WEST VIRGINIA PUBLIC EMPLOYEE GRIEVANCE BOARD

JOSEPH PAOLO JR.,
Grievant,

v. **Docket No. 2012-0311-HanEd**

HANCOCK COUNTY BOARD
OF EDUCATION,
Respondent,

and

ALYSSA MICK,
Intervenor.

DECISION

Grievant, Joseph Paolo Jr., filed a grievance against his employer, the Hancock County Board of Education, on or about September 16, 2011. The statement of grievance reads:

> I applied for the other middle assistant principal position in our county. I felt I was the most qualified applicant for the position. I believe the selection process was arbitrary and capricious and that I was discriminated against. Therefore, the selection process was flawed. This is a violation of the WVC 18A-4-7a and WVC 6C-2-2.

As relief Grievant sought:

> The remedy I seek is to be placed in the assistant principal position at the other middle school, placed in an administrative position at the high school located in the northern end of the county, or placed in a Central Office administrative position of increased administrative responsibility.

A hearing was held at level one on September 28, 2011, and a level one decision denying the grievance was issued on October 17, 2011. Grievant appealed to level two on January 10, 2012. Grievant appealed to level three and a hearing was held on November 26, 2012, at the Grievance Board's Westover office. Grievant was represented

by Owens L. Brown, West Virginia Education Association, and Respondent was represented by Gregory Bailey, Esquire, Bowles, Rice, McDavid, Graff and Love.

SYNOPSIS

Grievant argued he should have been selected for a middle school assistant principal position at Oak Glen Middle School in Hancock County. Grievant was the assistant principal at Weir Middle School in Hancock County and requested to be transferred to Oak Glen by written application. Grievant and six other applicants were interviewed for the position by an interview committee of five people. The committee met and selected Alyssa Mick to fill the position at Oak Glen Middle School. Grievant argues Hancock County Board of Education abused its discretion in the selection process by giving more weight to the interview process than Grievant's experience as an administrator in their school system.

The following Findings of Fact are properly made from the record developed at levels one and three.

FINDINGS OF FACT

1. Grievant has been employed by the Hancock County Board of Education for 14 years, the last four years have been as an assistant principal at Weir Middle School.

2. On August 16, 2011, Hancock County Schools posted a vacancy notice for an assistant principal's position at Oak Glen Middle School. Grievant and six other applicants were considered for the position. Alyssa Mick, who did not have any school administrative experience, was selected to fill the position.

3. The assistant principal position is an administrative position requiring the

application of the first set of criteria contained in West Virginia Code § 18A-4-7a in the evaluation of the qualifications of the candidates for the position.

- Appropriate certification, licensure or both;
- 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, degree level or both in the relevant field and degree level generally,
- Academic Achievement;
- Relevant Specialized training;
- Past performance evaluations conducted pursuant to section twelve, article two
- Other measures or indicators upon which the relative qualifications of the applicant may fairly be judged.

4. Each of the factors contained in the first set of criteria were considered in evaluating the qualifications of the candidates. To determine factor "(7) Other measures or indicators upon which the relative qualifications of the applicant may fairly be judged," the Respondent gave each of the applicants a 30 minute interview.

5. The interview questions were developed by Wayne Neely, Assistant Superintendent, with input from other administrators who participated on the interview team. Superintendent Suzan Smith, Assistant Superintendent Neely, Oak Glen Middle School Principal Ginger Green, Director of Secondary Curriculum Martin Hudek, and Director of Elementary Curriculum Betty Ann McGillen served as the interview committee. The interview questions were calculated to assess the qualifications of the candidates for the assistant principal position.

6. While all the factors contained in the first set of criteria contained in West Virginia Code § 18A-4-7a were afforded consideration, predominate weight was given to interview performance in determining the candidate with the highest qualifications for the position in question.

7. The first six (6) factors contained in the first set of criteria set forth in West Virginia Code § 18A-4-7a were reviewed for each applicant. Each applicant was presented the same questions. Follow-up questions for clarification of answers were permitted by all interview committee members. A period of 30 minutes was allotted for each interview. However, this time allotment was not applied rigidly. Candidates were allotted all time necessary to respond to the questions posed during the interviews. Responses to each question by each candidate were assessed individually by members of the interview committee and, based upon these individual assessments, the overall interview performance of each candidate was determined.

8. Following the interview of all candidates, the interview committee met to consider the qualifications of the candidates as measured by interview performance. Initially, three (3) candidates were eliminated from consideration based upon a consensus opinion that their qualifications were insufficient to warrant further discussion. Each member of the interview committee expressed that the Intervenor, Alyssa Mick, demonstrated the highest qualifications during the interview process. No member of the interview committee held the view that the Grievant was the most qualified candidate.

9. Notes taken by the members of the interview committee were prepared for the limited purpose of assisting in the recall of responses given by the candidates and were not intended, nor suited, to provide a record that could be used to compare the relative interview performance of the candidates for the position.

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 evidence. Procedural Rules of the West Virginia Public Employee Grievance Board, 156 C.S.R. 1 § 1.3. "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 & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

Grievant argues that the Hancock County Board of Education abused its discretion in the selection process by giving more weight to a thirty minute interview than four years of successful experience as an administrator in their school system.

"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." *Syllabus Point 3, Dillon v. Bd of Educ. of County of Wyoming*, 177 W. Va. 145, 351 S.E. 2d 58 (1986); *Triggs v. Berkeley County Bd. Of Educ.*, 188 W.Va. 435, 445, 425 S.E. 2d 111,121 (1992); *Bd. of Educ. Of County of Wood v. Enoch*, 186 W. Va 712, 414, S.E. 2d 630 (1992) *Syl. Pt. 3, Pockl v. Ohio County Bd of Educ.* , 185 W. Va 256, 406 S.E. 2d 687 (1991).

Equal weight need not be assigned to the individual factors to be considered in the selection of candidates under the first set of criteria contained in West Virginia Code §18A-4-7a. A county board of education is free to determine the weight to apply to each of the factors when assessing an applicant's qualifications as long as this substantial discretion is not abused. *Hughes v. Lincoln County Bd. of Educ.*, Docket No. 94-22-543 (Jan. 27, 1995); and *Blair v. Lincoln County Bd. of Educ.*, Docket No. 92-22-009 (July 31, 1992).

It is not unusual for an interview performance to be assigned significantly more weight when selecting high-ranking candidates under the first set of criteria contained in WEST VIRGINIA CODE § 18A-4-7a. *Baker v. Lincoln County Bd. of Educ.*, Docket No. 97-22-482 (Mar. 5, 1998); and *Harper v. Mingo County Bd. of Educ.*, Docket No. 93-29-064 (Sept. 27, 1993).

Grievant argues that his prior experience as an assistant principal should operate to automatically propel him to the position in question in view of the fact that the successful applicant had no prior experience as a school administrator. The Court considered a similar argument in the case *Tenney v. Board of Educ. of County of Barbour* and stated :

> The fact that the appellant has successfully served as principal previously, while possibly suggesting that he is very qualified does not demonstrate that he is the best qualified. Finally, the record is devoid of a comparison of the subjective attributes of the appellant and Mr. Schiefelbein that the Board might have considered in arriving at its decision and is also devoid of a showing that the Board's decision was motivated by fraud, partiality, capricious conduct, or other circumstance which would justify judicial interference with the Board's exercise of its discretion.

398 S.E.2d, at 9. 116, 183 W. Va., at p. 634.

The following Conclusions of Law support the Decision reached.

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 evidence. Procedural Rules of the West Virginia Public Employee Grievance Board, 156 C.S.R. 1§1.3. "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 & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

2. It was not an abuse of discretion to assign greater weight to an interview performance when considering the qualifications of the candidates for the position in question. Nor was it an abuse of discretion to consider the Grievant's performance during the interview as compared to the successful candidate for the position.

3. Grievant has the burden of proving each element of his grievance by a preponderance of evidence. Procedural Rules of the West Virginia Public Employee Grievance Board, 156 C.S.R. 1 §1.3.

4. The Grievant failed to meet his burden of proof in showing a violation of West Virginia Code § 18A-4-7a or that he was a victim of unlawful discrimination.

Accordingly, this grievance is DENIED.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. *See* W. VA. CODE § 6C-2-5. Neither the West Virginia Public Employees 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 Civil Action number should be included so that the certified record can be properly filed with the circuit court. *See also* 156 C.S.R. 1 § 6.20 (2008).

Date: February 11, 2013

HUNTER SIMMONS
Administrative Law Judge