BETTYE BELL,

Grievant,

v. Docket No. 05-33-020

McDOWELL COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Bettye Bell ("Grievant"), employed by the McDowell County Board of Education ("MCBE") as a teacher, filed a level one grievance on September 10, 2004, alleging that a violation of W. Va. Code § 18A-4-7a led to her nonselection as principal of Mount View Middle School. Grievant seeks instatement to the position for relief. Grievant's immediate supervisor lacked authority to grant the relief at level one. The grievance was denied following an evidentiary hearing at level two, and the State Department of Education waived consideration at level three, as is permitted by W. Va. Code § 18-29-4(c). Appeal was made to level four on January 24, 2005. WVEA Consultant Ben Barkey and Kathryn Reed Bayless, Esq., representing Grievant and MCBE respectively, agreed to submit the grievance for decision based upon the level two record. Proposed findings of fact and conclusions of law were filed by the parties on February 28, 2005, and the grievance was forwarded to the undersigned for disposition under cover letter dated March 2, 2005.

The following facts have been derived from a preponderance of the evidence admitted into the record at level two.

Findings of Fact

1. Grievant has been employed as a teacher for approximately thirty-three years, and has been assigned to Big Creek High School at all times pertinent to this grievance. 2. On July 16, 2004, MCBE posted a vacancy for the position of Principal at Mount View Middle School.

3. Six individuals submitted applications and were interviewed for the position. The applicants were rated on the seven statutory criteria found in the first set of factors in W. Va. Code § 18A-4-7a: certification; experience; degree level; academic achievement; relevant

specialized training; past evaluations; and other measures or indicators. The category of relevant specialized training was subdivided into three areas: whether the applicant held a middle school endorsement; whether she had experience completing evaluations, and knowledge of the WVEIS computer program.

4. Kathy Gentry received eighty-three points, and as the highest rated applicant, she was offered the position. Grievant received seventy-three points, and was ranked third of all the applicants. Grievant received only twenty points in the area of relevant specialized training, compared to Ms. Gentry's thirty points, due to her lack of knowledge of the WVEIS program.

5. In response to Grievant's request for a statement of reasons why she was not selected, MCBE Superintendent, Dr. Mark A. Manchin, advised her the interview committee determined that the successful applicant, Kathy Gentry, had acquired more relevant specialized training.

Discussion

In a non-selection grievance, Grievant bears the burden of proving, by a preponderance of the evidence, that she should have been selected for a particular position rather than another applicant, by establishing that she was the more qualifiedapplicant, or that there was such a substantial flaw in the selection process that the outcome may have been different if the proper process had been used. 156 C.S.R. § 4.21 (2004); Black v. Cabell County Bd. of Educ., Docket No. 89-06-707 (Mar. 23, 1990); Lilly v. Summers County Bd. of Educ., Docket No. 90-45-040 (Oct. 17, 1990), aff'd Cir. Ct. of Kanawha County, No. 90-AA-181 (Mar. 25, 1993). See also, W. Va. Code § 18-29-6. "The grievance procedure . . . allows for an analysis of legal sufficiency of the selection process at the time it occurred." Stover v. Kanawha County Bd. of Educ., Docket No. 89-20-75 (June 26, 1989).

In this case, Grievant bears a heavy burden, as the selection process for an administrative position is governed by the “first set of factors” set forth in W. Va. Code § 18A-4-7a, which directs county boards of education to hire "professional personnel other than classroom teachers on the basis of the applicant with the highest qualifications." Further, in judging qualifications, consideration shall be given to each of the following: (1) appropriate

certification and/or licensure; (2) amount of experience relevant to the position; (3) the amount of course work and/or degree level in the relevant field and degree level generally; (4) academic achievement; (5) relevant specialized training; (6) past performance evaluations; and (7) other measures or indicators upon which the relative qualifications of the applicant may be fairly judged.

It is well settled that county boards of education have substantial discretion in matters relating to the hiring of school personnel as long as their decisions are in the best interest of the school, and are not arbitrary and capricious. Dillon v. Bd. of Educ. of County of Wyoming, 177 W. Va. 145, 351 S.E.2d 58 (1986). Additionally, a county board of education is free to determine the weight to apply to each of the above-stated factors whenassessing 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). Finally, nothing in the language of W. Va. Code §18A-4-7a restricts the area of measures or indicators, as long as they are factors "upon which the relative qualifications of the applicant may fairly be judged." Indeed, W. Va. Code §18A-4-7a contemplates that county boards may look beyond certificates, academic training, and length of experience in assessing the relative qualifications of the applicants. Anderson v. Wyoming County Bd. of Educ., Docket No. 93-55-183 (Sept. 30, 1993). The selection of candidates for educational positions is not simply a "mechanical or mathematical process." Hoffman v. Mingo County Bd. of Educ., Docket No. 97-29-266 (June 15, 1998)(citing Tenny v. Bd. of Educ., 183 W. Va. 632, 398 S.E.2d 114 (1990)); See Deadrick v. Marion County Bd. of Educ., Docket No. 90-23-071(Jan. 30, 1991) . This is especially true in the selection for an administrative position. Stinn v. Calhoun County Bd. of Educ., Docket No. 98-07-085 (Aug. 28, 1998). The standard of review in cases brought by unsuccessful candidates for administrative posts generally entails an inquiry into whether the Board abused its considerable discretion in personnel matters, or if its decision was arbitrary and capricious. See Dillon, supra; Stinn supra; 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). "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)." Trimboli v. Dep't of Health & Human Res., 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)). The arbitrary and capricious standard is a high one, requiring willful and unreasonable action and disregard of known facts. Grievant and Ms. Gentry received identical ratings in six of the criteria, resulting in "relevant specialized training" being the determining factor. Peggy Freeman, Assistant Superintendent for Personnel, testified at level two that the interview committee determined that holding a middle school endorsement, knowledge of the WVEIS system, and evaluation training were three primary areas to be considered as "relevant specialized training." The applicants were given 10 points for each of the criteria met. Ms. Gentry was awarded the full 30 points, while Grievant received 20 points, due to her lack of experience with the WVEIS system. This evidence establishes that MCBE considered relevant information, and applied the criteria fairly in determining the most qualified applicant for the position. Grievant has failed to prove that the decision was arbitrary and capricious. In addition to the foregoing findings of fact and discussion, it is appropriate to make the following formal conclusions of law.

Conclusions of Law

1. In a non-selection grievance, Grievant bears the burden of proving, by a preponderance of the evidence, that she should have been selected for a particular position rather than another applicant, by establishing that she was the more qualified applicant, or that there was such a substantial flaw in the selection process that the outcome may have been different if the proper process had been used. 156 C.S.R. § 4.21 (2004); Black v. Cabell County Bd. of Educ., Docket No. 89-06-707 (Mar. 23, 1990); Lilly v. Summers County Bd. of Educ., Docket No. 90-45-040 (Oct. 17, 1990), aff'd Cir. Ct. of Kanawha County, No. 90-AA-181

(Mar. 25, 1993). See also, W. Va. Code § 18-29-6.

2. The selection process for an administrative position is governed by the "first set of factors" set forth in W. Va. Code § 18A-4-7a, which directs county boards of education to hire "professional personnel other than classroom teachers on the basis of the applicant with the highest qualifications."

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.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 & Human Res., Docket No. 93-HHR-322 (June 27, 1997). 4. Grievant failed to prove a violation of W. Va. Code § 18A-4-7a, or that MCBE acted in an arbitrary and capricious manner in the selection of the successful applicant for the position of principal at Mount View High School.

Accordingly, the grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County, or to the Circuit Court of McDowell 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.

DATE: MARCH 25, 2005

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SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE