DENNIS GARNER,

Grievant,

v. **Docket No. 05-30-164**

MONONGALIA COUNTY
BOARD OF EDUCATION,

Respondent.

DECISION

Dennis Garner ("Grievant") initiated this proceeding on February 15, 2005, alleging he should have been selected to fill an extracurricular assignment. The grievance was denied at level one on February 22, 2005, and at level two on May 13, 2005, following a hearing conducted on April 13, 2005. Level three consideration was bypassed, and Grievant appealed to level four on May 18, 2005. A hearing was held in Westover, West Virginia, on August 1, 2005. Grievant was represented by counsel, John E. Roush, and Respondent was represented by counsel, Jason S. Long. This matter became mature for consideration upon receipt of the parties' fact/law proposals on August 31, 2005.

The following material facts have been proven by a preponderance of the evidence of record.

Findings of Fact

1. Grievant is regularly employed by Respondent as a bus operator.

2. On January 24, 2005, Respondent posted a vacancy for an extracurricular bus run to transport Sabraton Headstart students from approximately 12:00 to 1:30 p.m. on a daily basis.

3. Grievant was the most senior applicant for the Headstart extracurricular run. 4. During the 2004-2005 school year, Grievant held another extracurricular bus assignment, whereby he transported students from the Vo-Tech Center to Morgantown High School in the late morning. He would wait for the students, then reload the bus at approximately 11:45 and transport them back to the Vo-Tech Center, arriving there at approximately 11:55.

5. Monongalia County transportation officials did not believe it would be possible for Grievant to travel from the Vo-Tech Center to Sabraton Headstart in time to pick up the Headstart students on time. Depending on the route used, construction, and traffic conditions, it takes from 8 to 12 minutes to drive from the Vo-Tech Center to Sabraton.

6. Grievant was not selected to fill the Headstart assignment, due to the potential overlap with his other extracurricular run. The driver who was awarded the run has the students loaded and ready to depart Sabraton by 12:10.

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 (2004); 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 contends that Respondent's concerns about his ability to make the Headstart run in a timely fashion are not supported by the evidence. During the pendency of this grievance, Grievant performed a “trial run” from the Vo-Tech Center to Sabraton, using a different route than the one implemented by the transportation department. Basedupon his experiment, Grievant testified that it is possible to make the trip in approximately eight minutes, which would place him at the Headstart by 12:05 at the latest. Therefore, he believes he should have been placed in the assignment, due to the fact that the driver actually performing the run did not actually depart from Sabraton until approximately 12:10.

Pursuant to the provisions of West Virginia Code § 18A-4-8b, extracurricular assignments are to be filled on the basis of seniority, qualifications, and past evaluations. See West Virginia Code § 18A-4-16(5). Respondent does not dispute that, as the most senior regular applicant, Grievant would have been placed in the position; however, the logistical issues regarding Grievant's ability to make the run on time forced Respondent to award the run to another driver.

County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel so long as that discretion is exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious.

Syl. Pt. 3, Dillon v. Bd. of Educ., 177 W. Va. 145, 351 S.E.2d 58 (1986). It has been previously held by this Grievance Board that it is not arbitrary and capricious for a board of education to deny an employee the opportunity to perform an extracurricular run when logistical problems exist. See Smith v. Putnam County Bd. of Educ., Docket No. 99-40-058 (Apr. 2, 1999). Generally, an action is arbitrary and capricious if factors intended to be considered were not relied upon, important aspects of the problem were entirely ignored, the decision was explained in a manner contrary to the evidence before the decision maker, or the decision reached was 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). As was the case in Russell v. Wayne County Board of Education, Docket No. 02-50-041 (March 25, 2002), it is not an abuse of discretion for a board of education to refuse to award an assignment to a driver when "legitimate questions existed as to Grievant's logistical ability to perform the run[.]" While it does appear that, under perfect conditions, it would have been *possible* for Grievant to reach the Headstart within a few minutes after 12:00 to pick up students, he would have been "cutting it close," to say the least. As discussed in Russell, supra, safety issues cannot be disregarded in these cases, and a board of education must keep in mind that pre- and post-trip inspections are required of all bus drivers, let alone the concern that drivers perform their duties safely and carefully. Under these circumstances, Respondent's concerns were legitimate, and the undersigned cannot find an abuse of its ample discretion in such matters.

The following conclusions of law support this decision.

Conclusions of Law

1. In a non-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 (2004); 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 hiring, assignment, transfer, and promotion of school personnel so long as that discretion is exercised reasonably, in the best interests of the schools, and in a mannerwhich is not arbitrary and capricious. Syl. Pt. 3, Dillon v. Bd. of Educ., 177 W. Va. 145, 351 S.E.2d 58 (1986).

3. Generally, an action is arbitrary and capricious if factors intended to be considered were not relied upon, important aspects of the problem were entirely ignored, the decision was explained in a manner contrary to the evidence before the decision maker, or the decision reached was 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).

4. It is not arbitrary and capricious for a board of education to deny an employee the opportunity to perform an extracurricular run when logistical problems exist. Russell v. Wayne County Bd. of Educ., Docket No. 02-50-041 (March 25, 2002); See Smith v. Putnam County Bd. of Educ., Docket No. 99-40-058 (Apr. 2, 1999).

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County, or to the Circuit Court of Monongalia 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 actionnumber so that the record can be prepared and properly transmitted to the appropriate circuit court.

Date: September 16, 2005

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DENISE M. SPATAFORE

Administrative Law Judge