DIANNA KINSER,

Grievant,

v. DOCKET NO. 94-40-223

PUTNAM COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Dianna Kinser, filed this grievance on November 17, 1993, alleging that Respondent, Putnam County Board of Education, violated W. Va. Code § 18A-4-7a in selecting another applicant for the position of Assistant Principal of George Washington Middle School/Buffalo High School. Grievant contends she is more qualified and seeks instatement into the position along with backpay and lost seniority. A Level II hearing was held on May 23, 1994, and a decision rendered denying the grievance on May 27, 1993. Grievant appealed to Level IV and a hearing was held on August 4, 1994. Post-hearing briefs were submitted on or about September 6, 1994, at which time this case became mature for decision.

The basic facts are not in dispute:

1. Grievant is employed as a school counselor and has a total of 24 years experience with Respondent.

2. Respondent posted the position of Assistant Principal of George Washington Middle School/Buffalo High School and accepted applications in or about October, 1993. Ten applications were received.

3. Surveys were sent to each applicant asking for information relating to the first set of seven criteria in W. Va. Code § 18A-4-7a for the selection of professional personnel. (See footnote 1)

4. Those surveys were screened and the top five candidates were submitted to the selection committee. (See footnote 2) The top five candidates were Grievant, Clarence Woodworth, Dale Eggleton, Robert Sloan and Janet Garrison.

5. The five candidates were asked to submit portfolios and were invited to be interviewed and

to participate in a writingassessment. The portfolio, interview and writing assessment comprised the total evaluation.

6. Each candidate was asked the same questions by the same interviewer and each candidate was given thirty minutes to answer the questions in the writing assessment.

7. Each of the eight raters gave an individual interview score, which were then combined and divided to get a mean score for each candidate. Grievant received a 27.6; Mr. Woodworth, the successful applicant, received a 36.8.

8. Each of the eight raters gave an individual writing assessment score, which also were combined and divided to get a mean score. Grievant received a 15.38 and Mr. Woodworth received a 20.63.

9. Each rater reviewed each candidate's portfolio for evidence of the seven criteria in W. Va. Code § 18A-4-7a and rated each category on a scale of 1 to 10. A consensus score was derived and Grievant received a 53 while Mr. Woodworth received a 55. The consensus scale is as follows:

CATEGORY	KINSER	WOODWORTH
A. Appropriate Certification	10	10
B. Experience Relevant to Position	0	0
C. Amount of Course Work and Degree Level in Relevant Field	8	8
D. Academic Achievement	9	8
E. Relevant Specialized	10	9
F. Quality of Performance Evaluations	10	10
G. Impact on Student Performance	3	9
H. Evidence of Physical Stamina	3	1
TOTAL	53	55

10. Based upon the total scores from each area of the evaluation, Mr. Woodworth was selected for the position of Assistant Principal.

Discussion

Grievant contends that the numbers assigned in the portfolio assessment, and the process by which the Board assigned these numbers, do not accurately reflect or fairly judge the qualifications of the applicants. Respondent contends that Grievant has not established any facts to indicate that the selection process was flawed or that she was more qualified for the position than the successful applicant.

County boards of education have substantial discretion in matters relating to the hiring of school personnel and they must exercise that discretion only within the best interests of the schools and in a manner which is neither arbitrary or capricious. See, Hyre v. Upshur County Bd. of Educ., 412 S.E.2d 265 (W. Va. 1991). With regard to the hiring of professional personnel, boards of education must exercise their discretionary authority by considering the "qualifying factors" contained in W. Va. Code § 18A-4-7a (1992). Finally, boards of education are free to determine the weight which is to be applied to each of the first set of categories listed in section 7a in assessing candidates' qualifications. See, Blair v. Lincoln Co. Bd. of Educ., Docket No. 92-22-009 (July 31, 1991).

Although the arbitrary and capricious standard of review of county boards of education decisions requires a searching andcareful inquiry into the facts, the ultimate scope of review is narrow, and the undersigned may not substitute her judgment for that of the Board. See generally, Harrison v. Ginsberg, 286 S.E.2d 276 (W. Va. 1982). The Grievance Board cannot perform the role of a "super-interviewer" in matters relating to the selection of candidates for vacant positions. Stover v. Kanawha Co. Bd. of Educ., Docket No. 89-20-75 (Jun. 26, 1989); Harper v. Mingo Co. Bd. of Educ., Docket No. 93-29-064 (Sep. 27, 1993). Generally, a [board's] action is determined to be arbitrary and capricious if it did not rely on factors that were intended to be considered, entirely ignored important aspects of the problem, explained its decision in a manner contrary to evidence before it, or reached a decision that is so implausible that it cannot be ascribed to a difference of view. Bedford County Memorial Hosp. v. Health and Human Serv., 769 F.2d 1017 (4th Cir. 1985).

Grievant does not contest the scores of the interview process. Grievant contested her scores on the writing assessment asserting hers should have been higher, but in her brief, Grievant acknowledges that those scores were inherently subjective in nature and does not offer further proof that they were somehow flawed. Rather, Grievant concentrates her focus on the scores awarded for the portfolio assessment.

Respondent created the scoring process on the portfolio assessment to measure each candidate against an established criteria and not against each other, thus making the process more objective. Each evaluator determined their score for each personseeking the job independent of the other evaluators and scores were tabulated and a mean score developed for each candidate.

As can be seen from the portfolio assessment scores, Grievant's score was equal to or higher than the successful candidate in every category except one. Nonetheless, Grievant asserts that her scores should all have been higher, and sometimes in excess of the scale itself or that Mr. Woodworth's scores should have been lower.

Respondent viewed the "certification" requirement as a minimum requirement; either candidates were fully certified for the position or they were not. Thus, candidates were given a 10 if they were certified and a 0 if they were not. All the candidates were given a 10 in this category. This method of scoring is not uncommon and has not been found to be arbitrary or capricious.

The second category, "amount of experience relevant to the position", looked at the amount of administrative experience each of the candidates had in a principal or vice-principal's position. Neither Grievant nor Mr. Woodworth had any experience as a principal or vice-principal and thus, both received zeros. Grievant contends that her experience as a counselor necessarily includes some administrative experience. However, Respondent clearly narrowed its inquiry down to principal or vice-principal experience only, and, as that standard was applied to all candidates, it is not found to be an arbitrary method of calculating that type of experience.

Both Grievant and Mr. Woodworth received an 8 in the category, "amount of course work and degree level in the relevant field." Both Grievant and Mr. Woodworth had a Master's plus 30 at the time of the selection process. Respondent assigned a score for each degree level recognized by the State, i.e., an 8 was assigned to a Master's plus 30, a 9 to Master's plus 40, and a 10 to a Ph.D. Again, as this same standard was applied to all candidates, it cannot be found to be an arbitrary or capricious standard. Grievant contends that she has many more hours of coursework which should have been given weight. However, Respondent did not give any of the candidates credit for extra coursework above the recognized degree level. Grievant was not treated any differently than any other candidate.

"Academic Achievement" was measured from the candidates' GPAs and transcripts submitted with their portfolio. In this category, Grievant received a 9 because she had a 3.91 GPA, and a 10

score would require a 4.0. Grievant complains that she should have received a higher score or the other applicants should have received a lower score in this category. Specifically, Ms. Garrison also received a 9 with a GPA eight hundredths of a point less than Grievant's. Mr. Woodworth received an 8 with a GPA of 3.52. Grievant asserts that Ms. Garrison should have gotten an 8 which would presumably have pushed Mr. Woodworth down to a 7. Grievant's complaint necessarily assumes that the raters compared the candidates to each other when scoring the portfolio assessments. Respondent established that they did not comparecandidates, but rather scored each candidate against the established criteria. The undersigned does not find it incredible or arbitrary that Grievant and Ms. Garrison both received 9's for GPAs differing by only eight hundredths of a point.

"Relevant specialized training" took into account courses and seminars that the applicants had taken which were relevant to the position applied for. Grievant received a 10 in this category and Mr. Woodworth received a 9. Despite the fact that Grievant received the highest score possible, she asserts that either Mr. Woodworth should have received a lower score or she should have received something above a 10, based only upon her opinion that she is more qualified than Mr. Woodworth. The undersigned does not find Grievant's argument on this point persuasive. Also, the extra coursework Grievant argues should have been counted in the degree level category was considered in this category, resulting in her receiving a 10.

The category, "quality of performance evaluations," was scored much like the "certification" category. If the candidates had satisfactory evaluations, they were given a 10; if they had unsatisfactory evaluations, they were given a 0. All the candidates received a 10 in this category. Again, Grievant asserts that her evaluations were better than the successful candidate's and that she should have been given a higher score. Respondent believed it was impossible to quantitatively rate the candidates on their evaluations because different individuals completed the evaluations and inherently subjective factors are involved inperformance evaluations. The undersigned finds that Respondent's method of assigning a 10 for satisfactory and a 0 for unsatisfactory is neither arbitrary or capricious.

Grievant received a 3 in the category, "impact on student performance." Mr. Woodworth received a 9. With respect to the portfolio assessment, this is the category that placed Mr. Woodworth above Grievant in the final scoring. Respondent was looking for evidence of activities that the candidates were involved with that had a direct impact on student performance, such as improvement teams,

cite-based management, and learning performance. Grievant contends that as a school counselor, she necessarily has an impact on student performance through counseling, study skills, self-awareness training and behavior and discipline. The undersigned finds no evidence that these factors were ignored or not taken into account by Respondent when it assigned Grievant a 3 in this category. Rather, Respondent felt Mr. Woodworth's involvement in school improvement teams and the Related Arts Team had more of an impact overall on student performance. Again, the undersigned cannot find that Respondent's decision on this score was arbitrary and capricious.

Grievant received a 3 in the last category, "evidence of physical stamina," and Mr. Woodworth received a 1. While the propriety of such a category was initially raised, Grievant received the higher score and does not apparently question the scoring of that category.

Grievant asserts that this Board's recent decision in Basler v. Putnam County Bd. of Educ., Docket No. 93-40-215 (Apr. 27, 1994) is controlling in this matter. While Basler serves to point out the inherent problems in a mathematical scoring matrix, the problem in Basler was that the Board had developed a scale which made it impossible for candidates to receive the highest score in some of the categories. The Board developed a scale of 0 to 50 for the seven criteria; however, in some categories, candidates could receive only a 0 or a 1. The Administrative Law Judge found that since none of the candidates could receive a 50 in those categories, the seven criteria could not have been equally weighted as the Board asserted. (See footnote 3)

In the instant case, the Board scaled each of the seven criteria on a scale of 0 to 10. Not only was it possible for the candidates to receive a 10 in each category, Grievant received a 10 in three categories, and scored the highest in all but 1 category.

Grievant's opinion that she is more qualified than the successful candidate amounts to no more than a mere disagreement with Respondent's interpretation of the qualifying factors. See, Blair v. Lincoln Co. Bd. of Educ., Docket No. 92-22-009 (July 31, 1991).

Conclusions of Law

Grievant has failed to prove by a preponderance of the evidence that Respondent violated W. Va. Code § 18A-4-7a or abusedits discretion in the selection of Mr. Woodworth for the position of Assistant Principal at George Washington Middle School/Buffalo High School.

Accordingly, this grievance is **DENIED**.

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

_____

MARY JO ALLEN

Administrative Law Judge

Dated: November 17, 1994

Footnote: 1 *Code § 18A-4-7a states, in pertinent part:*

> *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; . . . the amount of teaching experience in the subject area; the amount of course work and/or degree level generally; academic achievement; relevant specialized training; past performance evaluations conducted pursuant to section twelve [§ 18A-2-12], article two of this chapter; and other measures or indicators upon which the relative qualifications of the applicant may be fairly judged.*

Footnote: 2 *Paul Callahan, Assistant Superintendent of Instruction; Lydia McCue, the Adolescent Director; Jack Welton, Middle Childhood Director; Vernon Goff, Principal of Buffalo High School; Jeff Wymer, Principal of George Washington Middle School; Rebecca Crockett, Faculty Senate Representative from Buffalo High School; Warren Fagan, Faculty Senate Representative from G. W. Middle School; and Harold Hatfield, Assistant Superintendent of Personnel and Pupil Services.*

Footnote: 3 *Although the position in Basler was a teaching position, the Board used the first set of factors in Code § 18A-4-7a because it was hiring a new classroom teacher.*