KAMELA MEIKLE,

Grievant,

v. DOCKET NO. 98-30-093

MONONGALIA COUNTY BOARD OF EDUCATION,

Respondent,

and

TAMMY HOSKINS,

Intervenor.

DECISION

Grievant, Kamela Meikle, challenges the Monongalia County Board of Education's (MCBOE) selection of Intervenor, Tammy Hoskins, to fill a vacant position as itinerant physical education teacher at the elementary school level. This grievance was filed at level one on November 5, 1997, and was denied by Grievant's immediate supervisor. She appealed to level two, where a hearing was conducted on January 7, 1998. The grievance was denied by Dr. Louis Hlad, Hearing Examiner, on February 23, 1998. (See footnote 1) **Consideration at level three was waived, and Grievant appealed to level four on March 24, 1998. The successful applicant for the position at issue was granted leave to intervene at level four,pursuant to W. Va. Code § 18-29-3(u). A level four hearing was held in the Grievance Board's office in Morgantown, West Virginia, on May 21, 1998. The parties submitted written proposals to the undersigned on June 15, 1998, at which time this matter became mature for consideration.** (See footnote 2)

Findings of Fact

1. Both Grievant and Intervenor were employed as substitute teachers by MCBOE prior

to October, 1997.

2. Grievant had accumulated four years of seniority as a substitute for MCBOE, and Intervenor had one full year of substitute seniority.

3. Both Grievant and Intervenor hold a bachelor's degree and are certified to teach Physical Education, K-12.

4. At the time she applied for the itinerant physical education position, Grievant had earned 18 hours of credit toward a graduate degree.

5. Most of Grievant's substitute teaching and coaching experience has been at the high school level since 1988. However, Grievant substituted at the elementary school level for one year in Pennsylvania, and she has some coaching experience with younger children in leagues and summer camps.

6. Intervenor substituted at the elementary school level from 1995 through 1997, and served for several months in the position which is the subject of this grievance. She has also coached at the middle and high school levels and worked in summer camps forMCBOE

7. Grievant, Intervenor and another applicant who was not regularly employed by MCBOE ultimately applied for the itinerant physical education position, (See footnote 3) **so the first set of criteria in Code § 18A-4-7a was utilized in the selection process.**

8. While serving as a substitute for MCBOE, Intervenor exhibited success incorporating MCBOE's "basic skills program" into the elementary physical education program. The basic skills program is an academic program designed to remediate learning deficiencies in math, language arts, and music, and is heavily emphasized in Monongalia County.

9. During interviews for the position, MCBOE officials found that Intervenor's educational philosophy for young children was more compatible with the county's than was Grievant's.

Discussion

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. State ex rel. Melchiori v. Bd. of Educ., 188 W. Va. 575, 425 S.E.2d 251

(1992); See Hyre v. Upshur County Bd. of Educ., 186 W. Va. 267, 412 S.E.2d 265 (1991). The hiring of professional personnel and new classroom teachers is governed by the "first set of factors" set forth in Code §18A-4-7a, which provides:

> **Further, the county board shall make decisions affecting the hiring of new 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; 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 and/or degree level in the relevant field and degree level generally; academic achievement; relevant specialized training; past performance evaluations conducted pursuant to section twelve, article two of this chapter; and other measures or indicators upon which the relative qualifications of the applicant may fairly be judged.**

Unlike the portions of the statute governing the selection of applicants when regularly employed personnel apply, (See footnote 4) these provisions afford county boards of education considerable latitude in determining the weight to be given to each of the criteria in assessing candidates' qualifications. Blair v. Lincoln County Bd. of Educ., Docket No. 92- 22-009 (July 31, 1991). Although the "arbitrary and capricious" standard requires a searching and careful inquiry into the facts, the undersigned may not substitute her judgment for that of a board of education. See generally, Harrison v. Ginsberg, 169 W. Va. 162, 286 S.E.2d 276 (1982). Moreover, the Grievance Board cannot perform the role of a "super-interviewer" in matters relating to the selection of candidates for vacant positions. Hopkins v. Fayette County Bd. of Educ., Docket No. 95-10-486 (March 15, 1996); Harper v. Mingo County Bd. of Educ., Docket No. 93-29-064 (Sept. 27, 1993); Stover v. Kanawha County Bd. of Educ., Docket No. 89-20-75 (June 26, 1989).

Grievant contends that she is entitled to the position because she undisputedly possesses a much greater amount of experience than Intervenor in the areas of teachingphysical education and of extracurricular coaching. She argues that her credentials were not adequately assessed, neither during the 15-minute interview she received, nor were the references listed on her resume contacted.

The evidence presented in this case demonstrates that each and every one of the criteria set forth in the pertinent portion of Code § 18A-4-7a was assessed and considered. If that had not been the case, then reconsideration of the applicants may be merited. See Baird/Hawley v.

Kanawha County Bd. of Educ., Docket No. 95-20-445 (Sept. 16, 1996). In addition, there is no dispute that Grievant excelled over Intervenor in some of the criteria, such as amount of experience and additional coursework toward a masters degree. However, Code § 18A-4-7a "permits school boards to look beyond such factors as experience . . . when selecting applicants", because they are allowed to consider "other measures or indicators upon which the relative qualifications of the applicant[s] may be fairly judged." Villers v. Kanawha County Bd. of Educ., Docket No. 97-20-294 (Jan. 30, 1998). Most importantly, the statute does not prioritize the first set of criteria or mandate that any particular area be given specific significance. "A county board may objectively and/or subjectively assign different weight to the various aspects of the applicants' credentials." Jenkinson v. Greenbrier County Bd. of Educ., Docket No. 95-13-503 (March 31, 1996); See Marsh v. Wyoming County Bd. of Educ., Docket No. 94-55-022 (Sept. 1, 1994).

Assistant Superintendent Mullett explained that, although Grievant did have a greater amount of teaching experience, the interview team recommended Intervenor, largely based upon her demonstrated abilities regarding the basic skills program. They also found Intervenor's education philosophy regarding young children to be veryappealing, which was demonstrated both during her interview and while she was substituting in the itinerant position.

Grievant argued that she was not fairly evaluated, because of the length of her interview and because the specific references she listed on her resume were not contacted. However, Mr. Mullett testified that principals with whom Grievant worked were contacted, and they gave Grievant excellent recommendations. Unfortunately, however, Grievant's background, interview, and recommendations gave MCBOE officials the overall impression that her strengths were in secondary education. Also, the evidence does not indicate that Grievant's interview differed from those of the other candidates for the position.

Grievant has not demonstrated that MCBOE's decision violated the statutory requirements, nor that it was arbitrary and capricious. Respondent was permitted to place greater emphasis on "other measures or indicators" than upon the other criteria, and, in this case, it chose to place the greatest importance on demonstrated abilities with the basic skills program and Intervenor's previous success in the position at issue. While another individual might have

selected Grievant for the position due to her greater length of experience, the arbitrary and capricious standard of review does not permit an administrative law judge to simply substitute her judgment for that of the school board. Bradley v. Bd. of Directors, Docket No. 96-BOD-030 (Jan. 28, 1997). See Harper, supra. The evidence does not show that MCBOE's decision was founded upon impermissible factors, nor that it constituted an abuse of the discretion boards of education are granted when making determinations under the first set of factors in Code § 18A-4-7a. Tomblin v. Lincoln County Bd. of Educ., Docket No. 98-22-132 (June 29, 1998). In accordance with the foregoing findings and discussion, the following conclusions of law are made.

Conclusions of Law

1. In non-disciplinary matters, a grievant bears the burden of proving each element of her grievance by a preponderance of the evidence. See W. Va. Code § 18- 29-6; Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997).

2. 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. State ex rel. Melchiori v. Bd of Educ., 188 W. Va. 575, 425 S.E.2d 251 (1992); See Hyre v. Upshur County Bd. of Educ., 186 W. Va. 267, 412 S.E.2d 265 (1991).

3. The hiring of new classroom teachers is governed by the "first set of factors" contained in W. Va. Code §18A-4-7a, and boards of education have considerable latitude in determining the weight to be given to each of the criteria in assessing candidates' qualifications. Blair v. Lincoln County Bd. of Educ., Docket No. 92-22-009 (July 31, 1991).

4. Grievant failed to establish that she was more qualified than the successful applicant for the position in issue, or otherwise demonstrate that Respondent abused its discretion or failed to comply with the requirements of W. Va. Code § 18A-4-7a. See Pockl v. Ohio County Bd. of Educ., 185 W. Va. 256, 406 S.E.2d 687 (1991); Saunders v. Cabell County Bd. of Educ., Docket No. 97-06-149 (Dec. 29, 1997).

Accordingly, this grievance is DENIED.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the Circuit Court of Monongalia 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.

Date: June 30, 1998 _____

V. DENISE MANNING

Administrative Law Judge

Footnote: 1

At the level four hearing, Grievant's representative contended that the lower level responses by MCBOE had been untimely, and that the level two hearing had been postponed without Grievant's consent. However, Grievant did not pursue appeal to the next level or victory by default, as provided by Code § 18-29-3(a), when these incidents occurred, so the undersigned is without authority to provide any relief in this regard at level four. A grievant who wishes to be granted relief by default must raise the issue when the alleged default occurs. Syl. Pt. 4, Hanlon v. Logan County Bd. of Educ., 1997 W. Va. LEXIS 251 (S. Ct. 1997).

Footnote: 2

Grievant was represented by her father, Tom Meikle; Intervenor was represented by Don Craft of the West Virginia Education Association; and Respondent was represented by Jacob Mullett, Assistant Superintendent.

Footnote: 3

Two regularly employed teachers originally applied for the position, but withdrew their applications before the interview and consideration process began.

Footnote: 4

The statute provides that, when one or more regularly employed personnel applies for a classroom teaching position, a different set of criteria is used, and each criterion must be given equal weight.