JERRY WORKMAN,
Grievant,

v. **DOCKET NO. 99-50-099**

WAYNE COUNTY BOARD OF EDUCATION,
Respondent.

D E C I S I O N

Grievant, Jerry Workman, filed the following grievance against his employer, the Wayne County Board of Education ("WCBOE" or "Board"), on September 29, 1998:

> Violation of W V Code 18A-4-7a in regard to the posted position of supervisor of purchasing and English. The grievant was the most qualified applicant for the posted position. Relief sought is to be granted the position and any compensation and benefits due.

This grievance was waived at Level I, and a Level II hearing was held on February 24, 1999. A decision denying the grievance was issued by James J. Ross, the Superintendent's designee, on February 24, 1999. Grievant by-passed Level III and advanced this grievance to Level IV on March 4, 1999. The parties agreed to submit the grievance on the record developed below, and this matter became mature for decision on May 17, 1999, the deadline for the parties' submission of proposed findings of fact and conclusions of law. Grievant was represented by Susan Hubbard, from the West Virginia Education Association, and the Board was represented by Michael E. Ferguson, Director of Federal Programs, Wayne County Schools at Level II, with the Level IV proposals prepared and submitted by Attorney David Lycan.

Issues and Arguments

Grievant alleges he was the most qualified candidate for the Supervisor of Purchasing/English position, utilizing the selection criteria for administrative positions contained in W. Va. Code § 18A-4-7a. Grievant also asserts the Interview Committee was

improperly formed, because the successful applicant's brother-in-law, James Hale, chaired the Interview Committee. Additionally, Grievant argued the make-up of the Interview Committee was arbitrary and capricious, as the Transportation Director and/or other administrators should have been placed on this Interview Committee.

The Board maintains its selection of the successful applicant for the position conformed with the selection requirements in the above-cited Code Section and was not arbitrary or capricious. Further, Respondent maintains the relationship between Mr. Hale and the successful applicant was misstated, and in actuality, the successful applicant's brother is married to the sister of the wife of one of the Interview Committee members, James Hale, and this relationship is too far removed to be considered as affecting the selection process.

After a detailed review of the record in its entirety, the undersigned Administrative Law Judge makes the following Findings of Fact.

Findings of Fact

1. Grievant is employed by WCBOE as Assistant Principal at Spring Valley High School.

2. In late Summer 1998, WCBOE posted an administrative position of Supervisor of Purchasing/English. This position would have multiple purchasing duties and would also supervise middle school English teachers.

3. Because of financial constraints, positions are frequently posted and filled which have rather unusual combinations of areas of responsibilities, such as: Supervisor of School Lunches/Art; and Supervisor of Middle Childhood/Science.

4. Grievant, Patrick Mills,[1] Vickie Smith, and Nora Copeland [2] were considered for the position.

5. The Superintendent selected an Interview Committee consisting of Assistant Superintendent Jim Hale, Assistant Superintendent Larry Heck, Assistant Superintendent Gary Adkins, Treasurer Bob Smith, and Director of Elementary Education Katie Carey.[3]

6. The Interview Committee unanimously recommended to Superintendent Wilt Salmons that Ms. Smith be hired for the position.

7. After receiving this recommendation, Superintendent Salmons created a matrix of all the applicants' qualifications relating to the selection criteria established in W. Va. Code § 18A-4-7a. Bd. Ex. F. The ratings for Grievant and the successful applicant, Ms. Smith, are reproduced below:

Factors	Grievant	Ms. Smith
Appropriate certification	CHECK	CHECK
Amount of administrative experience	FOURTEEN YEARS	THIRTEEN YEARS
Course work/Degree Level	MA+45	MA+45
Academic Achievement	3.40	3.70
Relevant Specialized Training	ONE CHECK	TWO CHECKS
Evaluations	CHECK	CHECK
Other Measures or Indicators		CHECK

[1]Mr. Mills also filed a grievance over his non-selection, Docket No. 99-50-016. This grievance was denied by Decision dated by February 22, 1999.

[2]Ms. Copeland withdrew her name prior to the final decision.

[3]These individuals were only the Assistant Superintendents within WCBOE.

8. Neither Grievant or Ms. Smith had the most administrative experience. All candidates received checks in the areas of certification and evaluations, and all candidates had a MA+45.[4] Although Grievant is certified in Language Arts, 7-12, he has never taught the subject.

9. All factors in this matrix were considered, but because all the candidates were well qualified, the interview, or the area of "other measures and indicators", was selected by Superintendent Salmons to be given the greatest weight.

10. For the category relevant specialized training, the Superintendent gave one check to applicants with purchasing experience, and one check to applicants with English experience. Ms. Smith received a check in both areas, and Grievant received a check in purchasing experience.[5]

11. At the time of this posting, Ms. Smith had not been transferred to nor had she applied for another position.

12. Assistant Superintendent James Hale is not the brother-in-law of Ms. Smith, and is not directly related to her.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his 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

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[4]This delineation indicates the applicant had a Masters degree plus forty-five hours of course work.

[5]No specialized training requirements were listed in the posting. The parties did not address this issue.

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-4-7a sets forth the criteria to be used in filling administrative positions. That Code Section directs county boards of education to hire "professional personnel other than classroom teachers on the basis of the applicant with the highest qualifications." Further, in judging qualifications, consideration shall be given to each of the following:

> Appropriate certification and/or licensure; amount of experience relevant to the position . . . 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 . . . and other measures or indicators upon which the relative qualifications of the applicant may be fairly judged.

W. Va. Code § 18A-4-7a.

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 school, and are not arbitrary and capricious. Dillon v. Bd. of Educ. of County of Wyoming, 177 W. Va. 145, 351 S.E.2d 58 (1986). Additionally, a county board of education is free to determine the weight to apply to each of the above-stated factors when assessing an applicant's qualifications for an administrative position, as long as this substantial discretion is not abused. Hughes v. Lincoln County Bd. of Educ., Docket No. 94-22-543 (Jan. 27, 1995); Blair v. Lincoln County Bd. of Educ., Docket No. 92-22-009 (July 31, 1992).

Once a county board of education reviews the criteria, it has "wide discretion in choosing administrators . . .". March v. Wyoming County Bd. of Educ., Docket No. 94-55-

022 (Sept. 1, 1994). The standard of review in cases brought by unsuccessful candidates for administrative posts generally entails an inquiry into whether the criteria set forth in W. Va. Code § 18A-4-7a were accurately assessed for each applicant; whether favoritism and/or discrimination played a role in the selection process; and whether flaws in the process were so significant that the outcome might reasonably have been different. Stover v. Kanawha County Bd. of Educ., Docket No. 89-20-75 (June 26, 1989). See Mills v. Wayne County Bd. of Educ., Docket No. 99-50-016 (Feb. 22, 1999). Ultimately, it must be decided whether the Board abused its considerable discretion in personnel matters, or if its decision was arbitrary and capricious. See Dillon, supra; Amick v. Nicholas County Bd. of Educ., Docket No. 95-34-037 (Aug. 23, 1995).

"Generally, an action is considered arbitrary and capricious if the agency 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 was so implausible that it cannot be ascribed to a difference of opinion. See Bedford County Memorial Hosp. v. Health and Human Serv., 769 F.2d 1017 (4th Cir. 1985); Yokum v. W. Va. Schools for the Deaf and the Blind, Docket No. 96-DOE-081 (Oct. 16, 1996). While a searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute her judgment for that of a board of education. See generally, Harrison v. Ginsberg, 286 S.E.2d 276, 283 (W. Va. 1982)."[6] Trimboli v. Dep't of Health and Human Resources, Docket No. 93-HHR-322 (June 27, 1997).

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[6]169 W. Va. 162

Grievant has not proven the Board violated any statute, policy, rule, or regulation in assessing the criteria. As previously noted, the Board has wide discretion in matters involving the selection of administrative personnel, and has broad discretion to determine the weight to be afforded a particular criterion. Christian v. Logan County Bd. of Educ., Docket No. 94-23-173 (Mar. 31, 1995). W. Va. Code § 18A-4-7a contemplates that county boards may look beyond certificates, academic training, and length of experience in assessing the relative qualifications of the applicants. Alt v. Mineral County Bd. of Educ., Docket No. 97-28-015 (Aug. 25, 1997); Anderson v. Wyoming County Bd. of Educ., Docket No. 93-55-183 (Sept. 30, 1993). Thus, the fact that the Board gave more and greater weight to the interview process, or the other measures and indicators category, rather than the other six factors, does not render the selection process flawed.

Grievant has presented no evidence to demonstrate the selection process violated W. Va. Code § 18A-4-7a, was arbitrary and capricious, or was an abuse of WCBOE's substantial discretion. Grievant claims he is more qualified than the successful applicant, but his testimony indicated he knew little about Ms. Smith's specific qualifications. The matrix completed by the Superintendent confirms Grievant and the successful applicant both were highly qualified for the position. Superintendent Salmons had decided to give the decision of the Interview Committee great weight, and the Interview Committee unanimously recommended the selection of Ms. Smith. The Superintendent then, after reviewing the qualifications of the applicants and compiling his own matrix, followed that recommendation. There is no evidence Superintendent Salmons ignored any aspects of the applicants' qualifications or experience, or that his decision was in any way arbitrary and capricious. Additionally, in reviewing the qualifications of the applicants, it appears,

given Ms. Smith's experience in teaching English, her higher grade point average, and her performance in the interview, as reflected by the Interview Committee's recommendation, Superintendent Salmons's decision cannot be seen as arbitrary and capricious or an abuse of discretion.

Grievant's allegation about the make-up of the Interview Committee was not well delineated. The original allegation was that the successful applicant's brother-in-law chaired the Interview Committee, and he directed the interview process. This statement is false pursuant to Grievant's own testimony. Grievant testified Mr. Hale, Ms. Smith's brother's, brother-in-law chaired the committee, not her brother-in-law. No information was given about the closeness of this relationship, nor was it entirely clear from the record that Mr. Hale chaired the Interview Committee. The undersigned Administrative Law Judge takes administrative notice that in smaller counties many people will be related to each other. Further, it is clear Superintendent Salmons made his own review and matrix in selecting the candidate to recommend to the Board. If he had not agreed with the Interview Committee or had felt there were inappropriate actions on the part of the Interview Committee, he certainly had the opportunity to correct any defect or problem he saw. Further, Grievant presented no evidence to support his idea that the selection of the members of the Interview Committee was arbitrary and capricious. Apparently, the top administrators in the county were on the committee, and they were in unanimous agreement that the successful applicant was the right person for the position.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his 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. W. Va. Code § 18A-4-7a sets forth the criteria to be used in filling administrative positions. That Code Section directs county boards of education to hire "professional personnel other than classroom teachers on the basis of the applicant with the highest qualifications." Further, in judging qualifications, consideration shall be given to each of the following:

> Appropriate certification and/or licensure; amount of experience relevant to the position . . . 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 . . . and other measures or indicators upon which the relative qualifications of the applicant may be fairly judged.

W. Va. Code § 18A-4-7a.

3. 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 school, and are not arbitrary and capricious. Dillon v. Bd. of Educ. of County of Wyoming, 177 W. Va. 145, 351 S.E.2d 58 (1986).

4. "Generally, an action is considered arbitrary and capricious if the agency 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 was so implausible that it cannot be ascribed to a difference of opinion. See Bedford County Memorial Hosp. v. Health and Human Serv., 769 F.2d 1017 (4th Cir. 1985); Yokum v. W. Va. Schools for

the Deaf and the Blind, Docket No. 96-DOE-081 (Oct. 16, 1996). While a searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute her judgment for that of a board of education. See generally, Harrison v. Ginsberg, 286 S.E.2d 276, 283 (W. Va. 1982)."[7] Trimboli v. Dep't of Health and Human Resources, Docket No. 93-HHR-322 (June 27, 1997).

5. Additionally, a county board of education is free to determine the weight to apply to each of the above-stated factors when assessing an applicant's qualifications for an administrative position, as long as this substantial discretion is not abused. Hughes v. Lincoln County Bd. of Educ., Docket No. 94-22-543 (Jan. 27, 1995); Blair v. Lincoln County Bd. of Educ., Docket No. 92-22-009 (July 31, 1992). Once a county board of education reviews the criteria, it has "wide discretion in choosing administrators . . . ". March v. Wyoming County Bd. of Educ., Docket No. 94-55-022 (Sept. 1, 1994).

6. The standard of review in cases brought by unsuccessful candidates for administrative posts generally entails an inquiry into whether the criteria set forth in W. Va. Code § 18A-4-7a were accurately assessed for each applicant; whether favoritism and/or discrimination played a role in the selection process; and whether flaws in the process were so significant that the outcome might reasonably have been different. Stover v. Kanawha County Bd. of Educ., Docket No. 89-20-75 (June 26, 1989). Ultimately, it must be decided whether the Board abused its considerable discretion in personnel matters.

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[7] 169 W. Va. 162

See Dillon, supra; Amick v. Nicholas County Bd. of Educ., Docket No. 95-34-037 (Aug. 23, 1995).

7. The Board has wide discretion in matters involving the selection of administrative personnel, and has broad discretion to determine the weight to be afforded a particular criterion. Christian v. Logan County Bd. of Educ., Docket No. 94-23-173 (Mar. 31, 1995). W. Va. Code § 18A-4-7a contemplates that county boards may look beyond certificates, academic training, and length of experience in assessing the relative qualifications of the applicants. Alt v. Mineral County Bd. of Educ., Docket No. 97-28-015 (Aug. 25, 1997); Anderson v. Wyoming County Bd. of Educ., Docket No. 93-55-183 (Sept. 30, 1993).

8. The fact that the Board gave greater weight to the interview process, or other measures and indicators category, rather than the other six factors, does not render the selection process flawed.

9. Grievant has failed to prove by a preponderance of the evidence that the selection criteria of W. Va. Code § 18A-4-7a were not utilized and considered, or that the decision to award the position to the successful applicant was arbitrary and capricious.

10. Grievant has failed to demonstrate the selection of the successful applicant was fatally flawed by the placement of James Hale on the Interview Committee because his wife's sister is married to the successful applicant's brother.

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 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 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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JANIS I. REYNOLDS
Administrative Law Judge

Dated: June 11, 1999