ADRIAN YOUNGER,

Grievant,

v. **DOCKET NO. 97-25-432**

MARSHALL COUNTY BOARD OF EDUCATION,

Respondent,

and

MARY LEE PORTER, Intervenor.

DECISION

Grievant, Adrian Younger, challenges the selection of Intervenor, Mary Lee Porter, for the position of assistant principal at Moundsville Junior High School. As relief, Grievant has not specifically requested instatement to the position, but has requested that the qualification factors for the position be reassessed. Grievant's immediate supervisor was without authority to grant relief on August 27, 1997. He appealed to level two, where a hearing was conducted by Nick Zervos, Superintendent, at which time Grievant was represented by Owens Brown of WVEA and the Marshall County Board of Education ("Board") was represented by its attorney, Howard Seufer. A level two decision denying the grievance was issued on September 16, 1997. Level three was bypassed, and Grievant appealed to level four on September 22, 1997. Ms. Porter was allowed to intervene at level four, where she represented herself. The parties agreed at level four to have this matter decided upon the existing record, and written submissions were filed on January 8, 1998.

The following findings of fact are made from a preponderance of the evidence

submitted at level two.

Findings of Fact

1. Grievant has been employed by the Board as a classroom teacher for approximately 26 years, and he has always taught at the secondary school level.

2. Intervenor has been employed as a classroom teacher by the Board for approximately 21 years, teaching at the elementary school level.

3. The position of assistant principal at Moundsville Junior High School was posted from July 31, 1997, through August 6, 1997, specifying the minimal qualifications would include a teaching certificate, a master's degree, and an administrative certificate endorsed for assignment to a secondary school principalship.

4. The posting also required applicants to provide the following information supporting the first set of factors set forth in W. Va. Code § 18A-4-7a:

a. Appropriate certification and/or licensure
b. Amount of experience relevant to the position (number of years experience as an educational administrator)
c. Transcripts documenting the amount of course work and/or degree level in the relevant field (Administration) and degree level generally
d. Academic achievement
e. Relevant specialized training
f. Past performance evaluations for the last two years
g. Other:
    1. Number of years of experience as a classroom teacher
    2. Any other information you deem helpful in considering your application

5. Both Grievant and Intervenor are certified in administration.

6. Grievant has no experience working as a school administrator.

7. Intervenor served as principal of Sand Hill Elementary School from August 1996 through January 1997; accordingly, she was the only applicant who was credited with

"experience relevant to the position."

8. Both Grievant and Intervenor have a master's degree.

9. Grievant's grade point average ("GPA") during graduate school was 3.78 and Intervenor's GPA was 3.89.

10. Intervenor provided a portfolio of information regarding "relevant specialized training," with her application.

11. Grievant submitted no information regarding "relevant specialized training."

12. Both Grievant and Intervenor have received satisfactory evaluations for the past two years.

13. The Board selected Intervenor to fill the position of assistant principal of Moundsville Junior High School.

Discussion

The selection of personnel for administrative positions is governed by 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, article two of this chapter; and other measures or indicators upon which the relative qualifications of the applicant may fairly be judged.

Furthermore, "[c]ounty 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, supra, a county board is free to determine the weight to be applied to each of the above-listed factors in Code § 18A-4-7a[1] when assessing an applicant's qualifications for an administrative position, so long as this substantial discretion is not abused. Saunders v. Cabell County Bd. of Educ., Docket No. 97-06-149 (Dec. 29, 1997); Bell v. Lincoln County Bd. of Educ., Docket No. 97-22-013 (July 28, 1997); See Pockl v. Ohio County Bd. of Educ., 185 W. Va. 256, 406 S.E.2d 687 (1991).

Intervenor was selected for the position in question because she prevailed in three of the seven criteria set forth in the statute (and also in the job posting). She prevailed over Grievant and the other candidates in the areas of "amount of experience relevant to the position," because of her service as a principal for six months; "academic achievement," because her graduate degree GPA was highest; and "relevant specialized training," supported by the extensive portfolio of information she provided. She and Grievant received equal credit in the categories of certification, degree level, and past performance evaluations. Grievant prevailed over Intervenor only in the category of "other measures or indicators," which, per the job posting, assessed each candidate's total experience as a classroom teacher. Grievant had 26 years of experience as opposed to Intervenor's 21

[1]Grievant's representative asserted in his level four written argument that Grievant was told by the Board's personnel director that the factors were weighted equally in this case. No evidence was introduced to support this allegation, so it is not appropriate for consideration at this time. However, it would not affect the outcome of this Decision in any event.

years.

Grievant contests the credit granted to Intervenor in each of the three areas in which she prevailed. First, he argues that she should not have been given credit for the six months during which she served as a principal, because it was allegedly later determined that she had been improperly placed in the position. The only evidence to support this was Grievant's testimony that he had been told this by a third party. Nevertheless, if Grievant is correct, he still does not prevail on this point. It was held by this Grievance Board in a very similar situation that administrative experience earned while serving in a position, even when it is later determined that the employee was not entitled to the position, is appropriate for consideration under the experience criterion of Code § 18A-4-7a. The administrative law judge reasoned that the employee still performed the duties and gained "experience relevant to the position." Keatley v. Mercer County Bd. of Educ., Docket No. 94-27-641 (April 26, 1995), aff'd, 490 S.E.2d 306 (W. Va. 1997).[2]

The second challenge raised by Grievant is that the Board should not have considered the master's level GPA of each candidate for the criterion "academic achievement," because that phrase is not "defined in the law." Grievant's Level IV Brief. At the lower level hearing, Grievant's testimony regarding this issue was that it is commonly known that graduate program grades are often given for very little work, thus they are not a meaningful measure of academic achievement. He provided no specific evidence to support this allegation, and he did not offer any alternative method for assessing academic achievement.

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[2]As was the situation in Keatley, Grievant here asserts that Intervenor did not have the appropriate certification when she was placed in the Sand Hill principal position.

The assistant principal's position in question required a master's degree as a minimum qualification. Therefore, there is nothing unreasonable about the Board's selection of the candidates' graduate level GPA as a proper indicator of academic achievement, which was the standard applied to each and every candidate for this criterion. As set forth above, so long as a board of education's selection process is not unreasonable or arbitrary and capricious, it will not be disturbed. Dillon, supra. Moreover, this method does not violate any of the applicable provisions of Code § 18A-4-7a.

Finally, Grievant contends that the Board erred in awarding credit to Intervenor for specialized training. He bases this allegation largely upon the Grievance Board's decision in Hall v. Mercer County Bd. of Educ., Docket No. 97-27-175 (Apr. 30, 1997). In that case, the administrative law judge determined that specialized training should not have been considered, because of the manner in which the requirement was described in the job posting. Under the heading "specialized training," the posting stated "[t]raining relevant to fulfilling items listed under REGULAR DUTIES." In turn, under "regular duties," the posting listed a number of very generic items applicable to all secondary school teaching positions, such as "teaches ideas, concepts, and appreciations," and "directs learning activities." It was held that, because the board had specifically referenced only generic teaching requirements, merely labeling them "specialized" did not notify applicants that training over and above normal certification requirements would be considered. In other similar cases, this Grievance Board has deemed it improper for a board of education to consider the specialized training criterion when no mention of it is made in the job posting. Monk v. Mercer County Bd. of Educ., Docket No. 95-27-245 (Sept. 28, 1995); Sisk v. Mercer County Bd. of Educ., Docket No. 95-27-113 (Sept. 25, 1995).

The instant case is distinguishable from those cited above, simply because we are presently dealing with the first set of factors, not the second, as in Hall, Monk, and Sisk. The second set of factors states that one of the criteria for filling positions shall be "specialized training directly related to the performance of the job as stated in the job description." (Emphasis added.) Conversely, the first set of factors, applicable here, says that "consideration shall be given" to, among other things, "relevant specialized training." There is no reference to specialized training being placed in the job description, and the statute clearly states that it, along with the other factors, "shall" be considered. Accordingly, the first set of factors does not have any specific requirements regarding how or even if specialized training is to be placed in a job posting. Therefore, there was no violation of Code § 18A-4-7a with regard to that criterion. Moreover, Intervenor provided extensive documentation of training she received in the areas of evaluation, WVEIS, RESA, peer mediation, mentor training, and others, and Grievant provided absolutely no information of any specialized training when he applied for this position.

In summary, Grievant has not proven by a preponderance of the evidence that Intervenor was not entitled to the credit given to her in the categories of relevant experience, academic achievement, and specialized training. Once having reviewed the criteria in Code § 18A-4-7a, county boards have wide discretion in choosing administrators. Bell, supra; 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). In this case, all of the required factors were considered and assessed, and there has been no showing of an abuse of discretion.

Consistent with the foregoing discussion, the following conclusions of law are made

in this matter.

Conclusions of Law

1. In a non-disciplinary matter, the grievant bears the burden of proving each element of his claim by a preponderance of the evidence. See W. Va. Code § 18-29-6; Holly v. Logan County Bd. of Educ., Docket No. 96-23-164 (Apr. 30, 1997).

2. When hiring professional administrative personnel, county boards of education must give consideration to 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 applicants may fairly be judged. W. Va. Code § 18A-4-7a.

3. "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).

4. Grievant failed to establish that he was more qualified than the successful applicant for the position in question or otherwise demonstrate that the Board either abused its discretion or failed to comply with the requirements of W. Va. Code § 18A-4-7a. See Pockl v. Ohio County Bd. of Educ., 406 S.E.2d 687 (W. Va. 1991); Saunders v. Cabell County Bd. of Educ., Docket No. 97-06-149 (Dec. 29, 1997).

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the Circuit Court of Marshall 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: May 13, 1998

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V. DENISE MANNING
Administrative Law Judge