIS system before he could function as Coordinator of Purchasing.

28. Mr. Mathias believed that Grievant was not qualified for the position of Coordinator of Purchasing and that Grievant did not know the difference between apurchase order and a requisition.

29. Ms. Starkey believed that Grievant was not qualified for the position of Coordinator of Purchasing.

30. The interviewers agreed that Intervenor was very well qualified for the position.

31. Grievant does not contend that Intervenor is not qualified for the position, or that he is more qualified than Intervenor.

32. Grievant does not contend that HCBE acted arbitrarily or capriciously.

DISCUSSION

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving 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.

Grievant contends that as the most senior qualified applicant, he should have been

selected as the Coordinator of Purchasing. Grievant's argument rests upon his assertion that he is qualified for the position. The record shows that although Grievant had the intelligence to become Coordinator of Purchasing with further education and training, he was not qualified for the position at the time of his application. The record also shows that Intervenor was well qualified to be Coordinator of Purchasing.

All parties agree that W. Va. Code §18A-4-8b controls this matter:

A county board of education shall make decisions affecting promotion and filling of any service personnel positions of employment or jobs occurring throughout the school year that are to be performed by service personnel asprovided in Section 8, Article 4 of this Chapter, on the basis of seniority, qualifications and evaluation of past service. Qualifications shall mean that the applicant holds the classification title in his category of employment as provided in this section and must be given first opportunity for promotion and filling vacancies. Other employees then must be considered and shall qualify by meeting the definition of the job title as defined in Section 8, Article IV of this Chapter, that relates to the promotion or vacancy. W. Va. Code §18A-4-8b. (emphasis added)

The parties also agree that Grievant had more seniority than Intervenor. However, neither Grievant nor Intervenor held the job classification title. "[W]hen a school service employee makes application for a position outside of the classification category currently held, if the vacancy is not filled by an applicant within the classification category of the vacancy, the applicant shall combine all regular employment seniority acquired for the purposes of bidding on the position." W. Va. Code § 18A-4-8h.

Therefore, the question becomes their qualifications for the position. Because neither Grievant nor Intervenor qualified for the position by holding the job classification title, each could attempt to establish his or her qualifications by taking a competency test. However, no such test existed for this position. Absent such a test, a county board of education may develop its own competency test, so long as it is applied to everyone. Brewer v. Mercer County Bd. of Educ., Docket No. 91-27-002 (March 30, 1992). HCBE did so.

The facts in this grievance are strikingly similar to those in Hyre v. Upshur County Board. of Education, 186 W.Va. 267, 412 S.E.2d 265 (1991). In Hyre, the county board of education

posted the position of Supervisor of Transportation. The 4 applicants for the position were classified as bus operators. Because neither the grievant nor the successful applicant held the required classification title, the board properly looked to the qualificationsof the applicants. The board found that the grievant who, with 33 years experience was the most senior, was less qualified than the successful applicant, who had experience as a supervisor and administrator.

In Ohio County Board of Education v. Hopkins, 193 W.Va. 600, 457 S.E.2d 537 (1995), the Court again held that the qualifications of candidates not holding the required classification title must be compared. Significantly, the Court upheld the selection of a candidate not employed by the board of education, who held superior qualifications, over a board employee with seniority.

The outcomes of these cases are distinguishable from that of Bowman/Stacy v. Marion County Board of Education., Docket No. 95-24-003, 007 (Oct. 10, 1995), where a competency test had been developed and administered to the applicants. Achieving a passing score on a competency test conclusively demonstrates the qualification of an applicant for a classification title. W. Va. Code § 18A-4-8e. In Bowman/Stacy, because all of the candidates were “qualified” by reason of passing the test, the most senior applicant was entitled to selection. As noted above, because no competency test existed for the position of Coordinator of Purchasing, HCBE conducted structured interviews to determine the applicants' qualifications.

These interviews revealed that Intervenor was by far the most qualified applicant. Grievant, while possessing the intelligence needed for the position, had not been as diligent as Intervenor in obtaining the education needed to become Coordinator of Purchasing. Furthermore, Grievant does not argue that he is more qualified than intervenor, or that Intervenor is not qualified for the position.

Consistent with the foregoing discussion, the following Conclusions of Law aremade in this matter.

CONCLUSIONS OF LAW

1. 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.

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. Dillon v. Bd. of Educ.,177 W.Va. 145, 351 S.E.2d 58 (1986).

3. County boards of education shall make decisions affecting promotion and filing of any service personnel positions on the basis of seniority, qualifications and evaluation of past service. W.Va. Code § 18A-4-8b.

4. Where no applicant for a position holds the required classification title, the board of education must compare the qualifications of the applicants, and may select a candidate who held superior qualifications, over a board employee with seniority. Ohio County Bd. of Educ. v. Hopkins, 193 W.Va. 600, 457 S.E.2d 537 (1995).

5. Where no applicant for a position holds the required classification title, the board of education must compare the qualifications of the applicants, and may select a less senior board employee with superior qualifications. Hyre v. Upshur County Bd. OfEduc., 186 W.Va. 267, 412 S.E.2d 265 (1991).

6. Grievant, although more senior than Intervenor, has failed to show by a preponderance of the evidence that he was qualified for the position of Coordinator of Purchasing.

Accordingly, this Grievance is hereby DENIED.

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

ANDREW MAIER

ADMINISTRATIVE LAW JUDGE

Dated: April 29, 1998

Footnote: 1 ***For administrative reasons, this grievance was reassigned to the undersigned administrative law judge on March 18, 1998.***