PAT ENGLISH,

Grievant,

v.

DOCKET NO. 99-23-319

LOGAN COUNTY BOARD OF EDUCATION,

Respondent,

and

WALLEY ZIGMOND,

Intervenor.

D E C I S I O N

Grievant, Pat English, filed this grievance against her employer, the Logan County Board of Education ("Board"), on June 4, 1999, alleging:

> Violation of WV Code 18A-4-7a in hiring for a position of Director of Guidance and Testing. I was more qualified for the position than the person chosen. Grievant seeks to be placed into the Director of Guidance and Testing and any and all benefits.

The grievance was denied at level one and a level two hearing was held on July 22, 1999. Walley Zigmond, the successful applicant for the subject position, properly intervened at level two. The grievance was denied by the Superintendent's Designee, Brenda Skibo, on July 22, 1999. Grievant by-passed level three of the grievance procedure, and appealed to level four on August 3, 1999. The parties agreed to submit thegrievance on the record developed below, and this case became mature on October 8, 1999, the deadline for the parties' submissions of proposed findings of fact and

conclusions of law. (See footnote 1) Grievant was represented by Anita Mitter, WVEA, and the Board was represented by its counsel, Brian R. Abraham, Esq.

SUMMARY OF EVIDENCE

Joint Exhibits

1A -

Personnel Records of Pat English.

1B -

Personnel Records of Wally Zigmond.

Grievant's Exhibits

1 -

Job Description for Director of Guidance and Testing.

2 -

Letter from Raymond Woolsey to Pat English.

Testimony

Grievant testified in her own behalf and presented the testimony of Raymond Woolsey.

FINDINGS OF FACT

I find, by a preponderance of the evidence, the following facts:

1. Grievant is employed by the Board as a Guidance Counselor at Man High School.
2. Walley Zigmond, at all times relevant, was employed as a Guidance Counselor at Chapmanville High School. 3. The Board posted job posting No. 564 for Director of Guidance and Testing, an administrative position, on or about May 11, 1999.

4. Grievant and Ms. Zigmond submitted written documentation as to their desire to receive the position, along with supplemental information and resumes.

5. Both applicants were subsequently interviewed by Superintendent Raymond Woolsey.

6. Mr. Woolsey asked the applicants the same questions during the interviews. Based upon the interviews, Mr. Woolsey determined that, while both applicants were qualified for the position and had basically equal experience in the certification area, his preference was Ms. Zigmond based upon her answers to the questions asked during the interview.

7. Based upon the interviews with the parties, Superintendent Woolsey chose Ms. Zigmond for the Director of Guidance and Testing position.

DISCUSSION

Grievant alleges the Board violated W. Va. Code § 18A-4-7a in selecting Ms. Zigmond for the Director of Guidance and Testing position, on the basis of qualifications. The Board maintains that it looked at all the appropriate criteria when selecting Ms. Zigmond for the position. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.19 (1996); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v.McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code § 18-29-6.

County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel so long as that discretion is exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious. Syl. Pt. 3, Dillon v. Bd. of Educ., 177 W. Va. 145, 351 S.E.2d 58 (1986). A county board of education must make decisions on the selection of professional personnel other than classroom teachers on the basis of the applicant with the highest qualifications. In making its selection, a board must give consideration to appropriate certification, experience relevant to the position, course work and/or degree level in the relevant field, 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. W. Va. Code § 18A-4-7a. Villers v. Kanawha County Bd. of Educ., Docket No. 97-20-294 (Jan. 30, 1998); Bell v. Lincoln County Bd. of Educ.,

Docket No. 97-22-013 (July 28, 1997); Hughes v. Lincoln County Bd. of Educ., Docket No. 94-22-543 (Jan. 27, 1995); Marsh v. Wyoming County Bd. of Educ., Docket No. 94-55-022 (Sept. 1, 1994). See Pockl v. Ohio County Bd. of Educ., 185 W. Va. 256, 406 S.E.2d 687 (1991). 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 orindicators" is the most important factor. Baker v. Lincoln County Bd. of Educ., Docket No. 97-22-482 (Mar. 5, 1998)

In addition to meeting the minimum requirements which the school board reasonably decides to include in the posting, the applicant's qualifications for an administrative position may be judged upon the criteria contained in the "first set of factors" in W. Va. Code § 18A- 4-7a. School boards have considerable discretion in applying these factors, so long as this discretion is not abused through an arbitrary and capricious decision. See Bell, supra, Hughes, supra; Marsh, supra. See generally Pockl, supra. In applying an arbitrary and capricious standard of review to the Board's actions, a searching and careful inquiry into the facts is required. However, the undersigned may not substitute her judgment for that of the board of education. Baker v. Lincoln County Bd. of Educ., Docket No. 97-22-482 (Mar. 5, 1998); Villers, supra. See generally, Bedford County Memorial Hosp. v. Health & Human Serv., 769 F.2d 1017 (4th Cir. 1985); Staton v. Wyoming County Bd. of Educ., 184 W. Va. 369, 400 S.E.2d 613 (1990).

Grievant's only assignment of error is her belief that the Board credited Ms. Zigmond with the wrong total amount of experience in the relevant field. Specifically, Grievant contends Mr. Woolsey gave Ms. Zigmond two more years of experience credit than she deserved. However, Mr. Woolsey indicated in his letter to Grievant providing her with the reason for his selection of Ms. Zigmond, that he based his decision almost entirely on the interview, and he considered them equal with respect to all other hiring criteria.

Mr. Woolsey testified he was looking for an individual with a vision for the goals and direction of counseling in the future. Mr. Woolsey had asked both applicants what theirideas were for improving counseling in the schools to which Grievant replied, “We need more counselors.” Ms. Zigmond provided Mr. Woolsey with specific training ideas and counseling programs which could be instituted in the schools with the existing staff.

Grievant has failed to prove by a preponderance of the evidence that the Board's action in hiring Ms. Zigmond for the Director of Guidance and Testing position was not based on the statutory criteria, arbitrary and capricious, or an abuse of discretion.

CONCLUSIONS OF LAW

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.19 (1996); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code § 18-29-6.

2. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel so long as that discretion is exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious. Syl. Pt. 3, Dillon v. Bd. of Educ., 177 W. Va. 145, 351 S.E.2d 58 (1986).

3. A county board of education must make decisions on the selection of professional personnel other than classroom teachers on the basis of the applicant with the highest qualifications. In making its selection, a board must give consideration to appropriate certification, experience relevant to the position, course work and/or degreelevel in the relevant field, 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. W. Va. Code § 18A- 4-7a.

4. County boards of education have wide discretion in choosing applicants to serve as administrators, once they have reviewed the criteria in W. Va. Code § 18A-4-7a. Villers v. Kanawha County Bd. of Educ., Docket No. 97-20-294 (Jan. 30, 1998); Bell v. Lincoln County Bd. of Educ., Docket No. 97-22-013 (July 28, 1997); Hughes v. Lincoln County Bd. of Educ., Docket No. 94-22-543 (Jan. 27, 1995); Marsh v. Wyoming County Bd. of Educ., Docket No. 94-55-022 (Sept. 1, 1994). See Pockl v. Ohio County Bd. of Educ., 185 W. Va. 256, 406 S.E.2d 687 (1991).

5. Grievant has failed to prove by a preponderance of the evidence that the Board failed to consider all the applicable hiring criteria in W. Va. Code 18A-4-7a, or that is decision to hire Ms. Zigmond was arbitrary, capricious, or an abuse of discretion.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of the Logan 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 Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

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MARY JO SWARTZ

Administrative Law Judge

Dated: November 30, 1999

Footnote: 1

At the time the Board submitted its proposals, the level two transcript had not been prepared. The Board's counsel offered Grievant's representative the opportunity to take additional time to submit her proposals once the transcript had been prepared. No submissions have been received from Grievant's representative.