WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

SARAH LYNN FRENCH,
Grievant,

v. **Docket No. 2009-0822-MerED**

MERCER COUNTY BOARD OF EDUCATION,
Respondent.

DECISION

Sarah Lynn French ("Grievant") filed this grievance on December 17, 2008, challenging her non-selection for the position of Dean of Students by Respondent Mercer County Board of Education ("BOE"). Her "Statement of Grievance" provides as follows:

> WV. [sic] § 18A-4-7a; Mercer County Board of Education Dean of Students point allocation system. Non hire—Dean of Students, Princeton Senior High School.

As relief, Grievant seeks "[p]lacement in position—back pay and related benefits." This grievance was denied at Level One by decision dated January 13, 2009. A Level Two mediation was held on April 20, 2009. A Level Three hearing was held before the undersigned Administrative Law Judge ("ALJ") on September 25, 2009, at the Grievance Board's Beckley, West Virginia, office. Grievant appeared by and through her representative, Ben Barkey, West Virginia Education Association. Respondent BOE appeared by and through its counsel John H. Shott. This matter became mature for decision upon receipt of the last of the parties' proposed findings of fact and conclusions of law on October 20, 2009.

Synopsis

Grievant was not the successful applicant for the position of Dean of Students. She

argues that the manner in which the selection was made was improper. Grievant had more years of service than any other applicant. Respondent BOE maintains that its selection decision was not arbitrary and capricious or contrary to law because it considered the necessary statutory factors when making its selection decision.

Grievant has not established, by a preponderance of the evidence, that she was the most qualified applicant for the position. While she has approximately thirty-one years of teaching experience, experience is but one consideration. Unlike the Grievant, the successful applicant held a Masters of Arts in Administration, had experience with the West Virginia Educational Information System, had worked with the Evaluation Leadership Institute and exuded a "team player attitude." The successful applicant received a greater overall rating when compared to the Grievant. There is no indication that a flaw in the selection process occurred. The BOE's selection decision was not unreasonable. Accordingly, this grievance must be **DENIED**.

The following findings of fact are based upon a thorough review of the record produced in this matter:

Findings of Fact

1. Grievant has been employed by the BOE for approximately thirty-one years as a classroom teacher. Most of her teaching experience occurred at Glenwood Middle School.

2. The positions of Assistant Principal and Dean of Students at Princeton Senior High School became vacant and were advertised in accordance with the required posting procedures. Grievant applied for the two administrative positions. Grievant was most

interested in the Dean of Students position.

3. Seven individuals applied for the position of Dean of Students, including the Grievant and the successful applicant. Grievant was interviewed at the same time for both the Dean of Students position and the Assistant Principal position.[1]

4. Interviews were conducted by Jack W. Parker, Principal of Princeton Senior High School.[2] Mr. Parker examined the resumes of each applicant for the position of Dean of Students. In order to keep track of the applicants, Mr. Parker utilized a matrix whereby each applicant was given a specific score for each factor considered.

5. Applicants were scored across seven factors which included the following: "(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." A score was assigned for each

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[1] The pool of applicants was very similar for both positions. Level Three, Testimony of Jack W. Parker. Several applicants were interviewed at the same time for both positions. It is unclear as to whether the interviewer completed different matrix grid sheets for each position the applicant applied for. Grievant only grieves her non-selection for the position of Dean of Students. The difference in the job duties between the two positions was not presented by any party and job postings were not included as part of the record. The Grievant has not raised or challenged the fact that these positions were interviewed for at the same time and it is not further addressed.

[2] The Principal had only been recently hired at Princeton Senior High School and did not know any of the applicants except the Grievant, with whom he only had limited contact in the school setting.

of the applicants for each of the seven factors.[3] Level Three, Grievant's Exhibit 1.

6. When scoring applicants for factor number seven (7), Mr. Parker considered the answers the applicants gave to interview questions. The Principal interviewed all of the applicants using prepared questions. All applicants were asked the same ten questions.[4] A score was assigned by the Principal for each of the interview questions. Level Three, Testimony of Jack W. Parker.

7. When asked how she would deal with conflict, Grievant refused to fully answer the questions and stated she did not want people to know. Level Three, Testimony of Jack W. Parker. Grievant was given no points out of a possible three points for that question. Overall, Grievant received a score of fifteen for category seven (7), "Other measures or indicator . . .," based upon her interview answers.

8. The successful applicant, Mrs. Groseclose,[5] received a score of twenty-seven for category seven (7).[6] She spoke of bringing change to the program and making decisions in an assertive manner. Further, this applicant exuded a "team player" attitude.

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[3] But for some minute differences in wording, these factors are the exact factors listed in WEST VIRGINIA CODE § 18A-4-7a.

[4] At Level Three, Grievant testified that she believed the questions asked were "fair" and her interview was conducted in a fair manner. Level Three, Testimony of Sarah Lynn French.

[5] Mrs. Groseclose's first name was not provided. The precise spelling of her last name was not apparent from the record. Neither the BOE nor the Grievant presented specific details of Mrs. Groseclose's qualifications.

[6] The successful applicant did not receive the highest rating in this category when compared to all the applicants. One applicant received a rating of thirty. The Grievant did not receive the lowest rating in this category when compared to the other applicants. The lowest rating was a ten. The highest rating possible was a thirty-five, which no applicant received.

Id. Mrs. Groseclose gave the more "comprehensive and thoughtful" responses to the interview questions when compared to the Grievant. *Id*.

9. For category two (2), "Amount of experience relevant to the position; subject area" Grievant received a score of 15.5, while the successful applicant only received a score of 4.

10. After the matrix grid sheet was completed, the successful applicant received the highest combined score of 97. Grievant received a score of 95.5, which ranked fourth out of the seven applicants.

11. Superintendent Deborah Akers recommended the applicant with the highest combined points for the position, and the Mercer County Board of Education accepted that recommendation and offered the position to that person. Grievant was not the successful applicant for the position. Mrs. Groseclose was offered and accepted the Dean of Students position.

12. Grievant holds a B.S. in Education from Concord College. Grievant holds a Masters in Safety from Marshall University. Level Three, Grievant's Exhibit 2. She has completed various continuing education programs. *Id*.

13. Grievant holds a certification in Administration. Throughout her many years of employment, she has served as an athletic coach and sponsor of numerous student activities. *Id*.

14. Grievant has little experience with the West Virginia Educational Information System ("WVEIS"). WVEIS is a computer database system used for student attendance, grading and discipline that is linked to the state networking program. Level Three, Testimony of Jack W. Parker. Utilization of the WVEIS program is necessary for the Dean

of Students position. *Id*.

15. The successful applicant, Mrs. Groseclose, had experience in WVEIS and an administrative background. She had experience with the Evaluation Leadership Institute, whose methods administrators use for evaluation. *Id*. She held a certification/licensure in Administration and had four years of teaching experience. Level Three, Grievant's Exhibit One. She holds an M.A. in Administration. *Id*.

Discussion

Because this is a non-disciplinary grievance, Grievant has the burden of proving her grievance by a preponderance of the evidence. 156 C.S.R. § 1.3 (2008). *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). "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 & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the employee has not met his burden. *Id*.

This grievance must be denied because the Grievant has not established, by a preponderance of the evidence, that the BOE's selection decision was unreasonable or otherwise contrary to law. When filling administrative positions, WEST VIRGINIA CODE § 18A-4-7a(a) requires the best or most qualified applicant be selected. These qualifications are judged by the following factors, referred to as the "first set of factors," outlined in that statute:

(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(c). While each of these factors must be considered, this CODE Section permits county boards of education to determine the weight to be applied to each factor when filling an administrative position, so long as this does not result in an abuse of discretion. *Elkins v. Boone County Bd. of Educ.*, Docket No. 95-03-415 (Dec. 28, 1995); *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). That is, the statute does not mandate that any one area be afforded particular significance. *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). Once a board reviews the criteria required by WEST VIRGINIA CODE § 18A-4-7a, it has "wide discretion in choosing administrators . . . ." *March v. Wyoming County Bd. of Educ.*, Docket No. 94-55-022 (Sept. 1, 1994).

Nevertheless, the BOE's discretion may not be exercised in an arbitrary and capricious manner. *Duncan v. McDowell County Bd. of Educ.*, Docket No. 96-33-231

(Sept. 2, 1997). 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)).

When choosing the successful applicant for the Dean of Students position at Princeton Senior High School, the BOE considered each of the seven factors listed in WEST VIRGINIA CODE § 18A-4-7a(c). Level Three, Grievant's Exhibit One. Each applicant was scored across the seven dimensions and the ratings were totaled. Ultimately, the successful applicant received a total score of 97. Two other applicants received scores of 96.5 and 96, respectively. The Grievant received the fourth highest rating with a total score of 95.5. Several applicants were highly qualified for the position and the BOE ultimately chose the applicant with the highest overall score.

Mr. Parker, Principal of Princeton Senior High School, testified that Mrs. Groseclose gave comprehensive answers to the interview questions and had certain administrative skill

sets that would make her a valuable member of the Princeton Senior High School "team." Further, Mrs. Groseclose exhibited a "team player" attitude. Grievant, on the other hand, had more relevant experience than Mrs. Groseclose. However, her interview question answers were curtate and she received a lower score than the successful applicant. Grievant refused to fully answer one question.

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. Further, consistent with this standard of review, the grievance process is not intended as a "super interview," but merely an analysis of the 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). *See Sparks v. Mingo County Bd. of Educ.*, Docket No. 96-29-447 (Feb. 18, 1997). Nothing in the language of WEST VIRGINIA 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, WEST VIRGINIA 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); *English v. Logan County Bd. of Educ.*, Docket No. 03-23-307 (Feb. 27, 2004).

Upon due consideration of the evidence presented, it cannot be said that the

Grievant has established by a preponderance of the evidence that the BOE's selection of Mrs. Groseclose was unreasonable or otherwise contrary to law. Each applicant was assessed based upon the statutory factors. The Grievant had more experience than the successful applicant and this experience was reflected in the ratings. The successful applicant exuded a team player attitude and held an administrative skill set. This was also reflected in the ratings. Ultimately, there were many highly qualified applicants and the BOE chose Mrs. Groseclose because, based upon its assessment, she held the highest overall qualifications. Grievant has not established a flaw in the selection process or proven that she was the most qualified applicant.

The following conclusions of law are appropriate:

Conclusions of Law

1. In a non-disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. *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).

2. The grievance process is not intended as a "super interview," but merely an analysis of the 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). *See Sparks v. Mingo County Bd. of Educ.*, Docket No. 96-29-447 (Feb. 18, 1997).

3. "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." Syl. Pt. 3, *Dillon v. Bd. of Educ. of County of*

Wyoming, 177 W. Va. 145, 351 S.E.2d 58 (1986).

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 Res.*, Docket No. 93-HHR-322 (June 27, 1997).

5. In non-selection grievances, it is the Grievant's burden "to show, by a preponderance of the evidence, that the assessment was flawed and/or did not comply with policy, and that, but for the errors, the outcome of the selection process might reasonably have been different. *Stover v. Kanawha County Bd. of Educ.*, Docket No. 89-20-75 (June 26, 1989)." *Hopkins v. Monroe Co. Bd. of Educ.*, Docket No. 95-31-477 (Feb. 21, 1996).

6. Grievant has not established, by a preponderance of the evidence, that the BOE's selection for the position was arbitrary and capricious or otherwise contrary to law.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. *See* W. VA. CODE § 6C-2-5. Neither the West Virginia Public 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 WEST VIRGINIA CODE § 29A-5-4(b) to serve a

copy of the appeal petition upon the Grievance Board. The Civil Action number should be included so that the certified record can be properly filed with the circuit court. *See also* 156 C.S.R. 1 § 6.20 (2008).

Date: December 8, 2009

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Mark Barney
Administrative Law Judge