THE WEST VIRGINIA EDUCATION AND STATE EMPLOYEES GRIEVANCE BOARD

GLORIA CLINE,

Grievant,

v. **DOCKET NO. 06-33-396**

MCDOWELL COUNTY

BOARD OF EDUCATION,

Respondent.

DECISION

Grievant, Gloria Cline, filed this grievance on June 19, 2006, stating, “18A-4-7A employment permotion [sic]/transfer professional personnel was violated arbitrarily capriciously.” Her stated relief sought is “Mount View Middle Asst. Principal. Posting Number P-04-07.”

A level four hearing was held in the Grievance Board's Beckley office on January 4, 2007. Grievant was represented by Nick Roberson and Ben Barkey, West Virginia Education Association, and Respondent was represented by Kathryn Bayless, Esq. The matter became mature for decision on February 6, 2007, the deadline for filing of the parties' proposed findings of fact and conclusions of law. (See footnote 1)

Synopsis

Grievant asserts Respondent's decision to hire Adam Grygiel was arbitrary and capricious. Grievant argues an unfair amount of discretion was used so as to give preference to Mr. Grygiel. Respondent avers it followed the established point system and did not award the position in an arbitrary and capricious manner. Based on a preponderance of the evidence, I find the following material facts have been proven:

Findings of Fact

1. On May 18, 2006, Respondent posted a vacancy for the position of Assistant Principal at Mount View Middle School.

2. Grievant applied for the position. At the time she applied, Grievant was assigned as a classroom teacher.

3. A total of four applications were submitted, and all four individuals were interviewed.

4. Respondent rated the applicants 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.

5. Respondent designed a numerical point system by which to rank applicants.

6. Grievant had the appropriate certification, three years of administrative experience, a master's degree in Reading, a master's degree in Leadership, and 3.48 and 3.27 grade point averages. Grievant's numerical score was 117.5.

7. Grievant received the maximum number of points allowed for obtaining her master's degree. She was the only applicant with two master's degrees, but received the same numerical score as the other applicants who had obtained one master's degree.

8. Respondent's point system provides for ten points to be awarded to the candidate if he/she has obtained a master's degree and fifteen points for a doctorate. 9. Mr. Grygiel, the successful applicant, had the appropriate certification, no administrative experience, a master's degree, and a 3.80 grade point average. His numerical score was 125.

10. Respondent placed the most weight on the interview.

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 Respondent's decision to hire Mr. Grygiel was arbitrary and capricious. 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.

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 (Mar. 31, 1996); *Fisher v. Marion County Bd. of Educ.*, Docket No. 93-24-042 (Mar. 11, 1993); *Marsh v. Wyoming County Bd. of Educ.*, Docket No. 94-55-022 (Sept. 1, 1994). *See Saunders v. Cabell County Bd. of Educ.*, Docket No. 97-06-149 (Dec. 29, 1997); *Bell v. Lincoln County Bd. of Educ.*, Docket No. 97-22-013 (July 28, 1997). “Thus, a county board of education may determine that "other measures or indicators" is the most important factor. *Baker v. Lincoln County Bd. of Educ.*, Docket No. 97-22-482 (Mar. 5, 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 (1982)." *Trimboli*, *supra*, *Blake v. Kanawha County Bd. of Educ.*, Docket No. 01-20-470 (Oct. 29, 2001).

Respondent decided to give the most weight to the interview, as is permissible under the law. Mr. Grygiel scored sixty points on his interview, and Grievant scored ten, as did all other applicants. Grievant asserts the process was weighted unfairly. However, there is no evidence to support such assertion.

There is nothing arbitrary and capricious about Respondent determining a candidate's ability to provide information and present himself/herself during an interview should be weighted more heavily than the other criteria. While the interview process is highly subjective, there is no evidence that Respondent abused its discretion in determining the score to be applied to the various criteria. Grievant failed to prove, by a preponderance of the evidence, that Respondent acted in an arbitrary and capricious manner in the selection of the successful applicant for the position at Mount View Middle School. The following conclusions of law support this discussion:

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. 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 are not prioritized, and the statute does not mandate that any one area be afforded particular significance, a county board may objectively orsubjectively assign different weights to the various aspects of the applicants' credentials. *Jenkinson v. Greenbrier County Bd. of Educ.*, Docket No. 95-13-503 (Mar. 31, 1996); *Fisher v. Marion County Bd. of Educ.*, Docket No. 93-24-042 (Mar. 11, 1993); *Marsh v. Wyoming County Bd. of Educ.*, Docket No. 94-55-022 (Sept. 1, 1994). *See Saunders v. Cabell County Bd. of Educ.*, Docket No. 97-06-149 (Dec. 29, 1997); *Bell v.*

Lincoln County Bd. of Educ., Docket No. 97-22-013 (July 28, 1997). Thus, a county board of education may determine that "other measures or indicators" is the most important factor. *Baker v. Lincoln County Bd. of Educ.*, Docket No. 97-22-482 (Mar. 5, 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.

4. 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). 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 isnarrow, 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 (1982)." *Trimboli*, *supra*, *Blake v. Kanawha County Bd. of Educ.*, Docket No. 01- 20-470 (Oct. 29, 2001).

5. Grievant failed to prove, by a preponderance of the evidence, that Respondent acted in an arbitrary and capricious manner in the selection of the successful applicant for the position at Mount View Middle School.

For the foregoing reasons, 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: March 30, 2007

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Wendy A. Campbell

Administrative Law Judge

Footnote: 1

Proposed findings of fact and conclusions of law were not received from Grievant.