MITCHELL MORGAN,

Grievant,

v. **Docket No. 00-13-344**

GREENBRIER COUNTY BOARD OF EDUCATION,

Respondent,

and

JAMES JUSTICE, Intervenor.

DECISION

Mitchell Morgan ("Grievant") initiated this proceeding on September 11, 2000, challenging Respondent's decision to select another candidate for a coaching position at Greenbrier East High School. He requests instatement to the position with back pay. The grievance was denied at level one, and a level two hearing was held on September 27, 2000. Intervenor James Justice appeared at that hearing and was granted intervenor status in this matter. The grievance was denied in a written level two decision dated October 12, 2000. Level three consideration was bypassed, and Grievant appealed to level four on October 31, 2000, where the grievance was assigned to Administrative Law Judge Maier in the Grievance Board's Beckley office. After a level four hearing was scheduled, the parties elected to have a decision rendered based upon the record developed below. This grievance was reassigned to the undersigned on January 25, 2001, and became mature for consideration upon receipt of the parties' final fact/law proposalson February 7, 2001. (See footnote 1)

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

Findings of Fact

1. Grievant is employed by the Greenbrier County Board of Education ("GCBOE") as a math and physical education teacher at Eastern Greenbrier Junior High School, where he has also served

as head girls' basketball coach since 1992. He has served as a coach at the junior high school level in Greenbrier County for approximately 16 years, coaching both boys and girls.

2. Grievant's coaching record has been successful, and the teams he has coached have won the majority of their games every year.

3. On August 10, 2000, a vacancy was posted for the position of head girls' basketball coach at Greenbrier East High School. Grievant, Intervenor, and two other individuals applied for the position.

4. Intervenor has been employed as a substitute classroom teacher by GCBOE since 1998. He has been coaching basketball at the elementary, junior high and high school levels since 1978. He has coached numerous West Virginia boys' and girls' teams to the tournament and championship levels, and his teams have played in national tournaments every year since 1992. Intervenor's coaching at the national level has included the 1998 17-and-under AAU State Championship Team in the nationaltournament, the 1997 Girls' 11-and-under team in the Youth Basketball Organization of America State Championships and the Youth Basketball Association National Championships, the 1998 Girls' 12-and-under team in the All American Cage Classic, the 1998 AAU Invitational Team in a national tournament, and he coached the Boys' Amateur Athletic Union and Youth Basketball Organization of America Teams in national finals every year from 1992 through 1997. Intervenor was most recently employed as the coach for a girls' junior high basketball team in Raleigh County, taking a team that had won only six games the previous year and coaching them to the Raleigh County championship and winning the Mountain State Coal Classic Championship. He has been successful in nearly 90% of the games he has coached.

5. The applications for the position were reviewed by Robert Carlisle, Principal of Greenbrier East High School. Mr. Carlisle had supervised Grievant in the early 1990's when he was principal of Greenbrier Junior High School and Grievant was the basketball coach there. Mr. Carlisle was generally familiar with Grievant's coaching style and record.

6. Because he had worked with and was familiar with the other applicants, Mr. Carlisle only interviewed Intervenor, who had never been employed in Greenbrier County.

7. Based upon Intervenor's resume and interview and his knowledge of the qualifications of the other applicants, Mr. Carlisle recommended that Intervenor be placed in the position, which was ultimately approved by GCBOE.

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. LoganCounty 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. Grievant contends that, because he was not interviewed, no meaningful review of the applicants' credentials was conducted. He believes he is more qualified than Intervenor and should be instated to the position.

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 ofWyoming, 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).

It is understandable that Grievant was upset that he was not granted an interview, while Intervenor was. However, Mr. Carlisle testified that he was familiar with Grievant's coaching style and his success as a coach in Greenbrier County, and he had supervised Grievant in the past. He only interviewed Intervenor because he had not met him, and he wanted to give Intervenor the opportunity to discuss his coaching philosophy. There can be no dispute that Intervenor's lengthy coaching career is extremely impressive, with a large portion of it taking place at the national tournament level. As Mr. Carlisle testified, it was as if Lou Holtz applied for a job coaching a high school team. The undersigned does not find that GCBOE's decision to hire Intervenor was arbitrary and capricious, nor does it indicate an abuse of discretion. Grievant has failed to establish that his qualificationswere not fully considered and compared to those of Intervenor, and he has not proven entitlement to the position at issue. Accordingly, Grievant's requested relief must be denied.

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); 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 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 Greenbrier 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 so that the record can be prepared and properly transmitted to the appropriate circuit court.

Date: February 22, 2001 _____

DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

At all levels of the grievance process, Grievant was represented by Gary Archer, representative for the West Virginia Education Association; Respondent was represented by counsel, Erwin L. Conrad; and Intervenor was represented by counsel, John D. Wooton.