MICHAEL ROSS,

Grievant,

v. DOCKET NO. 99-41-091

RALEIGH COUNTY BOARD OF EDUCATION,

Respondent, and

JAMES JUSTICE,

Intervenor.

DECISION

This grievance was filed by Michael Ross (Grievant) against Raleigh County Board of Education (RCBE), alleging that a violation of W. Va. Code § 18A-4-7a occurred when RCBE did not select him as Head Girls Basketball Coach of Park Junior High School (PJHS). Grievant believes he is more qualified than the successful candidate, Intervenor James Justice (Justice). Grievant requests instatement into the position and back pay.

The grievance was denied at Level I by Richard Davis, Principal of PJHS, on December 15, 1998. A Level II hearing was held on February 4, 1999. Grievant was represented at this hearing by Gary Archer of the West Virginia Education Association, and RCBE was represented by its Director of Personnel, Emily Meadows. The grievance was denied at Level II by RCBE Superintendent Dwight Dials, on February 18, 1999. There is no record of any proceedings at Level III.

The parties agreed that this grievance could be submitted at Level IV based on the record developed at the lower levels. The parties were given until May 28, 1999, to submitproposed findings of fact and conclusions of law, and this matter became mature for decision on that date.

The following Findings of Fact have been determined based upon a preponderance of the credible evidence of record.

FINDINGS OF FACT

1. Grievant is a professional educator employed by RCBE as a behavioral disorders teacher at PJHS.

2. Intervenor and successful applicant Justice is a professional educator employed by RCBE as a substitute teacher.

3. On September 28, 1998, RCBE posted the position of Head Girls Basketball Coach at PJHS.

4. Grievant, Justice, and two other applicants applied for the position.

5. The selection process consisted of a review of the applications, recommendations, and information submitted by the candidates by a committee of PJHS Principal Richard Davis, Athletic Director Bennett, and Assistant Principal Mills. Principal Davis then conducted interviews with the candidates, and recommended successful applicant Justice for the position.

6. Grievant was Assistant Girls Basketball Coach at Woodrow Wilson High School for two years. In 1996 - 1997, that team advanced to the State Tournament semi- finals. Grievant is Assistant Boys Basketball Coach at PJHS. Most of the teams Grievant has helped coach have finished over .500.

7. Intervenor has coached basketball since 1978. He has taken numerous boysand girls basketball teams to the finals or championship of approximately six state and 19 national tournaments. In 1997, he coached his girls basketball team to the championship of the Youth Basketball Organization of America state championship, and the national championship, the first West Virginia team to win this national championship. His girls team won the Youth Basketball Organization of America state championship again in 1998. Also in 1998, his team won the girls 12 and under national championship at the All- American Cage Classic. His combined girls and boys lifetime record is 457 wins and 55 losses, or 402 games over .500.

8. During his interview, Justice impressed the committee with his detailed plans for improving the girls basketball program and the self-esteem of its participants.

9. Grievant was either the third or fourth most qualified applicant, as judged by the committee.

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 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. A preponderance of the evidence is defined as "evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary (6th ed. 1991); Leichliter v. W. Va. Dep't of Health & Human Resources, DocketNo. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, a party has not met its burden of proof. Id.

Grievant alleges that he was the most qualified applicant for the position of Head Girls Basketball Coach of Park Junior High School, and claims that W. Va. Code § 18A-4-7a mandates his selection for the position. RCBE counters that W. Va. Code § 18A-4-16 controls this selection process. RCBE is correct.

In Smith v. Logan County Board. of Education, Docket No. 91-23-040 (July 31, 1991), this Grievance Board determined that "W. Va. Code § 18A-4-7a does not apply to the filling of extracurricular coaching positions." See McCoy v. Kanawha County Bd. of Educ., Docket No. 94-20-141 (Oct. 13, 1994); Ramey v. Mingo County Bd. of Educ., Docket No. 90-29-538 (July 17, 1991). Moreover, it is established that the appropriate standard of review for decisions concerning selection of professional personnel to fill coaching assignments is whether the board acted in an arbitrary and capricious manner or otherwise abused its broad discretion in matters relating to the hiring of school personnel. Pockl v. Ohio County Bd. of Educ., 185 W. Va. 256, 406 S.E.2d 687 (1991); Dillon v. Bd. of Educ., 177 W. Va. 145, 351 S.E.2d 58 (1986); Foley v. Mineral County Bd. of Educ., Docket No. 93-28-255 (Oct. 29, 1993); Chaffin v. Wayne County Bd. of Educ., Docket No. 92-50-419 (Aug. 20, 1993).

In applying the "arbitrary and capricious" standard, a reviewing body applies a narrow scope of review, limited to determining whether relevant factors were considered in reaching that decision, and whether there has been a clear error of judgment. Bowman Transp. v. Arkansas-Best Freight System, 419 U.S. 281, 285 (1974); Harrison v. Ginsberg,169 W.Va. 162, 286 S.E.2d 276 (1982). Moreover, a decision of less than ideal clarity may be upheld if the agency's path in reaching that conclusion may reasonably be discerned. Bowman, supra at 286, Hill and Cyrus v. Kanawha County Bd. of Educ., Docket No. 96- 20-362 (Jan. 30, 1997). Furthermore, in matters of non-selection, the

grievance process is not that of a “super-interview,” but rather serves as a review of the legal sufficiency of the selection process. Thibault v. Div. of Rehabilitation Serv., Docket No. 93-RS-489 (July 29, 1994).

Generally, an action is arbitrary and capricious if an agency 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).

From the record in this grievance, it is very clear that RCBE did not act in an arbitrary or capricious manner or abuse its discretion in selecting Justice as Head Girls Basketball Coach of Park Junior High School. As noted in finding of fact seven, which describes only part of his extensive coaching career, he has a spectacular record of success as a basketball coach. Justice also impressed the interview committee with his detailed plans for improving the girls basketball program and the self-esteem of its participants. The undersigned administrative law judge finds that relevant factors were considered in reaching that decision, and there was not a clear error of judgment. Under these circumstances, Grievant has failed to prove, by a preponderance of the evidence, that he was more qualified than the successful applicant, or that RCBE's decision was notlegally sufficient.

Consistent with the foregoing discussion, the following Conclusions of Law are made in this matter.

CONCLUSIONS OF LAW

1. In a nondisciplinary grievance, 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. The appropriate standard for reviewing the selection of professional personnel for extracurricular coaching positions is whether the board acted in an arbitrary and capricious manner or otherwise abused its broad discretion in matters relating to the hiring of school personnel. Pockl v. Ohio County Bd. of Educ., 185 W. Va. 256, 406 S.E.2d 687 (1991); Dillon v. Bd. of Educ., 177 W. Va.

145, 351 S.E.2d 58 (1986); Foley v. Mineral County Bd. of Educ., Docket No. 93-28-255 (Oct. 29, 1993); Chaffin v. Wayne County Bd. of Educ., Docket No. 92-50-419 (Aug. 20, 1993).

3. In applying the "arbitrary and capricious" standard, a reviewing body applies a narrow scope of review, limited to determining whether relevant factors were considered in reaching that decision, and whether there has been a clear error of judgment. Bowman Transp. v. Arkansas-Best Freight System, 419 U.S. 281, 285 (1974); Harrison v. Ginsberg, 169 W.Va. 162, 286 S.E.2d 276 (1982). Moreover, a decision of less than ideal clarity may be upheld if the agency's path in reaching that conclusion may reasonably be discerned. Bowman, supra at 286, Hill and Cyrus v. Kanawha County Bd. of Educ., Docket No. 96- 20-362 (Jan. 30, 1997). Furthermore, in matters of non-selection, the grievance process is not that of a "super-interview," but rather serves as a review of the legal sufficiency of the selection process. Thibault v. Div. of Rehabilitation Serv., Docket No. 93-RS-489 (July 29, 1994).

4. Generally, an action is arbitrary and capricious if an agency 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).

5. Grievant failed to prove, by a preponderance of the evidence, that RCBE acted in an arbitrary or capricious manner or otherwise abused its discretion when it selected James Justice over Grievant for the position of Head Girls Basketball Coach of Park Junior High School.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Raleigh 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. 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 sothat the record can be prepared and properly transmitted to the appropriate circuit court.

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ANDREW MAIER

ADMINISTRATIVE LAW JUDGE

Dated June 2, 1999