THOMAS H. DANIELS,

Grievant,

v. **Docket No. 01-55-109**

WYOMING COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Thomas Daniels ("Grievant") initiated this proceeding on November 13, 2000, alleging he should have been selected for the position of girls' basketball coach at Wyoming East High School. On November 16, 2000, Grievant's immediate supervisor determined that he did not have authority to resolve the grievance. Grievant appealed to level two on November 27, 2000, and a level two hearing was held on January 4, 2001. The grievance was denied in a written level two decision dated March 19, 2001. Level three consideration was bypassed, and Grievant appealed to level four on March 22, 2001. The parties agreed that a level four decision could be rendered based upon the record developed below, supplemented by fact/law proposals, which were submitted by May 4, 2001. Grievant was represented by Ben Barkey of the West Virginia Education Association, and Respondent was represented by counsel, Gregory W. Bailey. This grievance was assigned to the undersigned administrative law judge on May 7, 2001.

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

Findings of Fact

1. Grievant has been employed by Respondent as a teacher for approximately29 years.
2. Grievant has served in the following coaching positions:

1970-1974

7th-8th Grade Boys Basketball Coach, Herndon Grade School

1978-1988

Pineville Middle School:

Assistant, 7th-8th Grade Football

6th Grade Boys Basketball

7th-8th Grade Girls Basketball

7th-8th Grade Boys Basketball

1988-1988

Girls Varsity Basketball--Pineville High School

3. Jerry W. Thomas has been a head girls' basketball coach at Mullens Middle School since 1995. Also during that time, he has coached summer league teams, AAU girls' teams and YBOA girls' teams. He also served as head boys' basketball coach at Mullens Middle School from 1994-1995 and at Mullens High School during 1988 and 1989.

4. On August 30, 2000, Respondent posted a vacancy for the position of girls' varsity basketball coach at Wyoming East High School. Six applicants, including Grievant and Mr. Thomas, made timely applications for the position.

5. An interview committee consisting of Raymond Rose, Principal of Wyoming East High School, and Assistant Superintendent Frank Mann interviewed the applicants, asking all candidates the same series of questions.

6. Following the interviews, Mr. Rose and Mr. Mann independently ranked the applicants, based largely on the interviews, because their qualifications were determined not to be significantly different. Both ranked the top two candidates as Jesse Lester and Mr. Thomas. After Mr. Lester withdrew his application, Mr. Thomas was offered theposition and placed in it by the Board.

7. Both Mr. Rose and Mr. Mann rated Grievant fifth out of the six candidates.

8. The interview committee considered the applicants' qualifications and determined that, although Grievant had more overall coaching experience, Mr. Thomas had more experience coaching girls' teams. Therefore, their qualifications were deemed to be similar, and Mr. Thomas was deemed to be a better candidate due to his positive and energetic demeanor during the interview.

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 § 4.21 (2000); 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.

Coaching positions are considered to be extracurricular assignments, which are governed by the provisions of W. Va. Code § 18A-4-16, which sets forth the legal requirements for the employment of persons in these types of positions. In essence, under W. Va. Code § 18A-4-16, the terms and conditions of the extracurricular assignment must be mutually agreed upon by the employer and employee, and formalized by a contract separate from the worker's regular contract of employment. Spillers v. Brooke County Bd. of Educ., Docket No. 95-05-329 (Sept. 18, 1995). See Ramey v. Mingo County Bd. of Educ., Docket No. 93-29-470 (May 12, 1994). However, the statute does not designate how, or under what standard, extracurricular coaching assignments are to be made. Ramey v. Mingo County Bd. of Educ., Docket No. 95-29-483 (Apr. 30, 1996). This Grievance Board has previously determined that the provisions of W. Va. Code § 18A-4-7a are not applicable in the selection of professional personnel for extracurricular assignments. Hall v. Mingo County Bd. of Educ. Docket No. 95-29-529 (Mar. 28, 1996); Foley v. Mineral County Bd. of Educ., Docket No. 93-28-255 (Oct. 29, 1993); Smith v. Logan County Bd. of Educ., Docket No. 91-23-040 (July 31, 1991). The standard of review for filling coaching positions is to assess whether the Board abused its discretion in the selection or acted in an arbitrary or capricious manner. Dillon v. Bd. of County of Wyoming, 177 W. Va. 145, 351 S.E.2d 58 (W. Va. 1986); Chaffin v. Wayne County Bd. of Educ., Docket No. 92-50-398 (July 27, 1993).

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 the board of education. See generally, Harrison v. Ginsberg, 169 W. Va. 162, 286 S.E.2d 276, 283 (1982).

Grievant contends that he was entitled to the coaching position at issue, due to an alleged standard practice which Respondent has followed regarding the filling of coaching positions. Grievant introduced a transcript of testimony taken during the grievance hearingof David Price on April 1998, wherein Superintendent Frank Blackwell gave testimony regarding how coaches were selected for newly created positions when Wyoming East High School was first opened that year. Grievant contends that Mr. Blackwell stated that coaches were selected based upon overall coaching experience and coaching experience at the applicable level, such as varsity. Pursuant to this alleged “standard”, Grievant contends that he would be the successful candidate, based upon his superior overall coaching experience and coaching at the varsity level.

Unfortunately, the Price transcript does not support Grievant's allegations. Mr. Blackwell explained that, because the new high school was created through the consolidation of two other schools, individuals who had held coaching positions at either of those schools were given priority in filling positions at the new school. Then, each applicant's seniority in the particular type of position--such as girls' varsity basketball or boys' varsity football--was the determining factor in who was placed in the position. In Mr. Price's case, where it was a wrestling coach position at issue, the successful applicant was selected over Mr. Price because, although he did not have as much overall coaching experience, he had been serving as the head wrestling coach at one of the consolidated schools.

Clearly, the procedure whereby coaching positions were originally filled at Wyoming East in 1998 does not establish a standard whereby all of the county's coaches are selected. As explained by Mr. Blackwell, those choices were made solely based upon preferences being given to coaches from the two consolidated schools. There is simply no evidence in the record to support the conclusion that this has been Respondent'spractice in any other case. (See footnote 1)

In the instant case, it is clear that all of the applicants' qualifications were reviewed and considered. Mr. Rose testified that Mr. Thomas had continued to show commitment to the program, even after he (and Grievant) was an unsuccessful candidate for the varsity girls' basketball coaching position at Wyoming East in 1998. He stated that Mr. Thomas had volunteered his time to assist the successful applicant for the position and worked well with the same girls in his summer, YBOA and

AAU programs. In addition, during the interviews, Mr. Thomas conveyed a more a positive response to a question regarding dealing with parents. Overall, he believed Mr. Thomas came across as more positive, energetic and enthusiastic than Grievant. Although Grievant may have more overall experience, years of experience does not necessarily mean he was more qualified. Butta v. Wood County Bd. of Educ., Docket No. 99-54-466 (Dec. 23, 1999); See Sparks v. Mingo County Bd. of Educ., Docket No. 96-29-447 (Feb. 18, 1997).

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

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 § 4.21 (2000); Hollyv. 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 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. Hyre v. Upshur County Bd. of Educ., 186 W. Va. 267, 412 S.E.2d 265 (1991).

3. The standard of review for filling coaching positions is to assess whether the Board abused its discretion in the selection or acted in an arbitrary or capricious manner. Dillon v. Bd. of County of Wyoming, 177 W. Va. 145, 351 S.E.2d 58 (W. Va. 1986); Chaffin v. Wayne County Bd. of Educ., Docket No. 92-50-398 (July 27, 1993).

4. Grievant has failed to prove by a preponderance that he was entitled to the position at issue, or that Respondent acted in an arbitrary and capricious manner or otherwise abused its substantial discretion.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the Circuit Court of Wyoming 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 GrievanceBoard. 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.

Date: June 5, 2001 _____

DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

A contrary conclusion was reached by this Grievance Board in Spolarich v. Wyoming County Bd. of Educ., Docket No. 99-55-452 (Dec. 23, 1999), wherein it was determined that Mr. Blackwell's testimony in the Price grievance established a "county policy" for selecting coaches. Nevertheless, the evidence in the instant grievance clearly distinguishes the 1998 consolidation situation from the selection decision at issue in this case.