GRANT DEGARMO,

Grievant

v. **Docket No. 06-54-025**

WOOD COUNTY BOARD

OF EDUCATION,

Respondent.

DECISION

Grievant Grant DeGarmo filed a grievance challenging his non-selection for the position of Head Boys' Football Coach at Jackson Junior High School ("JJHS"). The desired relief is to be placed in that position. Grievant is represented by Bruce Boston, WVEA Organizational Development Specialist, and Respondent is represented Dean Furner, counsel for Board of Education of Wood County Schools. The grievance was denied at all the lower levels and appealed to Level IV. The parties agreed to submit the appeal on the record established at Level II. This case became mature for decision on February 14, 2006, when undersigned received the lower level record. (See footnote 1)

Issues and Arguments

Grievant believes that he should have been selected as Head Boys' Football Coach for JJHS based on his years of coaching experience. He believes the decision to awardthat position to another individual with no coaching experience was arbitrary and capricious. Grievant also asserts he was asked different interview questions from the other candidates. He also claims he informed Respondent that, if hired for the position, he would remain in that position for a minimum of eight years. Grievant does not feel the interview was fair, and he does not feel he was given the same opportunity as the other candidates.

Respondent argued Grievant was not selected for the position because Grievant's resume indicated he had changed coaching positions with some frequency. Respondent also asserted Grievant's interview did not go well, with Grievant failing to provide any plans or strategies to prepare

the team for the season ahead. Also, Respondent was concerned Grievant's focus would be on winning and not on encouraging student participation in the junior high program.

Based on a preponderance of the evidence adduced from the record below, I find the following material facts have been proven:

Findings of Fact

1. Grievant has been employed by the Wood County Board of Education for 26 years and is currently working at Mineral Wells Elementary School as a Physical Education Teacher.

2. He has coached football for 17 years, and at the time of the interview held the head coaching position at Blennerhassett Junior High School.

3. On June 21, 2005, he applied for the position of Head Football Coach at JJHS.

5. He and two other candidates were interviewed by Richard Summers, Principal at JJHS. 6. The interview questions asked of the three were identical, with some specific questions posed to Grievant addressing Respondent's concerns.

7. Principal Summers took notes during Grievant's interview. This was the only interview where notes were taken. (See footnote 2)

8. Grievant did not provide sufficient information to ensure Principal Summers he would remain at the school if chosen for the position. Grievant also failed to present Principal Summers with any plans to ensure the football program would be well organized and operational by the start of the season.

9. Because Grievant taught at a different school, Principal Summers had concerns over his ability to arrive at JJHS to supervise the team as they prepared for practice, and Grievant could not conclusively state that he would be at the school on time.

11. Respondent chose Tony Huffman, a teacher at JJHS, to fill the position.

12. Mr. Huffman had no head coaching experience but had played football in high school and college. Because Mr. Huffman worked at JJHS, he was on-site and available to supervise the team immediately after school.

13. Also, Mr. Huffman's focus on participation in the football program comported with the Respondent's philosophy of junior high sports.

Discussion

In a non-selection grievance, Grievant bears the burden of proving, by a preponderance of the evidence, that he should have been selected for a particular position rather than another applicant, by establishing that he 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. "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).

Coaching positions are extracurricular assignments and are governed by the provisions of W. Va. Code § 18A-4-16, which sets forth the legal requirements for the employment of persons in these types of positions. In essence, under W. Va. Code § 18A- 4-16, the terms and conditions of the extracurricular assignment must be mutually agreed upon by the employer and employee and formalized by a contract separate from the worker's regular contract of employment. Spillers v. Brooke County Bd. of Educ. Docket No. 95-05-329 (Sept. 18, 1995). See Ramey v. Mingo County Bd. of Educ., Docket No. 93-29-470 (May 12, 1994). However, the statute does not designate how, or under what standard, extracurricular coaching assignments are to be made. Ramey v. Mingo County Bd. of Educ. Docket No. 95-29-483 (Apr. 30, 1996).

The standard of review for filling coaching positions is to assess whether the Board abused its broad discretion in the selection or acted in an arbitrary or capricious manner. Dillon v. Bd. of County of Wyoming, 177 W. Va. 145, 351 S.E.2d 58 (1986); Chaffin v. Wayne County Bd. of Educ., Docket No. 92-50-398 (July 27, 1993). The arbitrary and capricious standard of review requires a searching and careful inquiry into the facts; however, the scope of review is narrow, and an administrative law judge 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). An action is arbitrary or capricious if it does not rely on factors intended to be considered, entirely ignores important aspects of the problem, is explained in a manner contrary to the evidence before the board of education, or is a decision 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).

I. Interview

Grievant argues he should have been chosen for the position because he was the most qualified, and he does not feel he was given a fair interview by Respondent. Grievant testified Principal Summers told him he was being asked different questions than the other applicants. Principal Summers testified he asked identical questions to all candidates, with some follow up questions to Grievant in an attempt to address some of his concerns. During Principal Summers' testimony, proof that similar questions were asked was demonstrated. He was able to discuss the answers given by the other interviewees to the same questions listed for Grievant. Accordingly, Grievant did not meet his burden of proof on this issue.

II. Notes

Principal Summers did take handwritten notes during only Grievant's interview. These notes were later typed and submitted into the record as Employer's Exhibit No. 5.While Principal Summers' testimony differed in some instances from the information contained in the notes, it should be noted that approximately three months had passed between the interview and Principal Summers' testimony. Given the time lapse, some inconsistencies can be considered normal.

III. Considerations

It is clear from Respondent's testimony WCBOE believed it beneficial to have a coach who was employed at JJHS and could be a role model to the team throughout the day. Also, by working at JJHS, the coach would be on-site and available to supervise the team immediately after school as they prepare for practice.

Grievant was not employed by JJHS, and the undersigned believes it should be stressed that while being employed at the school is not a requirement, it is a valid consideration. Grievant indicated during the interview and the hearing that he believed he could get to JJHS in time to supervise the team prior to practice, but Principal Summers had valid concerns about Grievant's proposed method for ensuring he arrived on time.

One of the other concerns Principal Summers had in reviewing Grievant's resume is that he noticed Grievant transferred schools frequently. Respondent wanted someone who would remain in the position for an extended period of time. Grievant did testify he indicated he would coach for JJHS for a minimum of eight years. (See footnote 3)

Principal Summers was also aware practice would be starting in a few weeks, and he wanted detailed information about each candidates' plan to ensure the team was readyfor the season. Mr.

Huffman, the candidate chosen for the position, was able to provide some specific information to him, while Grievant merely took a small spiral bound notebook out of his pocket, pointed it at Principal Summers and stated they would be ready in a week. Grievant added no further detail and did not show the contents of the notebook to Principal Summers. This caused Principal Summers to reach the conclusion Grievant had no plan in place to get the team moving forward.

Principal Summers also questioned the candidates about their philosophies in coaching junior high school football. While Grievant focused on winning, Mr. Huffman focused more on participation. This philosophy comported with that of Respondent.

While there is no doubt Grievant had more coaching experience, it is apparent Respondent was looking at other considerations as well. In Grievant's Proposed Findings of Fact and Conclusions of Law, he cites Gibson v. Wyoming County Bd. of Edu., Docket No. 05-55-104, (June 18, 2004), where it was determined that selecting the applicant with the most relevant experience is not arbitrary and capricious, nor is it an abuse of discretion. Selection is fact specific, and Grievant bears the burden of proving that Respondent's decision was arbitrary and capricious, or an abuse of discretion. Respondent appropriately considered a number of factors when choosing the candidate for the position, experience being merely one out of many. In Wright v. Mason County Board of Education, Docket No. 05-26-367, (January 9, 2006), the Grievance Board held it is not arbitrary and capricious to chose a candidate with less experience if the factors considered were valid considerations. Therefore, Grievant failed to meet his burden of proof and show Respondent's decision to hire Mr. Huffman was arbitrary and capricious. The following conclusions of law support the decision reached.

Conclusions of Law

1. In a non-selection grievance, Grievant bears the burden of proving, by a preponderance of the evidence, that he should have been selected for a particular position rather than another applicant, by establishing that he 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 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).

3. Coaching positions are considered to be extracurricular assignments, which are governed by the provisions of W. Va. Code § 18A-4-16, which sets forth the legal requirements for the employment of persons in these types of positions. Under W. Va. Code § 18A-4-16, the terms and conditions of the extracurricular assignment must be mutually agreed upon by the employer and employee, and formalized by a contract separate from the worker's regular contract of employment. Spillers v. Brooke County Bd. of Educ. Docket No. 95-05-329 (Sept. 18, 1995). See Ramey v. Mingo County Bd. of Educ., Docket No. 93-29-470 (May 12, 1994). However, the statute does not designate how, or under what standard, extracurricular coaching assignments are to be made. Ramey v. Mingo County Bd. of Educ. Docket No. 95-29-483 (Apr. 30, 1996). 4. The standard of review for filling coaching positions is to assess whether the Board abused its broad discretion in the selection or acted in an arbitrary or capricious manner. Dillon v. Bd. of County of Wyoming, 177 W. Va. 145, 351 S.E.2d 58 (1986); Chaffin v. Wayne County Bd. of Educ., Docket No. 92-50-398 (July 27, 1993).

5. The arbitrary and capricious standard of review requires a searching and careful inquiry into the facts; however, the scope of review is narrow, and an administrative law judge 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).

6. An action is arbitrary or capricious if it does not rely on factors intended to be considered, entirely ignores important aspects of the problem, is explained in a manner contrary to the evidence before the board of education, or is a decision 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).

7. Grievant has failed to prove by a preponderance of the evidence that the hiring of Tony Huffman for the coaching position at issue was arbitrary and capricious, an abuse of discretion, or a violation of any statute.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Wood County, and 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 8, 2006

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Wendy A. Campbell

Administrative Law Judge

Footnote: 1

The parties submitted proposed findings of fact and conclusions of law by February 10, 2006, the required date, but the undersigned did not receive the lower level record until February 14, 2006, thus changing the mature date.

Footnote: 2

Principal Summers explained that he was concerned Grievant would file a grievance if he was not chosen for the position. While the concern may be valid, a uniform policy concerning note taking during interviews should be followed.

Footnote: 3

According to Principal Summers' notes, Grievant did indicate that he sometimes applies for a position, receives that position, and then applies for other jobs. He applies if he believes it to be a "better opportunity." He explained he worked for the Wood County school system and not one specific school.