

JOSEPH SHADE,

Appellant

v.

ST. MARY'S COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 03-23

OPINION

This is an appeal of a local board decision upholding the selection of another individual rather than Appellant for a regional building logistical support position. Appellant maintains that the local board acted arbitrarily, unreasonably, and illegally in denying him the promotion. The local board has filed a Motion for Summary Affirmance on grounds that Mr. Shade received sufficient due process and that the local board's decision was not arbitrary, unreasonable, or illegal.

In response to the motion, Appellant asserted for the first time that Mr. Hatton, the individual who was awarded the position, was not qualified for the job. In support of this assertion, Appellant filed affidavits from his union representative, his attorney, and himself. The local board in reply submitted the affidavit of Lawrence Hatton that details his prior managerial experience.

BACKGROUND

Appellant has worked at Ridge Elementary School for 30 years and currently serves in the position of building service manager. On May 2, 2002, a regional building logistical support position was advertised by St. Mary's County Public Schools. Following the submission and review of applications, Appellant and other qualified applicants were interviewed; however, Appellant was not selected for the position.

On August 12, 2002, Appellant filed an appeal with the County Superintendent Patricia Richardson, stating that he was a 30-year veteran of the St. Mary's County School System, had satisfactory and commendable evaluations during his career, was qualified for the position, and that the board principle of hiring from within the system as referenced in the collective bargaining agreement should apply when filling vacancies for classified positions. On September 26, 2002, an informal hearing was held with the Appellant, MSTA Uniserv Representative Andres Becerra, Union President James Spears, Chief Administrative Officer Brad Clements, and Human Resources Assistant Richard Smith. By letter dated October 11, 2002, the Superintendent upheld the candidate selection decision determining that the candidate selected met all of the qualifications and was considered the best candidate for the position.

By letter dated November 7, 2002, Mr. Shade filed an appeal of the Superintendent's decision. The letter reiterated in nearly verbatim fashion the issues raised in the August 12 appeal letter. Dr. Richardson submitted a memo to the Board responding to the issues on December 3, 2002.

The local board's requirements for the position were that candidates must hold a high school diploma or equivalency certificate; have 3-5 years of experience in building operations management; possess a valid Maryland driver's license; and have a working knowledge of standard computer programs. Regarding the qualifications of the candidate selected, the Superintendent noted:

While it is true that Mr. Shade worked for 30 years at Ridge Elementary School, received numerous commendations and has consistently received "satisfactory and commendable ratings", the candidate selected, Mr. Lawrence Hatton, was the most qualified for the position of Building Logistical Support. Mr. Hatton was also an internal candidate. He served in the role of general custodian/building service worker from 1997-2001. In April 2001, he was selected for the position of Regional Building Service Support, where he supported 23 of our schools in various capacities. Mr. Hatton has over 30 years of experience in building operations. Prior to working with the St. Mary's County Public Schools, Mr. Hatton worked for Calvert Cliffs Nuclear Power Plant from 1991-1997, where he supervised 10 employees. He received numerous commendations and has had extensive training in a wide variety of areas. During his time with the St. Mary's County Public Schools, he has never received lower than an "effective" or "commendable" rating.

The local board met on January 8, 2003, and filed a written decision dated January 29, 2003, unanimously upholding the Superintendent's decision. On February 27, 2003 Appellant filed an appeal of the local board's decision to the State Board.

ANALYSIS

Appellant brings this appeal pursuant to Md. Code Ann. Educ. §4-205(c). He argues that he was denied his due process right to an evidentiary hearing at the local board level, a right afforded by operation of §4-205(c). He also argues that he was denied the opportunity for promotion to a position for which he was well qualified and that had the local board granted a hearing, he could have presented evidence that the selected individual did not have the requisite experience; therefore the local board's decision was arbitrary and unreasonable and denied Appellant his due process rights.

(1) Due Process

The local board maintains that § 4-205(c) does not entitle Appellant to an evidentiary hearing before the local board. The board further maintains that Appellant was given the opportunity to present evidence at the informal hearing upon his initial appeal of the selection decision.

We concur that § 4-205(c) does not afford a right to an evidentiary hearing in all appeals. Instead, it provides the avenue by which an aggrieved party may have a local superintendent's decision reviewed by the local board. The review may be conducted on the record evidence relating to the dispute. That is what occurred in this case.

Moreover, Mr. Shade was not denied constitutional due process. Procedural due process is afforded to individuals by virtue of the Fourteenth Amendment in the protection of property rights. Appellant does not have property interests in a promotional position. Property interests, for the purposes of procedural due process, are only acquired in those benefits that a person already has and not those that one may be attempting to acquire. *See Board of Regents v. Roth*, 408 U.S. 564 (1972).

(2) Merits

Mr. Shade also alleges in the appeal to the State Board that the successful candidate did not have the requisite experience in building operations management, unlike himself. Appellant had not previously asserted this allegation at the local board level. Rather, he requested before the local board "an opportunity to review the job qualifications of the candidate that was chosen for the position." *See* 11/17/02 appeal letter from Joe Shade.

As the local board notes, it is the Appellant who has the burden under § 4-205(c) of the Education Article to present evidence that the selected candidate was not qualified. Moreover, as the local board indicates, it is prohibited by law from releasing "the job qualifications" of other candidates. *See* § 10-616(i), State Gov't Article, Annotated Code of Maryland.

In apparent recognition of his burden, Appellant in his reply to the local board's motion, submitted three affidavits. In his, Appellant avers, among other things, that he worked with Mr. Hatton and "personally am not aware that he ever obtained any management experience, and I am sure that he never obtained any such experience while working for St. Mary's County Public Schools." Appellant's union representative averred that it was his opinion "that Mr. Lawrence Hatton was not qualified for the position as it was advertised." Damon Felton, Appellant's attorney, averred:

Upon receiving a response to the State Board appeal, I was given, for the first time, evidence regarding Mr. Lawrence Hatton's prior work experience. Upon receiving this information I contacted the

company where Mr. Hatton allegedly obtained his building management experience. When I contacted Calvert Cliffs Nuclear Power Plant an individual in Human Resources searched the database to verify whether or not the Plant had employed Mr. Hatton. The individual confirmed that Mr. Lawrence Hatton had never been a direct employee of the plant since his name was not present on the database of past and present employees.

Felton Affidavit, ¶ 3.

In reply, the local board has submitted the affidavit of Lawrence Hatton, the individual selected for the position at issue. In that Affidavit, Mr. Hatton details his prior work experience including managing staff and identifying and scheduling work. With respect to employment at Calvert Cliffs Nuclear Power Plant, Mr. Hatton avers:

From 1991 to 1997 I worked for ISS in Lusby, Maryland fulfilling contractual obligations at Calvert Cliffs Nuclear Plant as a floor specialist/custodian. I received extensive training to become the floor specialist; while at the same time retained my responsibilities as crew leader managing a staff of 6 to 8 employees, who were responsible for custodial services and the operations of the building.

From a review of the record, including the affidavits submitted on behalf of Mr. Shade and Mr. Hatton's affidavit, we believe that there is no genuine dispute of material fact. Mr. Hatton has more than 20 years of experience in building operations management, easily satisfying the 3-5 years minimum qualifications requirement. The local board determined that, having possessed the requisite experience and other credentials, Mr. Hatton was the best candidate and chose him over Appellant. From our review of the record, we find that it was well within the local board's discretion to do so.

CONCLUSION

For these reasons and finding no due process violations or other illegalities in the proceedings, we affirm the personnel decision of the Board of Education of St. Mary's County.

Marilyn D. Maultsby
President

JoAnn T. Bell
Vice President

Philip S. Benzil

Dunbar Brooks

Clarence A. Hawkins

Walter S. Levin, Esquire

Karabelle Pizzigati

Edward L. Root

Walter Sondheim, Jr.

John L. Wisthoff

June 25, 2003