PATRICIA J. MILLS,

Grievant,

v. **DOCKET NO. 05-50-280**

WAYNE COUNTY BOARD

OF EDUCATION,

Respondent,

and

ASHLEY THOMPSON RICHMOND,

Intervenor.

DECISION

Grievant Patricia Mills filed a grievance against her employer, the Wayne County Board of Education (WCBOE) on July 7, 2005, alleging she should have been selected for a classroom teaching position. Intervenor Ashley Thompson Richmond was the successful applicant for the job. Grievant seeks instatement in the position, plus any back pay and benefits to which she may be entitled.

A level four hearing was held in the WCBOE Office in Wayne on February 6, 2006. Grievant was represented by David Mills, Intervenor presented her own case, and Respondent was represented by counsel, David Lycan, Esq. The matter became mature for decision on March 6, 2006, the deadline for submission of the parties' proposed findings of fact and conclusions of law.

Issues and Arguments

Grievant asserts that she is more qualified than Intervenor for the job in question. Based on a preponderance of the evidence adduced at the hearing, I find the following material facts have been proven:

Findings of Fact

1. Grievant is employed by Respondent as a substitute teacher at Dunlow Elementary School. At the time of the job posting in question, Grievant was unassigned, but after it was filled, Grievant was appointed to the position as a "permanent substitute" for Intervenor, the teacher who was selected. (See footnote 1)

2. In June 2005, Respondent posted a regular classroom teaching position at Dunlow Elementary School. There were no regularly-employed teachers who applied for the job, but Grievant and Intervenor were among the twenty-six substitute teachers who applied.

3. Because there were no regularly-employed applicants, Respondent applied the hiring factors stated in W. Va. Code § 18A-4-7a(c).

4. Not all of the applicants were interviewed, because they were all familiar to Personnel Director Dinah Ledbetter. There were many positions open at the time, and the same pool of applicants tended to apply for them, so she was familiar with their resumes, personnel files, experience and qualifications.

5. Based on her comparison of the information she had for the applicants and her personal knowledge, she recommended to the Superintendent that Intervenor be offered the Dunlow Elementary position.

6. At the time of the selection, Intervenor had experience teaching as an itinerant substitute for Respondent during the spring semester in 2004, and for the entire2004-2005 school year as a long-term substitute at Lavalette Elementary, where she taught 5th grade. She completed her bachelor's degree coursework in December 2003 with a 3.39 grade point average (g.p.a.), and was within a few days of completing her master's degree coursework, with a graduate g.p.a. of 4.0.

7. At the time of the selection, Grievant had been employed by Respondent as a long-term substitute for the entire years of 2003-2004 and 2004-2005. Her last assignment had been at Dunlow Elementary. Prior to her experience with Respondent, Grievant had taught as a substitute in other counties for a total of about 60 days during the 2002-2003 school year. She had completed her bachelor's degree coursework in 2002 with a g.p.a. of 3.1, and had taken no graduate-level classes. She had completed a three- hour introductory training class on a math pilot program that was to be implemented at Dunlow Elementary in 2005-2006.

8. Grievant's math pilot program training was not given any consideration by Ms. Ledbetter as "relevant specialized training." However, at the time of the selection, she also did not consider any of

Intervenor's graduate coursework as specialized training, and did not consider her work as a reading tutor or Booth Scholars Program mentor as “other relative qualifications.”

Discussion

County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. (See footnote 2) Grievant's claim that she was more qualified than Intervenor must be proven by a preponderance of the evidence. (See footnote 3) A county board of education must make decisions affecting the hiring of professional personnel on the basis of the applicant with the highest qualifications. Since there were no permanently employed applicants, in judging qualifications, consideration should have been given to each of the following seven factors: (See footnote 4)

(1) Appropriate certification, licensure or both;

(2) 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;

(3) The amount of course work, degree level or both in the relevant field and degree level generally;

(4) Academic achievement;

(5) Relevant specialized training;

(6) Past performance evaluations conducted pursuant to section twelve, article two of this chapter; and

(7) Other measures or indicators upon which the relative qualifications of the applicant may fairly be judged.

“With regard to the hiring for a classroom teaching position, boards of education must exercise their

discretionary authority by considering the seven 'qualifying factors' set forth in W. Va. Code §18A-4-7a (1992)." *(See footnote 5)*

Ms. Ledbetter stated that she did not compose a formal matrix for comparing the qualifications of the candidates, but instead based her recommendation on her general knowledge of the candidates. No interviews were conducted. The superintendent and the Board accepted this recommendation without further review. While this method ofselection does not contravene any statute or rule on personnel or hiring, it does introduce a large degree of uncertainty into the process and triggers an inference of unreliability. In this case, the most reliable comparison was done as an afterthought, in preparation for this grievance. However, that it was based on hindsight does not make it inaccurate. While the selection process was certainly flawed, it was not necessarily wrong.

"Because the . . . factors are not prioritized, and the statute does not mandate that any one area be afforded particular significance, a county board may objectively or subjectively assign different weights to the various aspects of the applicants' credentials." (See footnote 6) It follows that a Board may also weight the factors equally if it chooses to do so. There is no evidence in this case that the Board chose to weight the factors differently, and Grievant presented no evidence that would suggest it should weight anything differently.

If each factor were equally weighted, it is apparent Respondent made the correct choice. While Grievant has more overall teaching experience, that is the only point on which her qualifications exceed Intervenor's. However, the factor lists "the amount of teaching experience in the subject area." Grievant's teaching was all at the kindergarten level, while Intervenor's was at the same 5th grade level as the job posted. Grievant and Intervenor are evenly matched in terms of certification and evaluations, but Intervenor has higher academic achievement, more coursework and more relevant specialized training. On this basis, the record establishes that Respondent made the right choice between Grievant and Intervenor, even though the process it used was questionable.

The following Conclusions of Law support this decision:

Conclusions of Law

1. This grievance does not challenge a disciplinary action, so Grievant bears the burden of proof. Grievant's allegations must be proven by a preponderance of the evidence. *See*, W. Va. Code § 18-29-6, 156 W. Va. C. S. R. 1 § 4.21. "The preponderance standard generally requires proof that a

reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the party bearing the burden has not met its burden. *Id.*

2. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. *Dillon v. Bd. of Educ. of County of Wyoming*, 177 W. Va. 145, 351 S.E.2d 58 (1986).

3. "With regard to the hiring for a classroom teaching position, boards of education must exercise their discretionary authority by considering the seven 'qualifying factors' set forth in W. Va. Code §18A-4-7a (1992)." *Cummings v. Lincoln County Bd. of Educ*. Docket No. 92-22-324 (Dec. 3, 1997).

4. Because the . . . factors are not prioritized, and the statute does not mandate that any one area be afforded particular significance, a county board may objectively or subjectively assign different weights to the various aspects of the applicants' credentials. *Jenkinson v. Greenbrier County Bd. of Educ.*, Docket No. 95-13-503 (Mar. 31, 1996); *Fisher v. Marion County Bd. of Educ.*, Docket No. 93-24-042 (Mar. 11, 1993); *Marsh v. Wyoming County Bd. of Educ.*, Docket No. 94-55-022 (Sept. 1, 1994). *See 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). Given that discretion, a Board may choose to apply equal weight to the factors.

5. A county board of education must make decisions affecting the hiring of professional personnel on the basis of the applicant with the highest qualifications. In judging qualifications, consideration must be given to each of the following seven factors:

(1) Appropriate certification, licensure or both;

(2) 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;

(3) The amount of course work, degree level or both in the relevant field and degree level generally;

(4) Academic achievement;

(5) Relevant specialized training;

(6) Past performance evaluations conducted pursuant to section twelve, article two of this chapter; and

(7) Other measures or indicators upon which the relative qualifications of the applicant may fairly be judged.

W. Va. Code § 18A-4-7a.

6. Grievant did not meet her burden of proving she was more qualified than Intervenor.

For the foregoing reasons, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Wayne County. Any such appeal must be filed within thirty days of receipt of this decision. W. Va. Code § 18-29-7. Neither the West Virginia Education and StateEmployees Grievance Board nor any of its Administrative Law Judges is a party to such appeal, and should not be so named. However, the appealing party is required by W. Va. Code § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

May 22, 2006

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M. Paul Marteney

Administrative Law Judge

Footnote: 1

See Mills vv Wayne County Bd. of Educ., Docket No. 05-50-451 (May 12, 2006).

Footnote: 2

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

Footnote: 3

See, W. Va. Code § 18-29-6, 156 W. Va. C. S. R. 1 § 4.21.

Footnote: 4

W. Va. Code § 18A-4-7a.

Footnote: 5

Cummings v. Lincoln County Bd. of Educ. Docket No. 92-22-324 (Dec. 3, 1997).

Footnote: 6

Jenkinson v. Greenbrier County Bd. of Educ., Docket No. 95-13-503 (Mar. 31, 1996).