PAMELA JENKINSON

v. Docket No. 95-13-503

GREENBRIER COUNTY BOARD OF EDUCATION

DECISION

The grievant, Pamela Jenkinson, is employed by the Greenbrier County Board of Education (Board) as a substitute teacher. She filed this complaint at Level I October 17, 1995, protesting her non-selection for the position of Title I math teacher at Rainelle Elementary/Junior High School (REJS). Her supervisor was without authority to grant relief and the grievance was denied at Level II following a hearing held November 1, 1995. The Board, at Level III, declined to consider the matter and appeal to Level IV was made November 16, 1995. A hearing was held January 19, 1996, and the parties submitted proposed findings of fact and conclusions of law by February 19, 1996.

Facts

There is no dispute over the facts of the case. The record developed at Levels II and IV supports the following findings. 1) The position in issue was posted on or about October 5, 1995. A basic teaching certificate, grades Kindergarten through 8, was the only minimum qualification for the post. (See footnote 1)

2) The only applicants who met the certification requirement were substitute teachers.

3) REJS Principal Monica Patterson conducted interviews of the applicants and reviewed their personnel records to the extent that they had such records with the Board. Because of the demands of Ms. Patterson's position, a shortage of space at the school, and plumbing and electrical problems, many if not all the interviews were at least occasionally interrupted.

4) During the interviews, Ms. Patterson conducted a subjective assessment of the applicants and discerned or verified various aspects of their credentials. Ultimately, Ms. Patterson considered her subjective impressions of the applicants; their mathematics teaching experience; the level of their

mathematics education; their familiarity with "Jostens," a computer-oriented instruction program used in Title I math instruction; and, with the exception of the grievant, any past personnel evaluations the applicants may have had on file in the Board's central office.

5) A copy of the grievant's evaluation for school year 1989- 90, when she was regularly employed by the Kanawha County Board of Education (KCBE), was overlooked. 6) Ms. Patterson determined that Sheila Callison was the most qualified candidate for the post and that Carolyn Osborne was the second most qualified. The Board subsequently accepted the recommendation of Superintendent of Schools Stephen Baldwin that Ms. Callison be awarded the job.

7) Ms. Callison has never been regularly employed in any school system, and at the time of the selection, had been employed by the Board as a substitute teacher for approximately five years. She had worked 880 days, mostly in long term assignments.

8) Ms. Patterson had been advised by at least one fellow principal that Ms. Callison's service at his or her school had been exceptional. Ms. Callison had been rated highly on two personnel evaluations during her service with the Board.

9) The grievant has been employed by the Board as a substitute since the 1992-93 school year, but had worked only forty days at the time of the posting, and had not worked any days during the 1994-95 year. She was regularly employed by KCBE for approximately twelve years prior to her resignation during the 1990-91 school year.

Argument

The grievant avers generally that she was the most qualified applicant for the position but does not make specific allegations regarding the process by which Ms. Callison was appointed. She cites the failure to consider her KCBE evaluation and the interview interruptions, but it appears that her claim is primarily if not wholly grounded on her regular employment experience with KCBE.

The Board responds that Ms. Patterson's review of credentials comported with the provisions of W.Va. Code §18A-4-7a and was nototherwise arbitrary or capricious. The Board maintains that the grievant had ample opportunity to expound on her credentials during the interview and at least implies that the grievant had a duty to bring her personnel evaluations to Ms. Patterson's attention.

Conclusions

After a careful review of the parties' arguments, the applicable statute, and the foregoing findings of fact, the undersigned makes the following conclusions of law.

1) When no regular employees of a county board of education make application for a classroom teaching position, the board must assess and consider the applicants' credentials in the following areas: certification, amount of teaching experience in the position's subject area, degree level generally and degree level in the subject area, academic achievement, past performance evaluations, and "other measures or indicators upon which the relative qualifications of the applicant may fairly be judged." W.Va. Code §18A-4-7a, ¶1.

2) The pertinent portion of Code §18A-4-7a does not prioritize the areas of consideration or mandate that any one area be afforded particular significance. A county board may objectively and/or subjectively assign different weight to the various aspects of the applicants' credentials. Marsh v. Wyoming County Bd. of Educ., Docket No. 94-55-022 (Sept. 1, 1994). Thus, the focus of the review in such cases is first upon compliance with the statute and then upon the more general question of whether the Board abused its discretion.

3) In reviewing a county board's exercise of discretion in a hiring decision, the inquiry into the process by which thedecision was made must be thorough and searching but considerable deference must be afforded those conducting it. Hopkins v. Monroe County Bd. of Educ., Docket No. 95-31-477 (Feb. 21, 1996).

4) In order to obtain instatement to a position or a reevaluation of the applicants therefor, a grievant must not only demonstrate flaws in the process, but must also show that had the process been more accurate and/or fair, the ultimate selection might reasonably have been different. Stover v. Kanawha County Bd. of Educ., Docket No. 89-20-75 (June 26, 1989).

5) The grievant herein has shown that Ms. Patterson, through inadvertent error, failed to review and consider her 1990-91 personnel evaluation, and that her interview for the position was disrupted.

6) A preponderance of the evidence demonstrates, however, that Ms. Patterson most likely assumed that the grievant's performance for KCBE had been satisfactory or above and that a closer review of the grievant's past evaluations would not have resulted in a significant change in Ms. Patterson's overall ranking of the candidates. The record also establishes that while the disruptions in the grievant's interview may have impeded the presentation of her qualifications, she was no more

disadvantaged than other applicants.

7) To the extent that the interview interruptions and the failure to discover and consider the evaluation can be considered flaws in the process by which Ms. Callison was appointed to the position, they did not significantly skew the process. The grievant demonstrated no other deficiencies. 8) A preponderance of the evidence in the case establishes that Ms. Patterson considered the grievant's experience with KCBE to be an asset, but concluded that Ms. Callison's, more recent, highly rated in-county teaching service, and her greater experience in Title I mathematics instruction and familiarity with "Jostens," made her the more qualified applicant. The undersigned defers to her assessment and finds that it comported with the requirements of W.Va. Code §18A-4-7a and was neither arbitrary nor capricious.

Accordingly, the grievance is **DENIED**.

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

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JERRY A. WRIGHT

ADMINISTRATIVE LAW JUDGE

Dated: March 31, 1996

Footnote: 1

The posting itself did not list particular requirements. It did include the list of criteria contained in W.Va. Code §18A-4-7a upon which the candidates were to be assessed. The record is unclear, but it appears that potential applicants inferred from the position's designation that the Board was seeking elementary mathematics-related qualifications. The grievant does not allege impropriety in the posting and none is found.