MARK MONTGOMERY,

Grievant,

v.

DOCKET NO. 03-41-291

RALEIGH COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Mark Montgomery, filed this grievance against his employer, the Raleigh County Board of Education ("Board") on July 9, 2003, alleging a violation of W. Va. Code § 18A-4-7a, and seeking as relief, "[p]lacement in position of Head Boys Football Coach at Liberty High School, seniority for any lost time and back pay, if applicable."

The grievance was denied at level one by Principal Terry W. Farley on July 9, 2003, and a level two hearing was held on August 7, 2003, and the grievance again denied by Assistant Superintendent Janet Lilly on August 25, 2003. The Board waived participation at level three pursuant to W. Va. Code § 18-29-4, and Grievant appealed to level four on September 19, 2003. The parties agreed to submit the grievance based upon the record developed at levels one and two, and this matter became mature for decision on October 31, 2003, the deadline for the parties' submission of proposed findings of fact and conclusions of law. Grievant was represented by Ben Barkey, West Virginia Education Association, and the Board was represented by Kathryn Reed Bayless, Esq.

SUMMARY OF EVIDENCE

Level Two Joint Exhibits

Ex. 1 -

Level one grievance documents.

Ex. 2 -

Level two grievance documents.

Ex. 3 -

June 9, 2003 vacancy list; June 24, 2003 list of applicants; July 8, 2003 Board minutes.

Level Two Board Exhibits

Ex. 1 -

Handwritten list of interview questions.

Ex. 2 -

Hall v. Mingo County Board of Education, Docket No. 95-29-529 (Mar. 28, 1996).

Ex. 3 -

Foley v. Mineral County Board of Education, Docket No. 93-28-255 (Oct. 29, 1993).

Ex. 4 -

Shockey and Shockey v. Preston County Board of Education, Docket No. 02- 39-371 (June 9, 2003).

Testimony

Grievant testified in his own behalf, and presented the testimony of Jack Richmond. The Board presented no additional witnesses.

Based upon a review of the record in its entirety, I find the following facts have been proven by a preponderance of the evidence.

FINDINGS OF FACT

1. Grievant is, and has been, employed as a teacher for the Board for 16 years.

2. On June 9, 2003, the Board posted a vacancy list which included the position of Head Boy's Football Coach at Liberty High School.

3. Grievant, Jeff Alexander, and Jimmy Workman applied for the coaching position.

4. Liberty High School Principal, Jack Richmond, interviewed all three applicants, and asked each applicant the same set of interview questions. 5. The former head football coach, Rocky Cangemi, sat in on the interviews of Jeff Alexander and Jimmy Workman, but had to leave before Grievant's interview. Mr. Cangemi was present simply to answer any questions the applicants might have about the football program, which Principal Richmond could not answer.

6. Grievant has approximately 19 years of coaching experience.

7. Jeff Alexander had 23 years teaching experience with the Board, and had served as coach of various sports at the junior high level, and as assistant coach at the high school level for 2 years.

8. All three candidates were qualified for the position, and Principal Richmond felt that Mr. Alexander deserved a chance as head coach because of his many years with the county, and his willingness to do whatever it took to help the students.

9. Principal Richmond recommended to the Board that Mr. Alexander be selected for the Liberty High School Head Football Coach position.

10. Prior to the position being posted, Principal Richmond received several phone calls from parents in the community voicing their preference for Mr. Alexander.

DISCUSSION

Grievant has the burden of proving each element of 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. Grievant claims a violation of W. Va. Code § 18A-4-7a in the selection of Mr. Alexander for Head Football Coach at Liberty High School. The Board argues that the standard for reviewing selection of coaching positionsis whether the decision was arbitrary and capricious, and maintains Mr. Alexander's selection was based upon legitimate factors.

The Board is correct regarding the standard of review in selection of coaching positions. The

standard for the selection of professional personnel for extracurricular coaching positions is whether the board acted in an arbitrary or capricious manner or otherwise abused its 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); Chafin v. Wayne County Bd. of Educ., Docket No. 92-50-419 (Aug. 20, 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.2d1017 (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 is 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).

Principal Richmond testified that all three candidates were qualified to fill the Head Football Coach position at Liberty High School. He testified that he gave little weight to the parents' phone calls in support of Mr. Alexander, but believed that Mr. Alexander “deserveda chance” because of his many years with the Board. Moreover, Principal Richmond testified that when asked during the interviews if they would accept an Assistant Coach position if necessary, Grievant answered no, and Mr. Alexander said he would do whatever it took to help the students. Principal Richmond was impressed with Mr. Alexander's willingness to help out in whatever area he was needed. Clearly, it was a tough decision to make, as all three candidates could have performed well in the job. While Grievant had more coaching seniority than Mr. Alexander, Principal Richmond's desire to give him a chance as Head Coach in this situation is not an abuse of discretion or arbitrary and capricious.

CONCLUSIONS OF LAW

1. Grievant has the burden of proving each element of 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. The standard for the selection of professional personnel for extracurricular coaching positions is whether the board acted in an arbitrary or capricious manner or otherwise abused its 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); Chafin v. Wayne County Bd. of Educ., Docket No. 92-50-419 (Aug. 20, 1993). 3. 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.2d1017 (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 is 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).

4. Grievant failed to prove by a preponderance of the evidence that the Board's selection of Mr. Alexander for the Head Football Coach position at Liberty High School was an abuse of discretion, or arbitrary and capricious.

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. 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 Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

MARY JO SWARTZ

Administrative Law Judge

Dated: November 13, 2003