BETTY ANN MITCHELL,

Grievant,

v. **Docket No. 02-52-341**

WETZEL COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Betty Ann Mitchell, filed this grievance against her employer, the Wetzel County Board of Education ("WBOE"), on May 20, 2002. The statement of grievance reads:

> I was the most qualified for the New Martinsville 7th and 8th grade math position. This violates W.V. Code 18A-4-7a.

The stated relief sought was instatement into the position at issue.

After this grievance was set for hearing at Level IV, the parties agreed during a telephonic conference on December 3, 2002, conducted by Administrative Law Judge Sue Keller, to submit the grievance for decision at Level IV based upon the record developed at Level II, supplemented by written argument and additional documentary evidence. On December 10, 2002, Respondent submitted eight exhibits which it asked be admitted into evidence, labeled Emp. Ex 4 through 11. Grievant objected to the admission of all these exhibits, except number 11, and this grievance was assigned to the undersigned Administrative Law Judge. By letter dated December 18, 2002, the undersigned advised the parties that exhibit numbers 4, 5, 8, 9, and 10 would not be admitted, exhibit numbers 6 and 7 would be admitted, unless Grievant believed a hearing would be necessary to establish their authenticity, and exhibit number 11 would be admitted. The parties were given the opportunity to request a hearing to establish additional facts, and both parties declined to have a hearing at Level IV. Accordingly, Employer Exhibits 6, 7, and 11 are **ORDERED ADMITTED INTO EVIDENCE**, and Employer Exhibits 4, 5, 8, 9, and 10 are not admitted into evidence.

The following Findings of Fact are made based upon the evidence presented at Level II. (See

footnote 1)

FINDINGS OF FACT

1. Grievant is employed by WBOE as a math teacher at Paden City High School. She has been employed by WBOE for 23 years, and has been a teacher for 24 years. She is certified in mathematics, chemistry, and general science, grades 7 through 12.

2. On August 15, 2002, WBOE posted a vacancy in a 7th and 8th grade mathematics teaching position at New Martinsville School. The posting listed the required certification as mathematics grades 7-8 through Algebra. The posting did not list any specialized training that would be required. It listed as a qualification, "[o]thers [sic] qualifications as deemed relevant by the Principal." The job description for the position, as referred to in the posting, is a generic job description for classroom teacher, and it does not list any specialized training requirement. 3. There were seven applicants for the position, including Grievant. Four of the applicants were certified in math, and those applicants were interviewed.

4. An interview committee was formed. Those serving on the committee were Larry West, Principal of New Martinsville School, Brian Jones, Assistant Principal of New Martinsville School, Louis Kocher, a teacher at New Martinsville School, and Barbara Stout, WBOE's Director of Adolescent Education, grades 7 through 12.

5. The interview committee awarded points to the applicants interviewed, using the second set of criteria in W. Va. Code § 18A-4-7a, and prepared a grid comparing the applicants. Superintendent Paul Edward Barcus reviewed the grid and corrected it to award all applicants interviewed a point in the criterion existence of teaching experience in the required certification area, as all interviewees had teaching experience in the required certification area. The interview committee had awarded only Grievant a point in this criterion, as she had the most teaching experience in mathematics. After this correction, Grievant had a total of four points out of the seven possible. Another applicant, referred to on the grid as Snedden, also had a total of four points. Danny Anderson had five points. Mr. Anderson was selected for the position.

6. Mr. Anderson is certified to teach mathematics.

7. Mr. Anderson has a Master's degree in secondary education, with an emphasis in mathematics. Grievant has a Bachelor's degree in mathematics. She does not have a Master's

degree in any subject. The other two interviewees have Bachelor's degrees relevant to the required certification area. Mr. Anderson received a point in the criterion degree level in required certification area, as the applicant with the highest degree level.

8. Grievant had received a bad evaluation within the last two years, and did not receive a point in the criterion satisfactory evaluations over the last two years. 9. Mr. Anderson had not been employed by WBOE for two years, so he did not have evaluations from WBOE for the last two years. He had been evaluated in his previous employment as an algebra and calculus teacher in Garrett County, Maryland, during the 2000-2001 school year. The rating system in Garrett County allowed for a rating of effective or not effective in 10 areas related to classroom instruction and professional responsibilities. Mr. Anderson received a rating of effective for that school year, and positive comments from his supervisor. During the 2001-2002 school year, Mr. Anderson was employed by WBOE as a substitute teacher. He did not receive a written evaluation for that year, but Superintendent Barcus spoke to his supervisors who gave him good oral evaluations. He also taught a summer school class, and received an excellent evaluation for his performance. The interview committee awarded Mr. Anderson a point in the criterion satisfactory evaluations over the previous two years based upon these evaluations.

11. The interview committee awarded Mr. Anderson and Snedden a point in specialized training. It did not award Grievant a point in specialized training.

DISCUSSION

County boards of education have substantial discretion in matters relating to the hiring of school personnel. The exercise of that discretion must be within the best interests of the schools, and in a manner which is neither arbitrary nor capricious. See Hyre v. Upshur County Bd. of Educ., 186 W. Va. 267, 412 S.E.2d 265 (1991). With regard to hiring for a classroom teaching position, boards of education must exercise their discretionary authority by considering the "qualifying factors" set forth in W. Va. Code § 18A-4-7a (1992). The parties agreed that the “second set of factors” was applicable here. W. Va. Code § 18A-4-7a requires that, in applying the second set of factors, each factor be weighted equally, and the applicant with the highest qualifications, as determined by use of these factors, must be selected. The second set of factors is as follows:

> (d) If one or more permanently employed instructional personnel apply for a classroom teaching position and meet the standards set forth in the job posting, the county board

of education shall make decisions affecting the filling of such positions on the basis of the following criteria:

(1) Appropriate certification and/or licensure;

(2) Total amount of teaching experience;

(3) The existence of teaching experience in the required certification area;

(4) Degree level in the required certification area;

(5) Specialized training directly related to the performance of the job as stated in the job description;

(6) Receiving an overall rating of satisfactory in evaluations over the previous two years; and

(7) Seniority.

The arbitrary and capricious standard of review of county board of education decisions requires a searching and careful inquiry into the facts; however, the scope of review is narrow, and the undersigned may not substitute her judgment for that of the board of education. See generally, Harrison v. Ginsberg, 169 W. Va. 162, 286 S.E.2d 276 (1982). The undersigned cannot perform the role of a "super-interviewer" in matters relating to the selection of candidates for vacant positions. Stover v. Kanawha County Bd. of Educ., Docket No. 89-20-75 (June 26, 1989); Harper v. Mingo County Bd. of Educ., Docket No. 93-29-064 (Sept. 27, 1993). Generally, a board of education's action is arbitrary and capricious if it 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). 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)). The burden of proof is on the Grievant to demonstrate a flaw in the selection process, or that WBOE's action was arbitrary and capricious. Grievant asserted she was the most qualified applicant for the posted position, arguing that the applicants were not properly evaluated in three

areas. First, she argued Mr. Anderson should not have received a point in degree level in the required certification area, because his Master's degree was in education, not mathematics. Second, she argued no points should have been awarded for specialized training, because the posting did not list any specialized training that would be required. Finally, Grievant argued Mr. Anderson should not have received a point for satisfactory evaluations over the previous two years, because the interview committee had only Mr. Anderson's evaluation for one year, when he was employed in Garrett County, Maryland, citing Davis v. Ohio County Bd. of Educ., Docket No. 98-35-500 (Mar. 26, 1999).

Respondent argued that Mr. Anderson's Master's degree in secondary education with an emphasis in mathematics was in the required certification area, citing Worrell v. Mercer County Bd. of Educ., Docket No. 94-27-054 (Feb. 24, 1995). With regard to specialized training, Respondent argued the criterion “specialized training” related to performance of the job “is completely independent of and unrelated to any standards which may be listed on a job posting,” and thus, the posting did not have to list any specialized training that would be required. Superintendent Barcus suggested that the phrase “[o]thers [sic] qualifications as deemed relevant by the Principal,” informed the applicants that specialized training would be required, although he was not aware of what specialized training the principal deemed necessary in this situation. Finally, Respondent argued Mr. Anderson was properly awarded a point for past satisfactory evaluations, as it had received good evaluations on Mr. Anderson for the previous two years.

WBOE improperly considered specialized training in assessing the qualifications of the applicants. The statute is quite clear in stating that “Specialized training directly related to the performance of the job as stated in the job description,” is to be considered when the second set of factors is applicable to the selection process. (Emphasis added.) Respondent's argument ignores the essential element that the specialized training must be stated in the job description in order to be considered, and the requirement that all postings notifying applicants of professional vacancies must include the job description. W. Va. Code § 18A-4-7a. This Grievance Board has previously made it quite clear that, when the second set of criteria is applicable to the selection for a classroom teaching position, any specialized training required for the job must be set forth in the posting clearly enough so that it provides notice to the applicants of exactly what specialized training is required for the position. Walker v. Harrison County Bd. of Educ., Docket No. 99-17-520 (Apr. 19, 2000). The statement in the posting that other “qualifications as deemed relevant by the Principal” does not identify any

specialized training requirement. Id. The job description for the position, as referred to in the posting, is a generic job description for classroom teacher, and it does not list any specialized training requirement. Id. Neither the posting nor the attached job description set forth any required specialized training, and accordingly, this criterion could not be considered in evaluating the qualifications of the applicants.

WBOE also erred in crediting Mr. Anderson in the area of performance evaluations. In order to receive credit in this criterion, an applicant must have been evaluated over the previous two years. Defazio v. Harrison County Bd. of Educ., Docket No. 01-17-054 (May 7, 2001); Davis v. Ohio County Bd. of Educ., Docket No. 98-35-500 (Mar. 26, 1999). Regardless of whether the evaluation Mr. Anderson received when he was employed in Maryland may be considered here, it is clear that Mr. Anderson did not receive a performance evaluation for the 2001-2002 school year as a substitute teacher. The oral references solicited by Superintendent Barcus are not performance evaluations, and an evaluation for one summer school class is not an evaluation for the year.

WBOE exercised its discretion in crediting Mr. Anderson with a Master's degree in the required certification area, and Grievant did not identify any authority which wouldprohibit WBOE from considering a Master's degree in secondary education with an emphasis in mathematics to be in the required certification area. Hall v. Mercer County Bd. of Educ., Docket No. 96-27-175 (Apr. 30, 1997). Superintendent Barcus acknowledged that it was possible to obtain a Master's degree in mathematics, but noted that this was a non-teaching degree. The undersigned concludes that WBOE's decision that Mr. Anderson's Master's degree was in the required area of certification was reasonable, and that decision will be upheld. See Worrell v. Mercer County Bd. of Educ., Docket No. 94-27- 054 (Feb. 24, 1995).

In summary, Grievant demonstrated that WBOE should not have credited Mr. Anderson in two of the criteria, and had the criteria been properly applied, Mr. Anderson would have had three points, while Grievant had four points. Grievant has demonstrated she was more qualified for the position than Mr. Anderson, based upon proper application of the statutory criteria. Grievant also demonstrated that the other applicant with four points, Snedden, was improperly awarded a point in specialized training. When this adjustment is made Snedden has a total of three points also. Grievant has demonstrated that she was the most qualified applicant and should have been placed in the posted position.

The following Conclusions of Law support the Decision reached.

CONCLUSIONS OF LAW

1. County boards of education have substantial discretion in matters relating to the hiring of school personnel. The exercise of that discretion must be within the best interests of the schools, and in a manner which is neither arbitrary nor capricious. See Hyre v. Upshur County Bd. of Educ., 186 W. Va. 267, 412 S.E.2d 265 (1991).

2. With regard to hiring for a classroom teaching position, boards of education must exercise their discretionary authority by considering the "qualifying factors" set forth in W. Va. Code § 18A-4-7a (1992). If one or more permanently employed instructionalpersonnel apply for the position, as was the case here, the “second set of factors” must be used to evaluate the candidates. W. Va. Code § 18A-4-7a requires that, in applying the second set of factors, each factor be weighted equally, and the decision must be based upon the applicant with the highest qualifications. The applicable factors are as follows:

(1) Appropriate certification and/or licensure;

(2) Total amount of teaching experience;

(3) The existence of teaching experience in the required certification area;

(4) Degree level in the required certification area;

(5) Specialized training directly related to the performance of the job as stated in the job description;

(6) Receiving an overall rating of satisfactory in evaluations over the previous two years; and

(7) Seniority.

3. The arbitrary and capricious standard of review of county board of education decisions requires a searching and careful inquiry into the facts; however, the scope of review is narrow, and the undersigned may not substitute her judgment for that of the board of education. See generally, Harrison v. Ginsberg, 169 W. Va. 162, 286 S.E.2d 276 (1982). The undersigned cannot perform the role of a "super-interviewer" in matters relating to the selection of candidates for vacant positions. Stover v. Kanawha County Bd. of Educ., Docket No. 89-20-75 (June 26, 1989); Harper v. Mingo County Bd. of Educ., Docket No. 93-29-064 (Sept. 27, 1993). Generally, a board of education's action

is arbitrary and capricious if it 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). 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 thecase." Eads, supra (citing Arlington Hosp. v. Schweiker, 547 F. Supp. 670 (E.D. Va. 1982)).

4. The burden of proof is on the Grievant to demonstrate a flaw in the selection process, or that WBOE's action was arbitrary and capricious.

5. When the second set of criteria is applicable to the selection for a classroom teaching position, any specialized training required for the job must be set forth in the posting clearly enough so that it provides notice to the applicants of exactly what specialized training is required for the position. Walker v. Harrison County Bd. of Educ., Docket No. 99-17-520 (Apr. 19, 2000).

6. The statement in the posting that other “qualifications as deemed relevant by the Principal” does not identify any specialized training requirement. Walker, supra. The job description for the position, as referred to in the posting, is a generic job description for classroom teacher, and it does not list any specialized training requirement. Id. Neither the posting nor the attached job description set forth any required specialized training, and accordingly, this criterion could not be considered in evaluating the qualifications of the applicants.

7. In order to receive credit in the criterion performance evaluations, under the second set of factors, an applicant must have been evaluated over the previous two years. Defazio v. Harrison County Bd. of Educ., Docket No. 01-17-054 (May 7, 2001); Davis v. Ohio County Bd. of Educ., Docket No. 98-35-500 (Mar. 26, 1999).

8. WBOE erred in crediting Mr. Anderson with evaluations over the last two years, as he had not been evaluated for the year preceding the posting.

9. WBOE exercised its discretion in crediting Mr. Anderson with a Master's degree in the required certification area, and Grievant did not identify any authority which would prohibit WBOE from considering a Masters degree in secondary education with an emphasis in mathematics to be in

the required certification area. Hall v. Mercer County Bd.of Educ., Docket No. 96-27-175 (Apr. 30, 1997). WBOE's decision that Mr. Anderson's Master's degree was in the required area of certification was reasonable. See Worrell v. Mercer County Bd. of Educ., Docket No. 94-27-054 (Feb. 24, 1995).

10. Grievant demonstrated a flaw in the selection process, and that when the statutory factors are properly applied, she was the most qualified applicant.

Accordingly, this grievance is **GRANTED**. WBOE is **ORDERED** to place Grievant in the posted 7th and 8th grade mathematics teaching position at New Martinsville School.

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

BRENDA L. GOULD

Administrative Law Judge

Dated: February 26, 2003

Footnote: 1

The grievance was denied at Level I on September 26, 2002. Grievant appealed to Level II, where a hearing was held on October 16, 2002. A Level II decision denying the grievance was issued on October 28, 2002. Grievant bypassed Level III, appealing to Level IV on November 1, 2002. Grievant was represented by Owens L. Brown, and Respondent was represented by Larry W. Blalock, Esquire. This grievance became mature for decision on January 13, 2003, upon receipt of the parties' written arguments.