JANET HACKNEY,

Grievant,

v. **DOCKET NO. 98-50-434**

WAYNE COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

This grievance was initiated by Grievant Janet Hackney against Respondent Wayne County Board of Education, alleging a violation of W. Va. Code § 18A-4-7a occurred when Respondent filled the principal position at Lavalette Elementary School. Grievant believes she is more qualified than the successful applicant. She also alleged a flaw in the selection process. Grievant requested instatement into the position and backpay. (See footnote 1) The following Findings of Fact are made based upon the evidence presented at Levels II and IV.

Findings of Fact

1. Grievant is employed by the Wayne County Board of Education ("WBOE") as assistant principal at Buffalo Middle School.

2. Sometime prior to June 24, 1998, WBOE posted the principal position at Lavalette Elementary School. Six people applied for the position, including Grievant. All applicants were WBOE employees. Grievant submitted a resume with her application, which listed her achievements.

3. Superintendent Wilts Salmons formed a committee to evaluate the applicants and make a recommendation to him. The members of the committee were Michael Ferguson, WBOE's Director of Federal Programs, Jim Hale, an administrative assistant with WBOE, Larry Heck (See footnote 2), Beth Burgess, a teacher at Lavalette Elementary, and a Ms. Ferguson, the parent chairperson of the local school improvement council at Lavalette Elementary.

4. The committee interviewed four of the six applicants. Each interviewee was asked the same

seven questions during the interview, but follow-up questions may have been different for each. One of the questions was, "[h]ow will you work to make the community feel part of Lavalette Elementary? "

5. Mr. Heck participated in only two interviews, as he had an appointment and had to leave early. He did not participate in Grievant's interview. Mr. Hale had an appointment and had to leave before the last interview, but did participate in Grievant's interview.

6. Only Ms. Burgess, Ms. Ferguson, and Mr. Ferguson were able to participate in all interviews, and were able to stay after completion of the interviews to discuss the applicants. They voted on who they thought should be recommended to the superintendent, and chose Evelyn Meade by a two to one vote. The other two committee members did not participate in the vote of the committee to recommend Ms. Meade, but Mr. Ferguson did ask Mr. Hale and Mr. Heck for their input the following morning.

7. The superintendent reviewed the applicants' credentials independently, and rated them in each category as required by statute. He recommended Ms. Meade to the board of education, because the committee had recommended her selection, she had the most experience in Wayne County, and she had the most experience as an elementary principal. His recommendation was approved by WBOE, at a board meeting where three of the five members were in attendance.

8. Grievant and Ms. Meade both have Masters Degrees in Elementary Administration.

9. Grievant has 26 years of teaching and administrative experience, with 24 of those years in Wayne County, and 15 of those years in administration. She was assistant principal at an elementary school, acting principal at an elementary school,and for two years was principal at an elementary school. She had been an assistant principal at two different middle schools for the past eight years. Grievant has more years of experience in administration that Ms. Meade.

10. Ms. Meade has 26 years of teaching and administrative experience, all in Wayne County, and all at the elementary school level. She was the only applicant given credit by Superintendent Salmons in the category "amount of experience relevant to the position," because she had the most experience as an elementary principal.

11. Grievant has been on the summer staff of the Center for Professional Development for the Principals Academy, a member of the State Department of Education County on-site review group for five years, which reviews county school systems, and a lead teacher, training teachers with the Teacher Expectation and Student Achievement program.

12. Grievant and Ms. Meade had good evaluations.

Discussion

Grievant bears the burden of proving each element of her grievance by a preponderance of the evidence. Conner v. Mingo County Bd. of Educ., Docket No. 95- 29-476 (Mar. 28, 1996). In this case, Grievant bears a heavy burden, as the selection process for filling an administrative position is governed by the "first set of factors" set forth in W. Va. Code § 18A-4-7a, which provides:

> 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; amount of experience relevantto 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.

While each of these factors must be considered, this Code Section permits county boards of education to determine the weight to be applied to each factor when filling an administrative position, so long as this does not result in an abuse of discretion. Thus, a county board of education may determine that "other measures or indicators" is the most important factor. Baker v. Lincoln County Bd. of Educ., Docket No. 97-22- 482 (Mar. 5, 1998).

> All that Code §18A-4-7a requires when a decision concerning the hiring [for an administrative position] is made is that the decision is the result of a review of the credentials of the candidates in relation to the seven factors set forth. Once that review is completed, the Board may hire any candidate based solely upon the credentials it feels are of most importance. An applicant could "win" four of the seven "factors" and still not be entitled to the position based upon the Board's discretion to hire the candidate it feels has the highest qualifications. Again, a board is free to give whatever weight it deems proper to various credentials of the candidates and because one of the factors is "other measures or indicators," it is extremely difficult to prove that a decision is based upon improper credentials or consideration of such.

Harper v. Mingo County Bd. of Educ., Docket No. 93-29-064 (Sept. 27, 1993).

County boards of education have substantial discretion in matters relating to the hiring of school personnel. The exercise of that discretion must be within the best interests of the schools, and in a manner which is neither arbitrary nor capricious. See Hyre v. Upshur County Bd. of Educ., 186 W. Va. 267, 412 S.E.2d 265 (1991). Thearbitrary and capricious standard of review of county board of education decisions requires a searching and careful inquiry into the facts; however, the scope of

review is narrow, and the undersigned may not substitute her judgment for that of the board of education. See generally, Harrison v. Ginsberg, 169 W. Va. 162, 286 S.E.2d 276 (1982). The undersigned cannot perform the role of a "super-interviewer" in matters relating to the selection of candidates for vacant positions. Harper, supra; Stover v. Kanawha County Bd. of Educ., Docket No. 89-20-75 (June 26, 1989). Generally, a board of education's action is 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 the 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 argued she was the most qualified applicant for the posted position, because she had more administrative experience, and she was familiar with the students at Lavalette Elementary and the problems and successes at that school because those students attend Buffalo Middle School. She did not elaborate on the problems or successes she had seen at Lavalette Elementary, or whether they were unique. She also thought the interview committee should have asked questions pertinent to Lavalette Elementary. Respondent pointed out there was a question specific to Lavalette Elementary which would have allowed Grievant to discuss her views on this matter which she considered to be of importance. She also asserted that Ms. Meade had a poor evaluation, based upon her belief that Ms. Meade had been upset by an evaluation she had received from a former superintendent. James Ross, Director of Personnel for Wayne County Schools, testified, however, that he had researched Ms. Meade's evaluations, and found all of them to be good. Ms. Meade was not called to testify. Accordingly, the undersigned finds no evidence that Ms. Meade had any poor evaluations.

Grievant also argued the selection process was flawed, because no meaningful review of the qualifications of the applicants was conducted; only three of the members of the selection committee participated in the selection; different individuals participated in the interviews; the selection committee members did not look at her personnel file; and, she thought all members of the board of education should vote on the selection of a principal. Grievant did not indicate there was anything in her personnel file which she had not made the selection committee aware of, but believed the bad evaluation for Ms. Meade would have been found had this been done. This point has already been dispensed with. There was no evidence there was a requirement that personnel files be reviewed.

Respondent argued there is no requirement that five people sit on an interview committee, and presented testimony from Mr. Hale that had he voted, he would have recommended Ms. Meade. Respondent argued three is a quorum for a five member board of education, and there is no requirement that all five members participate in a selection decision. The undersigned finds nothing wrong with the interview and voting process conducted by the selection committee. WBOE was not required to have a selection committee, and was not required to have a particular number of members, or composition of the membership. As long as it was acceptable to the superintendent that two of the appointed members were unable to complete their obligations, the participation and vote of three members is sufficient. Further, Mr. Ferguson solicited the opinion of the other two members after the committee vote was taken, and their input did not affect the vote. See Hanlon v. Logan County Bd. of Educ., Docket No. 93-23-502 (Dec. 29, 1994), aff'd 201 W. Va. 305, 496 S.E.2d 447 (1997).

Likewise, Grievant cited to no statute, rule or regulation which requires all members of a board of education to participate in a selection decision, and she did not dispute that three is a quorum. While she testified that one board member told her the selection was "arbitrary and capricious," this hearsay statement represents only that board member's opinion. The evidence does not support that opinion.

There is no evidence that either the committee or the superintendent failed to consider that qualifications of the applicants. Grievant was not familiar with Ms. Meade's qualifications. While she questioned Ms. Meade's participation in training, this was based upon the fact Ms. Meade had not attended training at the same times she had. She admitted Ms. Meade could have attended the same training at other times.

Both Ms. Meade and Grievant were well qualified for the position, and it was reasonable to consider Ms. Meade's seniority in Wayne County and her greaterexperience as an elementary principal to be determining factors. The undersigned cannot conclude that Grievant's qualifications were so superior to Ms. Meade's that the decision to select Ms. Meade was clearly wrong, arbitrary and capricious, or an abuse of discretion.

The following Conclusions of Law support the Decision reached.

Conclusions of Law

1. Grievant bears the burden of proving each element of her grievance by a preponderance of

the evidence. Conner v. Mingo County Bd. of Educ., Docket No. 95-29-476 (Mar. 28, 1996).

2. County boards of education have substantial discretion in matters relating to the assignment of school personnel, so long as they act reasonably, in the best interests of the school, and in a manner which is not arbitrary and capricious. See Hyre v. Upshur County Bd. of Educ., 186 W. Va. 267, 412 S.E.2d 265 (1991).

3. With regard to the hiring for an administrative position, boards of education must select the applicant with the highest qualifications. In evaluating qualifications, a board of education must consider each of the seven "qualifying factors" set forth in W. Va. Code §18A-4-7a: appropriate certification, experience relevant to the position, degree level, course work and/or degree level in the relevant field and degree level generally, academic achievement, relevant specialized training, past performance evaluations, and other measures or indicators upon which the relative qualifications of the applicants may be fairly judged. The appropriate weight to be given each factor is within the discretion of the board of education. Baker v.Lincoln County Bd. of Educ., Docket No. 97-22-482 (Mar. 5, 1998); Harper v. Mingo County Bd. of Educ., Docket No. 93-29-064 (Sept. 27, 1993).

4. Grievant did not demonstrate a flaw in the selection process, that she was more qualified than Ms. Meade to fill the posted position, or that it was arbitrary and capricious, clearly wrong, or an abuse of discretion for the Wayne County Board of Education to place Ms. Meade in the position as the most qualified candidate.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or to the Circuit Court of Wayne County. Any 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. 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 appealing party must also provide the Grievance Board with the civil action number so that the record can be prepared and transmitted to the circuit court.

BRENDA L. GOULD

Administrative Law Judge

Dated: July 6, 1999

Footnote: 1

This grievance was filed on July 13, 1998. Grievant requested that Level I be waived, and her request was accommodated. The grievance was denied at Level II on September 17, 1998, following a hearing held on August 11, 1998. Grievant appealed the Level II Decision to Level IV on October 26, 1998, waiving Level III. After two continuances for good cause, a Level IV hearing was held on April 14, 1999. Grievant was represented by Susan Hubbard, and Respondent was represented by David Lycan, Esq. This grievance became mature for decision on May 17, 1999, upon receipt of the last of the parties' written arguments.

Footnote: 2

The record does not reflect Mr. Heck's position, but Respondent's proposed findings of fact identify him as an Assistant Superintendent for WBOE.