THE WEST VIRGINIA EDUCATION AND STATE EMPLOYEES GRIEVANCE BOARD

BILL BRYANT,

Grievant,

v. **Docket No. 06-22-051**

LINCOLN COUNTY BOARD
OF EDUCATION/WEST VIRGINIA
DEPARTMENT OF EDUCATION,

Respondents,

and

DEBORAH DINGESS,

Intervenor.

DECISION

Grievant, Bill Bryant, filed a grievance on December 15, 2005, grieving non-selection of the principal position at Harts Primary School in Lincoln County. His requested relief is to be placed in that position. The grievance was denied at Levels I and II, Grievant by- passed Level III, and appealed to Level IV. A Level IV hearing was held at the Grievance Board's Charleston office on April 10, 2006. Grievant was represented by Susan Hubbard of West Virginia Education Association; Lincoln County Board of Education was represented by Rebecca Tinder, Esq., of Bowles Rice McDavid Graff & Love LLP; State Board of Education was represented by Sherry Goodman, Esq.; and Intervenor was represented by Gary Archer of West Virginia Education Association. This case becamemature for decision on May 5, 2006, upon the parties' submissions of proposed findings of

fact and conclusions of law. (See footnote 1)

Issues and Arguments

Grievant argues he should have been hired as the principal of the new Harts Primary School because he has more years of experience as an administrator than Intervenor. Respondents assert that it considered all the required criteria, and found Intervenor performed better in the interview, which was a key factor.

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

Findings of Fact

1. Grievant has been an employee of the Lincoln County Board of Education for 31 years. He was a teacher for six and a half years and has been principal of Ferrellsburg Elementary for twenty-four and a half years.

2. Ferrellsburg Elementary will be closed for the 2006-2007 school year, and students will be transferred to consolidated Harts Primary School.

3. Respondent posted the notice of vacancy for the principal position at Harts Primary from September 28, 2005, to October 4, 2005.

4. Approximately ten applications were received in response to the posting. Among them were the applications of Intervenor and Grievant.

5. A committee consisting of Superintendent William Grizzell, Louis Watts, and Jeff Huffman reviewed the applications and conducted interviews. 6. Grievant failed to fully complete his application, leaving the following sections completely blank: “Academic Achievements,” “Degree Level,” “G.P.A.,” “List On [sic] Related Work Experience That Would Help You In Teaching,” “Evaluation Status,” “Specialized Training Related To The Position(s) For Which You Are Applying,” and “Additional Training.” Level Two Joint Exhibit 4.

7. Grievant and Intervenor had similar experience and education.

8. Grievant held a Master's degree +45, as well as the appropriate administrative certification. He had a total of 31 years in county teaching experience, which included 24 years administrative experience. His GPA ranged from 4.0-3.5.

9. Intervenor held a Master's degree +60, as well as the appropriate administrative certification. She had 29 and one half years in county teaching experience, and one and one half years of elementary school administrative experience in Lincoln County Schools. She had a 4.0 GPA.

10. In choosing the successful applicant, the committee considered the seven qualification categories identified in *W. Va. Code* § 18A-4-7a.

11. The committee agreed to give more weight to the relevant specialized training. They also relied heavily on the interviews in which all applicants were asked the same questions and notes were taken of their responses.

12. Grievant provided no additional documentation to the committee during his interview. He was vague in his answers to the committee's questions and failed to articulate a clear vision or goal for the new consolidated school.

13. Intervenor provided extensive documentation to the Committee, including a three inch binder of trainings she had attended. 14. Intervenor also prepared extensively for the interview. She prepared blue ribbons for each committee member to illustrate her goal of Hart's Primary becoming a blue ribbon school. She informed the members of discussions she had with other school administrators. She intelligently discussed the school facilities, as she had gone to view them prior to her interview.

15. The committee chose Intervenor to fill the position because they believed she was the most qualified candidate.

16. The committee did not review personnel files, but simply relied on the documentation supplied by the applicants.

Discussion

This grievance does not challenge a disciplinary action, so Grievant bears the burden of proof. Grievant's allegations must be proven by a preponderance of the evidence. *See W. Va. Code* § 18-29-6, 156 W. Va. C. S. R. 1 § 4.21. "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the party bearing the burden has not met its burden. *Id.*

Grievant asserts he is the more qualified candidate for the principal position because, while he and Intervenor have similar qualifications, he has more years of experience as a school administrator. Respondent, however, argues that Intervenor performed better during the interview.

A county board of education must make decisions affecting the hiring of professional

administrative personnel on the basis of the applicant with the highest qualifications. In judging qualifications, consideration must be given to each of the following seven factors:

(1) Appropriate certification, licensure or both;

(2) Amount of experience relevant to the position; or, in the case of a classroom teaching position, the amount of teaching experience in the subject area;

(3) The amount of course work, degree level or both in the relevant field and degree level generally;

(4) Academic achievement;

(5) Relevant specialized training;

(6) Past performance evaluations conducted pursuant to section twelve, article two of this chapter; and

(7) Other measures or indicators upon which the relative qualifications of the applicant may fairly be judged.

W. Va. Code § 18A-4-7a.

In other word's the Board's discretion does not extend to hiring any qualified candidate, but it must hire the most highly qualified candidate within the statutory framework. The discretion relates to the fact that, because the factors are not prioritized, and the statute does not mandate that any one area be afforded particular significance, a county board may objectively or subjectively assign different weights to the various aspects of the applicants' credentials. *Jenkinson v. Greenbrier County Bd. of Educ.*, Docket No. 95-13-503 (1996). Thus, a county board of education may, in its discretion, determine that "other measures or indicators" is the most important factor. *Baker v. Lincoln County Bd. of Educ.*, Docket No. 97-22-482 (1998). “However, that discretion must be tempered in a manner that is reasonably exercised, in the best interest of the schools, and in a manner which is not arbitrary and capricious.” *Duncan v. McDowell County Bd. of Educ.*, Docket No. 96-33-231.

“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 theDeaf and the Blind*, Docket No. 96-DOE-081 (Oct. 16, 1996)."

Trimboli v. Dep't of Health and Human Resources, 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)). "While a searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute her judgment for that of a board of education." *See generally*, *Harrison v. Ginsberg*, 169 W. Va. 162, 286 S.E.2d 276, 283.

Grievant has failed to show Respondent's decision to hire Intervenor was arbitrary and capricious. Grievant argues his years of experience as an administrator make him better qualified for the position. However, his length of experience does not automatically ensure he is the best candidate for the position. The Grievance Board has held, "*W. Va. Code* section 18A-4-7a contemplates that county boards may look beyond certificates, academic training, and length of experience in assessing the qualifications of the applicants." *Oldham v. Cabell County Bd. of Educ.*, Docket No. 03-06-269. Respondents looked to the interview to determine the best candidate.

While Grievant and Intervenor had similar relevant qualifications, Intervenor extensively prepared for the interview. She set out to prove to the committee she was the best qualified applicant and brought documentation of the trainings she had attended. Grievant, on the other hand, brought nothing additional. Grievant testified Superintendent Grizzell should have reviewed Grievant's personnel file and been apprized of his specific experience. However, the Grievance Board has held, "Applicants have a duty to inform theinterviewer of any experience and credentials they believe pertinent to the position, and their failure to do so will not be considered a flaw in the interview process. *Vonkallist v. Mercer County Bd. of Educ.*, Docket No. 94-27-073 (Aug. 8, 1994)." *Pettry v. Boone County Bd. of Educ.*, Docket No. 96-03-150 (Sept. 30, 1996). Clearly, it was Grievant's responsibility to provide the appropriate information to the committee.

The following conclusions of law support this decision.

Conclusions of Law

1. This grievance does not challenge a disciplinary action, so Grievant bears the burden of proof. Grievant's allegations must be proven by a preponderance of the evidence. *See W. Va. Code* §

18-29-6, 156 W. Va. C. S. R. 1 § 4.21. "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the party bearing the burden has not met its burden. *Id.*

2. A county board of education must make decisions affecting the hiring of professional administrative personnel on the basis of the applicant with the highest qualifications. In judging qualifications, consideration must be given to each of the following seven factors:

(1) Appropriate certification, licensure or both;

(2) Amount of experience relevant to the position; or, in the case of a classroom teaching position, the amount of teaching experience in the subject area;

(3) The amount of course work, degree level or both in the relevant field and degree level generally;

(4) Academic achievement;

(5) Relevant specialized training;

(6) Past performance evaluations conducted pursuant to section twelve article two of this chapter; and

(7) Other measures or indicators upon which the relative qualifications of the applicant may fairly be judged.

W. Va. Code § 18A-4-7a.

3. Because the factors in *W. Va. Code* § 18A-4-7a are not prioritized, and the statute does not mandate that any one area be afforded particular significance, a county board may objectively or subjectively assign different weights to the various aspects of the applicants' credentials. *Jenkinson v. Greenbrier County Bd. of Educ.*, Docket No. 95-13-503 (1996).

4. Thus, a county board of education may, in its discretion, determine that "other measures or indicators" is the most important factor. *Baker v. Lincoln County Bd. of Educ.*, Docket No. 97-22-482 (1998). “However, that discretion must be tempered in a manner that is reasonably exercised, in the best interest of the schools, and in a manner which is not arbitrary and capricious.” *Duncan v. McDowell County Bd. of Educ.*, Docket No. 96-33- 231.

5. “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 and Human Resources*, 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).

6. 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)). "While asearching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute her judgment for that of a board of education. *See generally*, *Harrison v. Ginsberg*, 169 W. Va. 162, 286 S.E.2d 276, 283." *Trimboli*, *supra*, *Blake v. Kanawha County Bd. of Educ.*, Docket No. 01-20-470 (Oct. 29, 2001).

7. Grievant failed to show Respondent violated any statute or policy or otherwise abused its discretion in not assigning him the position.

Therefore, this grievance is hereby **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Lincoln County. Any such appeal must be filed within thirty 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: June 13, 2006

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Wendy A. Campbell

Administrative Law Judge

Footnote: 1

Proposed findings of fact and conclusions of law were received only from Grievant and the Lincoln County Board of Education.