JIMMY DAMRON,

Grievant,

v. **DOCKET NO. 99-50-015**

WAYNE COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Grievant, Jimmy Damron, challenges his non-selection for a teaching position at Spring Valley High School. He seeks placement in the position. The record does not reflect what occurred at level one of the grievance procedure. Grievant appealed to level two, where a hearing was held on September 22, 1998. The grievance was denied by James J. Ross, Personnel Director, on January 6, 1999. Level three consideration was bypassed, and Grievant appealed to level four on January 11, 1999. The parties agreed to submit this matter for a decision based upon the record developed below. This matter became mature for consideration on February 5, 1999, the deadline for submission of the parties' written arguments. (See footnote 1) Grievant was represented by Susan Hubbard of the West Virginia Education Association, and Respondent was represented by David Lycan, Esquire.

The following findings of fact are made from a preponderance of the evidence of record.

Findings of Fact

1. At all times pertinent to this grievance, Grievant was employed by the Wayne County Board of Education (WCBOE) as a classroom teacher at Wayne High School. 2. In early 1998, Spring Valley High School was created by the consolidation of Buffalo, Ceredo-Kenova and Vinson High Schools. The new school was to open at the beginning of the 1998-1999 school year.

3. Pursuant to W. Va. Code § 18A-4-8f, the teachers of Wayne County voted to allow the teachers from the closed schools to be given priority when positions were filled at Spring Valley High School.

4. WCBOE posted all positions to be filled at Spring Valley High School.

5. The position of health teacher at Spring Valley High School was originally awarded to Gary Norris, who had priority status.

6. During the summer of 1998, Mr. Norris successfully bid upon another position at Spring Valley High School, declining the health teacher position. WCBOE re-posted the health position.

7. WCBOE awarded the health teacher position to Brent Terry, who had priority status, on August 13, 1999, prior to the opening of the new school.

8. Grievant bid on the health teacher position, but was not selected, because he did not have priority status.

Discussion

In a non-disciplinary matter, Grievant must prove the allegations of his complaint 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.

W. Va. Code § 18A-4-8f governs seniority rights during school consolidations, andprovides, in pertinent part:

> Notwithstanding any provision of this article to the contrary, when a majority of the classroom teachers, as defined in section one [§ 18A-1-1], article one of this chapter, who vote to do so, in accordance with procedures established herein, and who are employed by a county board of education, the board shall give priority to classroom teachers in any school or schools to be closed as a result of a consolidation or merger when filling positions in the new school created by the consolidation or newly created positions in existing schools as a result of the merger . . . . The teachers in the school or schools to be closed shall have priority in filling new positions in the new or merged schools for which the teachers are certified and meet the standards set forth in the job posting on the basis of seniority within the county. . . . The most senior teacher in the closed school or schools shall be placed first, the second most senior shall be placed next and so on until all the newly created positions are filled, or until all the teachers in the closed school or schools who wish to transfer into the newly created positions are placed[.]

Grievant contends that, once Mr. Norris declined the position and it was re-posted, it was no longer a “newly created position” at the consolidated school. Therefore, it was not to be filled by priority status under the above-cited statute, but should have been filled with the most qualified

candidate, per W. Va. Code § 18A-4-7a. Grievant has cited no authority in support of this proposition.

It is well settled that county boards of education have substantial discretion in matters relating to the hiring of school personnel as long as their decisions are in the best interest of the schools and are not arbitrary and capricious. See Hyre v. Upshur County Bd. of Educ., 186 W. Va. 267, 412 S.E.2d 265 (1991); Syl. Pt 3, Dillon v. Bd. of Educ. of County of Wyoming, 177 W. Va 145, 351 S.E.2d 58 (1986). The issue presented in this case has not previously been addressed.

The arbitrary and capricious standard of review 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 decision-maker. See generally, Harrison v.Ginsberg, 169 W. Va 162, 286 S.E.2d 276 (1982). "An action is arbitrary and capricious if the agency making the decision did not rely on criteria intended to be considered; explained or reached the 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 opinion. See Bedford County Memorial Hosp. v. Health and Human Servs., 769 F.2d 1071 (4th Cir. 1985); Snodgrass v. Kanawha County Bd. of Educ., Docket No. 97-20-255 (Mar. 19, 1998). An action may also be arbitrary and capricious if it is willful and unreasonable without consideration of facts. Black's Law Dictionary, 55 (abr. 5th ed. 1985). Arbitrary is further defined as being "synonymous with bad faith or failure to exercise honest judgment." See Trimboli v. W. Va. Dept. of Health and Human Servs./ Div. of Personnel, Docket No. 93-HHR-322 (June 27, 1997).

Respondent contends that, because Spring Valley High School had not yet opened at the time Mr. Terry was selected, it acted appropriately in filling the position by priority status. The undersigned agrees. Mr. Norris, who was originally chosen for the health teacher position, never served in it. Accordingly, the position remained the same “newly created position” at Spring Valley High School when it was re-posted in August of 1998. Therefore, it was proper for WCBOE to place a teacher with priority status in the position, because it had not yet been “filled,” as mandated by W. Va. Code § 18A-4-8f. Grievant has not proven that this decision was arbitrary and capricious or constituted an unreasonable interpretation of the priority statute.

Consistent with the foregoing findings and discussion, the following conclusions of law are made.

Conclusions of Law

1. In a non-disciplinary matter, Grievant must prove the allegations of his complaint 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. When a majority of the teachers in a county vote to do so, a board of education shall give priority to classroom teachers in any school or schools to be closed as a result of a consolidation or merger when filling positions in the new school created by the consolidation. W. Va. Code § 18A-4-8f.

3. County boards of education have substantial discretion in matters relating to the hiring of school personnel as long as their decisions are in the best interest of the schools and are not arbitrary and capricious. See Hyre v. Upshur County Bd. of Educ., 186 W. Va. 267, 412 S.E.2d 265 (1991); Syl. Pt 3, Dillon v. Bd. of Educ. of County of Wyoming, 177 W. Va 145, 351 S.E.2d 58 (1986).

4. A county board of education may fill newly created positions at a consolidated school under the priority provisions of W. Va. Code § 18A-4-8f at any time prior to the opening of the new school.

5. Respondent appropriately followed W. Va. Code § 18A-4-8f in filling the health teacher position at Spring Valley High School.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or theCircuit Court of Wayne 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: February 18, 1999 _____

DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

Respondent elected not to file a written submission at level four.