THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

LYNNE SHROADS,
Grievant,

v. **DOCKET NO. 2009-1582-HanED**

HANCOCK COUNTY BOARD OF EDUCATION,
Respondent.

DECISION

This grievance was filed by Grievant, Lynne Shroads, on May 27, 2009, against her employer, the Hancock County Board of Education, challenging the decision of the Board of Education not to accept the Superintendent's recommendation that her title be changed from Coordinator of Special Education to Director of Special Education, that this Director position be compensated on the administrative pay scale, and that she remain on a 230-day contract. As relief Grievant seeks,"[t]ransfer me to Director of Special Education with appropriate pay scale on administrative/director's salary scale at 261 days beginning with the 2007-2008 school year to the present time."

The parties agreed to waive levels one and two, proceeding directly to level three on May 27, 2009. A level three hearing was held before the undersigned Administrative Law Judge on August 10, 2009, at the Grievance Board's Westover office. Grievant represented herself, and Respondent was represented by William T. Fahey, Esquire. This matter became mature for decision at the conclusion of the level three hearing on August 10, 2009, as the parties declined to submit written Proposed Findings of Fact and Conclusions of Law.

Synopsis

Grievant became the Coordinator of Special Education July 1, 2007, having bid upon the posted position, and she is paid under the professional pay scale. After serving in the position for some period of time she realized that other Central Office Administrators were titled Directors, and were paid substantially more than she under the administrative pay scale. The Superintendent recommended to the Board of Education that Grievant be made a Director, but the Board rejected this recommendation by a vote of 3-2. One of the Board members based her decision upon inaccurate information. Grievant argued Respondent had a duty to properly classify her as a Director. She did not demonstrate, however, that there exists any legal distinction between a Director and a Coordinator, or that Respondent was required to classify her position as a Director. Grievant did demonstrate that the decision of the Board of Education was arbitrary and capricious. The proper remedy in this case is to require the Board of Education to reconsider its decision.

The following Findings of Fact are properly made from the record developed at level three.

Findings of Fact

1. Grievant has been employed by the Hancock County Board of Education ("HBOE"), as the Coordinator of Special Education, since July 1, 2007, after bidding on the posted position, and being selected for the position. As was stated in the posting, she is compensated in accordance with HBOE's salary scale for professional personnel, which includes a $4,400.00 supplement, under a 230-day contract. Her salary for the 2009-2010 school year will be $67,139.30. Her daily rate of pay is $291.91.

2. Grievant is a Central Office Administrator. She is responsible for a budget of close to $2,000,000.00. She is responsible for overseeing more professional staff than any other administrator employed by HBOE, and in addition, she is responsible for overseeing the special education aides and autism mentors. There are more than 800 special education students in Hancock County.

3. HBOE has an administrative pay scale for certain Central Office Administrators, all of whom are titled Directors, approved by the Board. This pay scale was developed because the salary of principals was surpassing that of the Central Office Administrators. This pay scale takes the base salary and applies an index to the salary. Not all employees who are titled Director are paid under the administrative pay scale. If Grievant were paid on the administrative pay scale, her salary for the 2009-2010 school year would be $91,175.60.

4. Prior to 2002, the Coordinator of Special Education had been titled the Director of Special Education. When Superintendent Danny Kaser was advertising the position in 2002, he did not want to exclude the employee who had been the Director's assistant for many years, Darcy Moorhead, from bidding on the position due to the requirement of an administrative certification for a Director, so he posted the position as a Coordinator rather than a Director. The duties of the position did not change, however. Ms. Moorhead bid on the job and was selected.

5. After Grievant began serving as the Coordinator of Special Education, she realized that her compensation was well below that of other Central Office Administrators, Principals, and Assistant Principals. Sometime near the end of the 2007-2008 school year, Grievant spoke with Superintendent Susan Smith about the inequity she perceived.

Superintendent Smith agreed that Grievant should be compensated on the administrative pay scale rather than the professional pay scale, but asked Grievant if she would be willing to wait a year to address this issue, due to the significant budget deficit HBOE was facing. Grievant agreed to do so.

6. At a meeting of the HBOE held on May 11, 2009, Superintendent Smith recommended that the HBOE approve the transfer of Grievant from Coordinator of Special Education under a 230-day contract to Director of Special Education under a 230-day contract, effective for the 2009-2010 school year. HBOE did not approve the transfer, by a vote of 3-2.

7. HBOE member Gerry Durante did not vote in favor of the Superintendent's recommendation to transfer Grievant for several reasons. He believed there were other administrators who were not being fairly compensated, while application of the administrative pay scale had pushed the salaries of administrators to a point where they were too high, and he believed that placing Grievant on the administrative pay scale would result in an excessive increase in her salary.

8. HBOE member Laura Greathouse based her decision to vote against the Superintendent's recommendation to transfer Grievant on information she obtained from a non-governmental web site. She used a form on the web site to enter some data on Grievant's salary, a teacher's salary, and a custodian's salary. The web site provided her with data which led her to conclude that Grievant's current salary is already very comparable to salaries of Directors of Special Education across the country, while the salaries of teachers and custodians in Hancock County are well below the national average. This discrepancy was the deciding factor for her.

9. The data on the web site used by Ms. Greathouse was based upon information provided by a limited number of people who had chosen to report information, and did not accurately reflect salaries nationwide. Ms. Greathouse did not attempt to obtain information on salaries in West Virginia, or even in the Northern Panhandle of West Virginia, nor did she consult any reputable sources of nationwide information, such as the Bureau of Labor Statistics. Ms. Greathouse announced her findings during the HBOE meeting. Ms. Greathouse's decision was based upon erroneous information.

10. The salaries of the Directors of Special Education in the three other counties of the Northern Panhandle of West Virginia - Brooke, Ohio, and Marshall - are $82,741.00, $95,000.00, and $95,400.00. All three are paid under a 261-day contract, and all three have more years of experience than Grievant.

11. Grievant's salary under a 261-day contract, under the professional pay scale, would be $76,188.51.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). *See also 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).

Grievant argued that Respondent had a duty to properly classify and compensate its employees, and that the members of the Board of Education must execute their duties properly, making fair, well reasoned decisions. She argued that the members of the Board of Education, in particular Ms. Greathouse, based their decision on inaccurate information, and the decision was arbitrary and capricious. Respondent argued that Grievant bid on the posted position of Coordinator of Special Education, and accepted the rate of pay for the position. Respondent also argued that there is no statutory distinction between the titles Director and Coordinator, and therefore, Respondent was not required by law to classify Grievant as a Director. Further, even if Grievant's title were Director, HBOE was not required to compensate her using the administrative pay scale. Finally, Respondent denied that the decision of HBOE was arbitrary and capricious.

Grievant is correct that "[i]t is an abuse of a board's discretion to classify a position incorrectly or to call the position by another title for reasons unrelated to the duties of the position. " [*Gosnell v. Raleigh County Bd. of Educ.,* Docket No. 94-41-112 (Apr. 21, 1995)]; *See* W. VA. CODE § 18A-4-18. *Dawson, et al., v. McDowell County Bd. of Educ.*, Docket No. 97-33-010 (May 29, 1998), aff'd Kanawha County Cir. Ct. (Sept. 10, 1999). However, the Grievance Board has also concluded that the W. VA. CODE § 18A-4-8(i)(34) "definition of the labels for the different positions [Director and Coordinator] provides little clarity," and "the classifications of Director and Coordinator are equivalent."[1] *Harmon v. Fayette County*

[1] "Director or coordinator of services" is defined in W. VA. CODE § 18A-4-8(i)(34) as:

Bd. of Educ., Docket No. 03-10-035 (May 6, 2003). The undersigned has found no statutory requirement that Grievant's position be titled Director, rather than Coordinator. While Grievant certainly makes a good argument that she has significantly more responsibility than a teacher, and that her responsibilities are comparable to Directors who are being paid using the administrative pay scale, Grievant did not produce any statute, rule or regulation which would require that HBOE classify her as a Director and change her compensation to the administrative pay scale.

Grievant also asserted that the members of the HBOE acted in an arbitrary and capricious manner, pointing particularly to Ms. Greathouse basing her decision on unreliable information. Generally, an agency's action is arbitrary and capricious if it did not rely on factors that were intended to be considered, entirely ignored important aspects of the problem, explained its decision in a manner contrary to the evidence before it, or reached a decision that is 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.

> an employee of a county board who is assigned to direct a department or division.
> (A) Nothing in this subdivision prohibits a professional person or a professional educator from holding this class title;
> (B) Professional personnel holding this class title may not be defined or classified as service personnel unless the professional personnel held a service personnel title under this section prior to holding class title of "director or coordinator of services."
> (C) The director or coordinator of services shall be classified as either a professional person or a service person for state aid formula funding purposes; and
> (D) Funding for the position of director or coordinator of services is based upon the employment status of the director or coordinator either as a professional person or a service person;

1985). 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 one may disagree with Mr. Durante's opinion that Grievant is not entitled to such a large increase in her salary, the undersigned cannot conclude that his rationale was based upon factors which were not intended to be considered, or was unreasonable or implausible. Such is not the case with Ms. Greathouse's analysis. Ms. Greathouse based her decision in this matter entirely upon inaccurate, unreliable data. She did not consider the true facts and circumstances in reaching her decision.[2] For this reason, this matter will be returned to the HBOE to reconsider this issue.[3]

The following Conclusions of Law support the Decision reached.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). *See also Holly v. Logan*

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[2] While the issue was not addressed by the parties, it is important for county boards of education to consider statutory uniformity of pay requirements when evaluating an employee's pay. These requirements were not considered by either Mr. Durante or Ms. Greathouse.

[3] Respondent also asserted a timeliness defense with respect to Grievant's request for back pay for the 2007-2008 school year. It is not necessary to consider this argument, as Grievant has not been awarded any back pay.

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).

2. "It is an abuse of a board's discretion to classify a position incorrectly or to call the position by another title for reasons unrelated to the duties of the position. " [*Gosnell v. Raleigh County Bd. of Educ.,* Docket No. 94-41-112 (Apr. 21, 1995)]; *See* W. VA. CODE § 18A-4-18. *Dawson, et al., v. McDowell County Bd. of Educ.*, Docket No. 97-33-010 (May 29, 1998), aff'd Kanawha County Cir. Ct. (Sept. 10, 1999).

3. The W. VA. CODE § 18A-4-8(i)(34) "definition of the labels for the different positions [Director and Coordinator] provides little clarity," and "the classifications of Director and Coordinator are equivalent." *Harmon v. Fayette County Bd. of Educ.*, Docket No. 03-10-035 (May 6, 2003).

4. Grievant did not demonstrate that HBOE violated any statute, rule or regulation by classifying her as a Coordinator rather than a Director.

5. Generally, an agency's action is arbitrary and capricious if it did not rely on factors that were intended to be considered, entirely ignored important aspects of the problem, explained its decision in a manner contrary to the evidence before it, or reached a decision that is 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). 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).

6. The decision of HBOE to reject the Superintendent's recommendation that Grievant be made a Director, by a 3-2 vote, was based upon inaccurate, unreliable information which should not have been considered, and was an arbitrary and capricious action.

Accordingly, this grievance is **GRANTED IN PART AND DENIED IN PART**. Grievant's request that her title be changed to Director of Special Education, and compensated in accordance with HBOE's administrative pay scale, is **DENIED.** HBOE is **ORDERED** to reconsider its decision to reject the Superintendent's recommendation that Grievant be made a Director.

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 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 certified record can be prepared and properly transmitted to the Circuit Court of Kanawha County. *See also* 156 C.S.R. 1 § 6.20 (2008).

BRENDA L. GOULD
Administrative Law Judge

Date: September 8, 2009