DEBRA SANTER,

Grievant,

v. **DOCKET NO. 01-20-557**

KANAWHA COUNTY

BOARD OF EDUCATION,

Respondent.

DECISION

In a grievance filed in August 2001, (See footnote 1) Grievant stated: "A position, Principal of Robins [sic] Elem., for which I clearly was the more senior and qualified candidate, was assigned to the other finalist due to her affiliation with the Asst. Supt. for Elem. Schools. Blatently [sic] false information was used to numerically justify the hiring through the KCS administrative matrix." Grievant's stated relief requested is: "I wish to promptly be reassigned from Asst. Principal to Principal and be reimbursed lost wages."

After being denied at the lower levels, a level four hearing was held December 19, 2002, and April 1, 2003, at the Grievance Board's Charleston Office. (See footnote 2) Grievant was represented by Jennifer Narog Taylor, Esq., and Respondent was represented by James M. Withrow, Esq. The parties agreed to submit their proposed findings of fact and conclusions of law by July 28, 2003, whereupon the matter became mature for decision. I find the following relevant facts have been proven by a preponderance of the credible evidence:

FINDINGS OF FACT

1. On July 23, 2001, Respondent Kanawha County Board of Education (KCBOE) posted a notice of vacancy for the Principal position at J. E. Robbins Elementary School.

2. Grievant Debra Santer, Intervenor Margaret Bays, and others applied for the position. Grievant and Intervenor were the only two applicants who were found to be minimally qualified and were interviewed for the position.

3. In order to help rank applicants for administrative positions, Respondent's Human Resources

Department has developed a “Matrix” in which candidates are evaluated based on the hiring criteria for administrative positions contained in W. Va. Code § 18A-4-7a.

4. The Matrix is constructed prior to interviewing each candidate by Nancy Lenhart, Secretary to Assistant Superintendent Melanie Vickers. Ms. Lenhart assigns numbers to most categories based on KCBOE records. The categories on the Matrix are weighted, with the maximum number of points in each category being the percentage of the total assigned to that category. Some categories are empirical, with a fixed number of points assigned to each candidate according to his or her meeting the criteria for a given point level, and some are relative, based on comparisons between the candidates. For example, “Degree Level” is assigned a point value based on the highest degree completed by each candidate, with a Ph.D. receiving 15 points, an M.A. + 45 receiving 12 points, etc. More than one candidate may receive the same number of points in this empirical category. “Relevant Experience,” however, is calculated by giving the candidate with themost experience the maximum 25 points, and other candidates are scored based on a fraction of 25 corresponding to the ratio of their experience to the most experienced candidate's.

5. The Matrix is completed during the interviews by adding the score for the interview portion of the process and totaling the scores.

6. After compiling the Matrix, Ms. Lenhart arranges for an interview team comprising the supervisor of the position being filled, another principal from a different school, a teacher, and a representative of the KCBOE Human Resources Department. She then arranges interview times with the candidates.

7. Ms. Lenhart also prepares an “Applicant Profile” for each candidate to be interviewed, consisting of the name of the applicant, the position applied for, undergraduate and graduate grade point averages (g.p.a.'s), years of experience, date of hire, types of certificates and endorsements, and previous positions held.

8. In addition to the information packets prepared by Ms. Lenhart, a set of interview questions is prepared by the Assistant Superintendent who heads that level of education, in this case the Assistant Superintendent for Elementary Education.

9. The Matrix, Applicant Profiles and interview questions are not given to the interview committee until the morning of the interviews.

10. The Matrix for the posting in question was completed as follows:

Category	Certification	Relevant Experience	Relevant Courses/Degree	Academic Points	Relevant Training	Past Performance	Interview	Total
Maximum Points	**5**	**25**	**15**	**10**	**20**	**10**	**5**	**100**

Intervenor	5	25	12	8	20	10	11.25	91.25
Grievant	5	25	12	7	15.48	10	10.25	84.83

11. The Matrix compiled by Ms. Lenhart and used during the interviews was incorrect, although Grievant and Respondent differ in their contentions as to the extent of the inaccuracy.

12. Contrary to Grievant's assertions, the Matrix category of “Relevant Experience” was scored correctly. In this category, both candidates were given 25 points based on both having 2.0 years of relevant experience. Had this category been scored as Grievant argued it should be, Grievant would have been credited with 2.5 years of experience, so she would have been awarded 25 points and Intervenor would have been awarded 20 points. (See footnote 3)

13. Also contrary to Grievant's argument, “Relevant Training” was scored correctly, based on the last five years of staff development training available to Ms. Lenhart at the time she compiled the Matrix (See footnote 4). At the time, staff development hours for the 2000- 2001 school year had not been compiled and reported by the Staff Development Office, although that school year had already ended. Had the Matrix been completed based on Grievant's calculations, she would have been credited with 519 hours compared to Intervenor's 427 hours, for school years 1996-1997 through 2000-2001, instead of 387 hours compared to Intervenor's 427 hours for school years 1995-1996 through 1999-2000. The change would result in Grievant receiving the maximum 20 points for this category, and Intervenor receiving 16.4. (See footnote 5)

14. The sole inaccuracy of the Matrix was in Academic Points, in which Intervenor was credited as having a 4.0 g.p.a. in her graduate course work when she, in fact, did not. This category is scored by assigning a number of points based on a range in which a given g.p.a. falls, (See footnote 6) and if scored correctly, both candidates would have received a 7 in this category.

15. The corrected Matrix should appear as follows:

	Certification	**Relevant Experience**	**Relevant Courses/Degree**	**Academic Points**	**Relevant Training**	**Past Performance**	**Interview**	**Total**
Intervenor	5	25	12	7	20	10	11.25	90.25
Grievant	5	25	12	7	15.48	10	10.25	84.83

16. If the Matrix were completed according to Grievant's calculations, it would appear as follows:

	Certification	**Relevant Experience**	**Relevant Courses/Degree**	**Academic Points**	**Relevant Training**	**Past Performance**	**Interview**	**Total**
Intervenor	5	20	12	7	16.4	10	11.25	81.65

Grievant	5	25	12	7	20	10	10.25	89.50

17. KCBOE Policy G45, § 45.10 provides in part that, “The selection committee shall incorporate the results of the interview and rank each candidate in ascending order. The names of the top 4 candidates shall be provided to the superintendent.” Section 45.11 states,

> The Superintendent shall consider the qualifications of the candidates for administrative positions based upon the criteria set forth in W. Va. Code § 18A-4-7a. Such consideration may include, under the criteria other measures or indicators upon which the qualifications may fairly be judged: the results of a structured interview; input from the supervisors or other administrators who are familiar with the job performance of any candidate; successful completion of a leadership internship; and, interviews that may be conducted by the Superintendent. The Superintendent shall select acandidate from the pool provided by the selection committee. In the event the Superintendent elects not to recommend a candidate from the pool, the position shall be readvertised and the qualification or qualifications found lacking in the pool shall be included in the new job posting.

Level two KCS Exhibit No. 9 (emphasis added).

18. The interview committee forwarded the names of both Grievant and Intervenor to the Superintendent as the pool of best candidates. Had the Matrix been completed the way Grievant asserts it should have been, both names would still have been recommended to the Superintendent for consideration.

19. The Superintendent recommended to the Board that Intervenor be hired for the position, and the Board followed that recommendation.

20. Board Policy G45, section 45.06 states in part (formatted as it appears in the policy):

> IN THE EVENT IT BECOMES NECESSARY TO SELECT A NEW PRINCIPAL, THE OPINIONS OF THE SCHOOL COMMUNITY ON THE DESIRED PRINCIPAL LEADERSHIP SKILLS WILL BE CONSIDERED IN SELECTING A NEW PRINCIPAL. PLEASE MARK THE FIVE (5) SKILLS THAT YOU BELIEVE ARE MOST IMPORTANT.
>
> The results of this survey shall be used in formulating interview questions.

Level two KCS Exhibit No. 9.

21. Respondent had previously conducted such a survey to meet the requirements of the state's Office of Educational Performance and Audits, and had the results on file. The most desired leadership skills were “The principal should be easy to approach and a good listener, and the principal should involve

parents and community members in resolving school issues. The principal should be available to discuss a child's education with parents and guardians." 22. Grievant was placed as principal of Roxalana Elementary School in that school's final year before it was closed. Due to staff and community complaints, she was removed from the position after three months, and placed at Piedmont Elementary. Her position at Piedmont was not as co-principal or vice principal, but was simply a created position so she could finish out the year. Her title and pay were not changed.

23. The fact that Ms. Bays had been a student at Robbins Elementary had no bearing on her selection.

DISCUSSION

This is a non-disciplinary grievance in which Grievant bears the burden of proof. Grievant's allegations must be proven by a preponderance of the evidence. *See*, W. Va. Code § 18-29-6, 156 W. Va. C. S. R. 1 § 4.21. Grievant argues that there were significant flaws in the ranking and interview process, which, if corrected, would dictate that she be considered the successful candidate. Respondent's position is that, while there were flaws in the Matrix, Grievant nevertheless would not be the favored candidate.

Grievant contends Respondent erred on three parts of the Matrix: years of relevant experience, academic points, and relevant specialized training. Grievant also contends the interview portion of the process was unfair because one of the interviewers was acquainted with Ms. Bays. Although each of the potential errors on the matrix is discussed below, Grievant's argument ignores the fact that scoring highest on the Matrix does not entitle an applicant to the position applied for. Instead, as stated in KCBOE's policy, the four highest scoring candidates are the names forwarded to the Superintendent for his consideration, independent of the Interview Committee. Both Grievant's and Intervenor's names were forwarded to the Superintendent, as per policy, and the involvement of the Matrix in thehiring process stopped there. Had the Matrix been completed as Grievant asserts it should have been, the outcome of the interviews would have been no different; both names would still have been forwarded to the Superintendent.

Grievant's contention that Intervenor was incorrectly credited with a 4.0 g.p.a. in her graduate work is factually correct. The evidence shows that with this correction, both Grievant and Intervenor would have the same seven-point score on "Academic Points." This one-point difference in Intervenor's overall score does not significantly affect the Matrix.

Grievant did not meet her burden of proving her argument that she should have been credited with 2.5 years of experience instead of 2.0 years. In this matter, Grievant essentially contends that, for her,

"seniority" and "relevant experience" are synonymous, while for Intervenor, they are not. Grievant argues that her appointment as principal at Roxalana, even while she was not actually serving in that capacity, counts as relevant experience. However, she argues that Intervenor's actual experience as a non-principal administrator is not relevant to the position in question.

Respondent correctly counted the candidates' experience on the Matrix. Grievant seeks to be credited with the entire year she was nominally the principal of Roxalana Elementary school, even though she only actually worked in that position for half of a year. Respondent's evidence showed that Grievant had no actual duties at Piedmont, but was only placed there to serve out the year. While she is credited with seniority for the time after she was removed from the Roxalana position, she could not have gained any experience for work she did not actually do. Intervenor's experience as head of the 21st Century Learning program, even though it was not a site-based job situated at a particularschool, was relevant to the Principal job in question. In that job, she actually performed work involving working with parents and community members and she demonstrated good leadership skills.

Grievant also avers that the candidates' staff development hours were improperly counted. These hours show up on the Matrix under "Relevant Training." For the Matrix, Respondent counts the hours recorded for the last five school years. However, for administrative reasons having to do with the availability of clerical help needed to enter records in to the record-keeping system, hours submitted throughout the school year are collected and entered all at once at the end of the school year. At the time of interviews for the job in question, the most recent school year, although completed, had not been compiled and tallied, so the most recent five completed years was used. This system is used consistently, and there is no evidence that it was manipulated to hinder Grievant's application. The person compiling the Matrix received from the Staff Development office its latest records as she does for all job postings. Grievant argues that the records had been submitted for the most recent school year so they should have been used, and if they had, she would have gained an advantage in the number of total hours.

Mr. Buchanan inexplicably testified that a Matrix compiled with inaccurate information would still be correct, as long as the Matrix correctly reflected the inaccurate information. This contention is indefensible, but Mr. Buchanan's opinion is not material to the final decision. Had he admitted the obvious and taken steps to correct the actual errors, the outcome in the final hiring decision would not have been affected.

Ultimately, the hiring decision was made by the Superintendent after consideration of both candidates whose names were forwarded by the Interview Committee. Grievantargues that while Intervenor may have met the minimum requirements for the position, she herself met the maximal requirements, therefore choosing Intervenor over her was arbitrary and capricious. "West Virginia Code § 18A-4-7a sets forth the

criteria to be used in filling administrative positions. To hire 'professional personnel other than classroom teachers on the basis of the applicant with the highest 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." Goodwin v. Monongalia County Bd. of Educ., Docket No. 01-30-495 (June 26, 2003). 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).

While each of the factors listed in W. Va. Code § 18A-4-7a must be considered, this Code section permits county boards of education to determine the weight to be applied to each factor when filling an administrative position, so long as this does not result in an abuse of discretion. Thus, a county board of education may determine that "other measures or indicators" is the most important factor. Switzer v. Kanawha County Bd. ofEduc., Docket No. 03-20-013 (Apr. 11, 2003); Baker v. Lincoln County Bd. of Educ., Docket No. 97-22-482 (Mar. 5, 1998).

> All that Code §18A-4-7a requires when a decision concerning the hiring [for an administrative position] is made is that the decision is the result of a review of the credentials of the candidates in relation to the seven factors set forth. Once that review is completed, the Board may hire any candidate based solely upon the credentials it feels are of most importance. An applicant could "win" four of the seven "factors" and still not be entitled to the position based upon the Board's discretion to hire the candidate it feels has the highest qualifications. Again, a board is free to give whatever weight it deems proper to various credentials of the candidates and because one of the factors is "other measures or indicators," it is extremely difficult to prove that a decision is based upon improper credentials or consideration of such.

Switzer, *supra*; Harper v. Mingo County Bd. of Educ., Docket No. 93-29-064 (Sept. 27, 1993).

Superintendent Duerring is the person who made the final decision on which candidate to recommend to the Board for hiring. He took the Matrix scores into consideration, but also considered the leadership skills of each and the opinion of the school community. According to a survey, the school community desired that "[t]he principal should be easy to approach and a good listener, and the principal should involve parents and community members in resolving school issues. The principal should be available to discuss a child's education with parents and guardians."

Superintendent Deurring also had received calls from parents who stated a desire for a principal who would better integrate the school with the community. He had observed Intervenor's leadership skills when she served as acting principal at Rand Elementary School, and thought “she did a wonderful job there.” Her administrative experience as Director of the 21st Century Learning program demonstrated to him her resourcefulness and ability to work with community agencies and people. He equated theproblems with Robbins Elementary with the similar problems at Rand when Intervenor took over that school, and did a good job. Grievant, on the other hand, did not demonstrate the same leadership and community interaction skills.

It was not arbitrary and capricious for Superintendent Deurring to weight the concerns of the school community and the particular needs of the school as highly. He properly exercised his discretion in choosing the leader he felt would best serve the needs of the school, and the undersigned Administrative Law Judge is not in a position to second- guess his judgment.

Grievant also asserted that some bias was introduced in the process by Leonard Allen's participation in the Interview process. She presented no evidence to support this vague allegation, other than the fact that Mr. Allen knew who Intervenor was and had worked with her at some point in the past.

The following conclusions of law support this discussion.

CONCLUSIONS OF LAW

1. This is a non-disciplinary grievance in which Grievant bears the burden of proof. Grievant's allegations must be proven by a preponderance of the evidence. See, W. Va. Code § 18-29-6, 156 W. Va. C. S. R. 1 § 4.21. "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." Leichliter v. W. Va. Dep't. of Health and Human Resources, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the party bearing the burden has not met its burden. Id.

2. 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. *See* Dillon v. Bd. of Educ. of County of Wyoming, 177 W. Va. 145, 351 S.E.2d 58 (1986); Stinn v. Calhoun County Bd. of Educ., Docket No. 98-07-85 (Aug. 28, 1998); Elkins v. Boone County Bd. of Educ., Docket No. 95-03-

415 (Dec. 28, 1995); Amick v. Nicholas County Bd. of Educ., Docket No. 95-34-037 (Aug. 23, 1995).

3. "[West Virginia Code] § 18A-4-7a sets forth the criteria to be used in filling administrative positions to hire 'professional personnel other than classroom teachers on the basis of the applicant with the highest 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." Goodwin v. Monongalia County Bd. of Educ., Docket No. 01-30-495 (June 26, 2003).

4. 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 educationreviews the criteria, it has "wide discretion in choosing administrators . . . ." March v. Wyoming County Bd. of Educ., Docket No. 94-55-022 (Sept. 1, 1994).

5. While each of the factors listed in W. Va. Code § 18A-4-7a must be considered, this Code section permits county boards of education to determine the weight to be applied to each factor when filling an administrative position, so long as this does not result in an abuse of discretion. Thus, a county board of education may determine that "other measures or indicators" is the most important factor. Switzer v. Kanawha County Bd. of Educ., Docket No. 03-20-013 (Apr. 11, 2003); Baker v. Lincoln County Bd. of Educ., Docket No. 97-22-482 (Mar. 5, 1998).

6.

> All that Code §18A-4-7a requires when a decision concerning the hiring [for an administrative position] is made is that the decision is the result of a review of the credentials of the candidates in relation to the seven factors set forth. Once that review is completed, the Board may hire any candidate based solely upon the credentials it feels are of most importance. An applicant could "win" four of the seven "factors" and still not be entitled to the position based upon the Board's discretion to hire the candidate it feels has the highest qualifications. Again, a board is free to give whatever weight it deems proper to various credentials of the candidates and because one of the factors is "other measures or indicators," it is extremely difficult to prove that a decision is based upon improper credentials or consideration of such.

Switzer, *supra*; Harper v. Mingo County Bd. of Educ., Docket No. 93-29-064 (Sept. 27, 1993).

7. Abuse of discretion is evaluated by reviewing an action against the arbitrary and capricious standard. "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 soimplausible 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)." Trimboli v. Dep't of Health and Human Resources, Docket No. 93-HHR-322 (June 27, 1997). Arbitrary and capricious actions have been found to be closely related to ones that are unreasonable. State ex rel. Eads v. Duncil, 196 W. Va. 604, 474 S.E.2d 534 (1996). An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." Eads, *supra* (citing Arlington Hosp. v. Schweiker, 547 F. Supp. 670 (E.D. Va. 1982)). "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, [168 W. Va. 162], 286 S.E.2d 276, 283 (W. Va. 1982)." Trimboli, *supra*.

8. Grievant did not meet her burden of proving the selection process for the position in question was unreasonable, flawed, or tainted by an arbitrary and capricious review of the candidates' qualifications.

9. Grievant did not prove she should have been selected for the position.

For the foregoing reasons, this grievance is hereby **DENIED.**

Any party may appeal this Decision to the Circuit Court of Kanawha 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 sonamed. 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 Grievance Board with the civil action number so that the record can be prepared and transmitted to the circuit court.

Date: August 14, 2003

M. Paul Marteney

Administrative Law Judge

Footnote: 1

No day was specified on the form.

Footnote: 2

The first day of hearing was presided over by Brenda Gould, Administrative Law Judge, and the case was subsequently

reassigned to the undersigned, who presided over the second day of hearing.

Footnote: 3

Calculated as 2.0 . 2.5 = 0.80; 25 . 0.80 = 20.

Footnote: 4

KCS Exhibit No. 6 at level two and Grievant's Exhibit 7 at level four purport to show the same data on staff development hours, however the exhibit admitted at level four appears to have been assembled with the page for school year 1998-1999 and part of 1999-2000 missing. The lower-level exhibit was therefore relied on to prove these numbers, and the level four exhibit was disregarded.

Footnote: 5

Calculated as 427 . 519 = 0.82; 0.82 . 20 = 16.4.

Footnote: 6

2.5 - 2.99 = 2; 3.0 - 3.49 = 3; 3.5 - 3.99 = 4; 4.0 = 5. Undergraduate and Graduate g.p.a. scores are added together to arrive at the number entered on the Matrix.