THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

PAUL WEEKLEY and
CHARLES HACKNEY,
Grievants,

v. **Docket No. 2010-1378-CONS**

JACKSON COUNTY BOARD OF EDUCATION,
Respondent,

and

MICHAEL WOLFORD,
Intervenor.

DECISION

Grievant, Paul Weekley, filed two grievances at level one on January 26, 2010. The grievances were consolidated and a level one hearing was held on February 12, 2010. The grievances were denied at level one by decision on March 18, 2010. A level two mediation was conducted on August 2, 2010. Grievant Weekley appealed to level three on August 12, 2010. Grievant, Charles Hackney, filed a grievance at level one on or about January 27, 2010. A hearing was held at level one on March 19, 2010, and was denied at that level. A level two mediation was conducted on September 3, 2010. Each Grievant alleges that he was the most qualified candidate for the position of Chief Mechanic. The position of Chief Mechanic was awarded to Michael Wolford, Intervenor. Each Grievant sought to be instated into the Chief Mechanic position with compensation for lost wages. By order dated October 6, 2010, Grievant Weekley's grievance and Grievant Hackney's grievance were consolidated. A level three hearing was held for the consolidated

grievances on November 19, 2010. Grievant Weekley was represented by John Everett Roush, Esq., of the West Virginia School Service Personnel Association. Grievant Hackney was represented by Jeffrey Blaydes, Esq., Carbone & Blaydes, PLLC. Respondent, Jackson County Board of Education, was represented by Richard S. Boothby, Esq., Bowles Rice McDavid Graff & Love LLP. Intervenor did not appear at level three. This matter became mature for decision on January 7, 2011, upon receipt of the parties' written Proposed Findings of Fact and Conclusions of Law.

Synopsis

Grievant Weekley, Grievant Hackney and Intervenor Wolford are employed as mechanics by Respondent. Neither Grievant Weekley, Grievant Hackney nor Intervenor Wolford are classified as Chief Mechanic. On or about December 1, 2009, Respondent posted the Chief Mechanic's position. Both Grievants, Weekley and Hackney, as well as Intervenor Wolford, applied for the position of Chief Mechanic. Intervenor Wolford was selected as the successful applicant for the Chief Mechanic position. Grievant Weekley alleges he should have been awarded the position because he holds the most seniority in the mechanic classification. Grievant Hackney argues he should have been awarded the position because he holds the most overall seniority. Respondent believes Intervenor Wolford was appropriately selected for the position of Chief Mechanic based on his qualifications, seniority and past performance evaluations. Respondent avers that Grievants did not meet the minimum qualifications for the posted position.

Grievants failed to meet their burden of proof. Therefore, this grievance is DENIED.

Findings of Fact

1. Grievant Weekley is employed by Respondent as a mechanic.

2. Grievant Weekley has been employed as a mechanic since 1998.[1]

3. Grievant Hackney is employed by Respondent as a mechanic.

4. Grievant Hackney worked part time as school service personnel from 1989 to 1995. He has been full time school service personnel since 1995. Grievant Hackney has held the position of a mechanic since 2000.[2]

5. Intervenor Wolford is employed by Respondent as a mechanic.

6. Intervenor Wolford has been full time service personnel since 1997. He has held the position of a mechanic since 2001.[3]

7. The position of Chief Mechanic became vacant in December of 2009, upon the retirement of Danny Endicott. Mr. Endicott had held the position for more than eight (8) years.

8. The job description used in the posting when Mr. Endicott was hired as Chief Mechanic was last revised in 1998.

9. Job descriptions are attached to all county job postings and are reviewed and updated, as necessary, prior to a vacancy being posted.

10. Prior to the Chief Mechanic posting on or about December 1, 2009, the job description was reviewed with the qualifications and job responsibilities revised to be in alignment with the requirements and responsibilities of the position.

11. In reviewing the Chief Mechanic job description, the Assistant Superintendent

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[1] *See* Respondent's Exhibit No. 7.

[2] Id.

[3] Id.

in charge of instructional programs and personnel, the Assistant Superintendent of Non-Instructional Programs, the Transportation Supervisor, Superintendent of Schools and the Executive Director for Transportation at the West Virginia State Department of Education decided that Automotive Service Excellence ("ASE") certification and prior supervisory experience should be included in the job description.

12. ASE is a certification process administered by the National Institute of Automotive Service Excellence. One can achieve certification in various areas relating to bus maintenance thereunder by completing an application and taking a test in seven areas of certification. ASE certification may be granted in the areas of steering and suspension; drive train; electrical; air conditioning; steering; brakes; and diesel.

13. The updated Chief Mechanic job description was posted with the following required qualifications:

1. High school diploma or satisfactory completion of the GED test
2. Valid Commercial Drivers License (CDL)
3. Licensed State Inspector
4. Minimum of five years successful experience as a mechanic
5. Minimum of two years experience in a supervisory position (chief mechanic, shop foreman, etc.)
6. ASE Certification
7. Physically and mentally alert
8. Ability to get along with people
9. Ability to effectively read, write, compute, and communicate
10. Ability to use trade tools and equipment such as computer diagnostics, air tools, welding and brazing and electrical trouble shooting equipment
11. Must satisfy all qualification requirements as set forth in the West Virginia Transportation Regulations - WV State Board Policy 4336
12. Successfully complete the WV State Competency Test for mechanic or currently hold the classification of mechanic.

14. Respondent received 10 applicants for the Chief Mechanic position. No applicant was classified as Chief Mechanic.

15. Six applicants were interviewed for the position, including both Grievants and Intervenor.

16. Grievant Weekley has more seniority in the mechanic classification than Grievant Hackney and Intervenor Wolford.

17. Grievant Hackney has more total seniority than Grievant Weekley and Intervenor.

18. Out of the six interviewees, two applicants, Intervenor Wolford and Nathan Myers, held ASE certification.

19. Neither of the Grievants possessed ASE certification in any of the seven areas of possible certification.

20. Intervenor Wolford is ASE certified in Brakes and Suspension & Steering.

21. Intervenor Wolford has approximately eight years of experience as a supervisor at a truck repair company.

22. Grievant Hackney has three and a half years of supervisory experience in the United States Air Force.[4]

23. Four interviewers scored each of the six applicants interviewed. The four interviewers consisted of Supervisor of Transportation, Assistant Superintendent in charge of transportation, Assistant Superintendent of personnel and instruction, and Superintendent of Schools.

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[4]Jay Carnell, Assistant Superintendent for Instructional Programs and Personnel, testified at the level one hearing that he did not recall Grievant Hackney mentioning any supervisory experience during his interview.

24. The applicants were awarded points under an interview matrix.[5]

25. The interview matrix included 18 questions where each interviewee could be awarded zero to five points for each question. The interview matrix also awarded points for seniority; diploma or GED; valid CDL; licensed state inspector; minimum 5 years experience as mechanic; two years supervisory experience; ASE certification; and, mechanic classification for school systems. All interviewees were asked the same 18 questions.[6]

26. The combined scores awarded from the four interviewers were averaged. A perfect score on the matrix would have been a score of 125 points. Intervenor Wolford received the highest average score of 105.25.[7] Grievant Weekley received an average score of 77.75. His average score was the lowest of the six applicants. Grievant Hackney received an average score of 83.75. His average score was the second to lowest of the six applicants.

27. At its board meeting on January 7, 2010, Respondent hired Intervenor Wolford as Chief Mechanic.

Discussion

Since this grievance is not about discipline, Grievants must prove their claim by a preponderance of the evidence, which means they must provide enough evidence for the undersigned Administrative Law Judge to decide that their claim is more likely valid than

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[5]Grievant Hackney's Exhibit No. 1

[6]Id.

[7]Neither grievant was the second highest scorer in the interview ranking. David Farra received an average score of 93, John Burford received an average score of 91.75, and Nathan Myers received an average score of 89.50.

not. *Leichliter v. W. Va. Dep't of Health and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). If the evidence supports both sides equally, then Grievant has not met his burden. *Id.*

It is well-settled that county boards of education have a substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. Nevertheless, this discretion must be exercised reasonably, in the best interest of the schools and in a manner which is not arbitrary and capricious." *Syl. Pt. 3, Dillon v. Wyoming County Board of Education*, 177 W.Va. 145, 351, S.E. 2d 58 (1986). "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 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 (W. Va. 1982)." *Trimboli, supra*.

Grievant Weekley argues he should have been awarded the position of Chief Mechanic because he has more seniority in the mechanic classification than Intervenor Wolford and Grievant Hackney. In support of his position, Grievant Weekley refers to W.VA. CODE § 18A-4-8e. The statute states "the classification titles of chief mechanic, mechanic and assistant mechanic are included in one classification title and have the same competency test." Grievant Weekley argues that an employee who passes the competency test for a classification category is considered qualified for any classification title within the classification category. Grievant Weekley also refers to W.VA. CODE § 18A-4-8b(d)(2)(D) in support of his argument. That statute states "the mechanic assistant and chief mechanic class titles are included in the same classification category as mechanics."

Grievant Hackney argues that when no applicant for a position holds the classification title for the posted position, a board of education must consider total seniority rather than seniority within classification. Because no applicant held the classification title of chief mechanic, Grievant Hackney was the most senior applicant based upon total seniority. With respect to the use of seniority in hiring service personnel, W. VA. CODE § 18A- 4-8g mandates that:

> For all purposes including the filling of vacancies and reduction in force, seniority shall be accumulated within particular classification categories of employment as those classification categories are referred to in W.VA. CODE § 18A-4-8e . . .
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> . . .
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> Seniority acquired within different classification categories shall be calculated separately: Provided, that when a school service employee

> makes application for a position outside of the classification category currently held, if the vacancy is not filled by an applicant within the classification category of the vacancy, the applicant shall combine all regular employment seniority acquired for the purposes of bidding on the position.

Respondent argues that seniority alone is not the sole factor to be considered, under W.VA. CODE § 18A-4-8b, to the effect that a county board of education must show valid cause why any employee with the most seniority is not employed in the position for which he applies. Respondent contends that because Intervenor Wolford had greater training, knowledge, and skills relevant to a chief mechanic, it filled the position with the most qualified applicant.

It is well-settled that county boards of education have a substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. Nevertheless, this discretion must be exercised reasonably, in the best interest of the schools and in a manner which is not arbitrary and capricious." Syl. Pt. 3, *Dillon v. Wyoming County Board of Education*, 177 W.Va. 145, 351, S.E. 2d 58 (1986). W.VA. CODE 18A-4-8b(a) provides that a board of education is required to make decisions affecting the filling of service personnel positions on the basis of seniority, qualifications and evaluation of past service.

The responsibilities of the Chief Mechanic position must be considered when evaluating whether Respondent had valid cause for not selecting the applicant based solely on seniority. W.VA. CODE §18A-4-8(22) states:

> "Chief mechanic" means a person employed to be responsible for directing activities which ensure that student transportation or other county board-owned vehicles are properly and safely maintained."

Chief mechanic is a supervisory position by nature. The definition clearly states the

position is responsible for “directing activities...”. The West Virginia Supreme Court of Appeals in *Ohio County Board of Educ. v. Hopkins*, 193 W.Va. 600, 457 S.E. 2d 537 (1995) cited *Cox v. Board of Educ. of the County of Hampshire*, 177 W.Va. 576, 355 S.E. 2d 365 (1987), and said "we emphasized that the management of a county school transportation system is for the welfare of the children . . . ," and that it was within the county board of education's discretion to place the responsibility for its transportation system with an applicant "more acquainted with the administrative and managerial skills necessary to the operation of an efficient transportation system." Additionally, a county board of education has an implicit obligation "to supervise the system in a responsible and efficient manner" and to choose the candidate who, by virtue of experience, is more acquainted with "the administrative and managerial skills necessary to the operation of an efficient transportation system." *Cox* at 370. *See Hopkins, supra*. The *Hopkins* Court noted the transportation of school children has a "special degree of responsibility," and it was within the parameters of the board of education's discretion to look outside the statutory definition to assess the qualifications, and the decision should not be based on seniority alone. The *Hopkins* Court specifically stated “that seniority alone is not the sole factor to be considered is clear from the language of W.VA. CODE § 18A-4-8b...” Accordingly, if an assessment of the successful applicant's qualifications demonstrates he was more qualified for the position, then hiring him would not violate any Code Section and would be in the best interest of the school system.

Grievants argue ASE certification should not have been added as a job requirement

in the posting for Chief Mechanic.[8] David Baber, State Department of Education School Bus Inspector, provided testimony at the level three hearing that the increasingly complex mechanical and electrical systems of school buses make ASE certification, in any of the several areas where certification is available, a highly desirable qualification for bus mechanics, even more so for the Chief Mechanic. Mr. Carnell testified at the level one hearing that job descriptions are reviewed prior to postings and when needed, the job description is updated or revised prior to the new vacancy being posted. The job description for chief mechanic had not been updated since 1998. The Supreme Court of Appeals of West Virginia has held that a county board of education does not abuse its discretion by demanding additional qualifications beyond the passing of the competency test in filling a supervisory position. *See Hancock County Bd. of Educ. v. Hawken*, 209 W.Va. 259, 263, 546 S.E.2d 258, 262 (1999). "In light of the importance [placed] upon providing students with 'a thorough and efficient system of free schools," the passing of the competency examination is not "the alpha and the omega" of a board's hiring process. Id. Respondent argues, given the supervisory nature of the safety-sensitive Chief Mechanic's position, the requirements of ASE certification and supervisory experience were not inconsistent with the statutory definition.

Given the supervisory nature of the Chief Mechanic's position and the responsibility of ensuring the safety of the transportation of students, the undersigned does not find the

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[8]Although the requirement of a minimum of two years experience in a supervisory position was also added in the posting for Chief Mechanic, Grievants do not argue that this additional requirement should not have been added to the posting. Intervenor Wolford has 8 years of supervisory experience while Grievant Hackney has three and a half years of supervisory experience.

inclusion of ASE certification and supervisory experience in the qualifications for the position to be arbitrary and capricious. Respondent showed valid cause for awarding the position to Intervenor Wolford instead of granting the position based solely upon seniority. Respondent's decision to select Intervenor Wolford because he had greater training, knowledge, and skills relevant to the chief mechanic position, was not arbitrary and capricious.

The following Conclusions of Law support the Decision reached.

Conclusions of Law

1. Because this grievance is not about discipline, Grievants must prove their claim by a preponderance of the evidence, which means they must provide enough evidence for the undersigned Administrative Law Judge to decide that their claim is more likely valid than not. *Leichliter v. W. Va. Dep't of Health and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). If the evidence supports both sides equally, then Grievant has not met his burden. *Id.*

2. It is well-settled that county boards of education have a substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. Nevertheless, this discretion must be exercised reasonably, in the best interest of the schools and in a manner which is not arbitrary and capricious." Syl. Pt. 3, *Dillon v. Wyoming County Board of Education*, 177 W.Va. 145, 351, S.E. 2d 58 (1986).

3. "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 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 (W. Va. 1982)." *Trimboli*, *supra*.

4. Boards of education in West Virginia must fill school service personnel positions on the basis of seniority, qualifications and evaluation of past service. W. VA. CODE § 18A-4-8b.

5. "In light of the importance [placed] upon providing students with 'a thorough and efficient system of free schools," the passing of the competency examination is not "the alpha and the omega" of a board's hiring process. *Hancock County Bd. of Educ. v. Hawken*, 209 W. Va. 259, 546 S.E.2d 258 (1999). *See Shaffer v. Kanawha Bd. of Educ.,* Docket No. 00-20-085 (June 12, 2000).

6. A board may expand the qualifications for a position found in W. VA. CODE

§ 18-4-8, so long as this expansion is consistent with the statutory definition. *Ohio County Bd. of Educ. v. Hopkins*, 193 W. Va. 600, 457 S.E.2d 537 (1995); *Dawson v. McDowell County Bd. of Educ.*, Docket No. 97-33-101(May 29, 1998).

7. A county board is not precluded from considering other job-related qualifications in determining which applicant is the most qualified to fill a posted vacancy. *Hawken*, *supra*; *Hopkins*, *supra*.

8. Under W.VA. CODE § 18A-4-8b, a county board of education must show valid cause why any employee with the most seniority is not employed in the position for which he applies.

9. Respondent showed valid cause for the selection of Intervenor Wolford as Chief Mechanic.

10. Intervenor Wolford received the highest average score from the interview matrix, has more years of supervisory experience than Grievants, and is ASE certified in Brakes and Suspension & Steering.

11. The selection of Intervenor Wolford for the position of Chief Mechanic was not arbitrary and capricious.

12. Grievants have not met their burden of proof in demonstrating that Respondent violated W. VA. CODE §§ 18A-4-8g, 18A-4-8e, & 18A-4-8b in filling the posted vacancy for Chief Mechanic.

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 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).

Jennifer Lea Stollings-Parr
Administrative Law Judge

Date: February 24, 2011