

**THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

JAN CRAIG,
Grievant,

v.

Docket No. 2015-0499-UpsED

UPSHUR COUNTY BOARD OF EDUCATION,
Respondent.

DECISION

Jan Craig filed this action against her employer, Upshur County Board of Education, on October 28, 2014, in which she alleged the following:

WV§18A-4-16; 18A-4-7a; 18A-3C-3 & WVBOE 5800 (*6.1 and 6.2.5)(* including but not limited to). Hiring of Mentors contrary to policy statu[t]e. Arbitrary and capricious. Successful applicants prematurely selected. Person's previously holding positions should get priority.

For relief she requested that the "selection process [be] revisited, starting from scratch. Priority given to former mentors as well as teachers within an individual school."

A level one conference was held and the decision denying Grievant's claims was issued on November 21, 2014. A level two mediation session was conducted on May 12, 2015. A level three hearing was held on January 8, 2016, at the Randolph County Development Authority, WV Wood Technology Center, Elkins, West Virginia. Grievant appeared in person and by her representative, Joseph M. Britton, WVEA. Respondent appeared by its counsel, Rebecca Tinder, Bowles Rice LLP. This matter became mature for consideration upon receipt of the last of the parties' fact/law proposals on February 10, 2016.

Synopsis

Grievant challenges the posting and filling of mentor teacher positions by the Respondent. Grievant failed to prove that the actions taken by Respondent in filling the mentor positions, as posted, were unreasonable, arbitrary or capricious. The record established that the actions were taken in an effort to provide for skilled and available mentors to improve the performance of new teachers, which was clearly in the best interests of the schools.

The following Findings of Fact are based on the record of this case.

Findings of Fact

1. Grievant has been employed by the Upshur County Board of Education as a professional employee, serving as a Special Education Coordinator, this year and last, at the Buckhannon Upshur Middle and High School.
2. Respondent advertised for mentor teachers to assist new teachers in multiple schools during the 2014-2015 school year. That posting was dated October 3, 2014, with a closing date of October 9, 2014.
3. The posting outlined the schools in which the teachers were assigned that needed mentors, as well as the certification areas of those teachers in need of mentors.
4. Grievant was among the multiple applicants for the mentor positions and, at that time, did not hold the Master Mentor Teacher credential.
5. The previous mentor program was not successful in that there were insufficient substitute teachers to regularly cover for the teacher/mentors to leave their regular teaching assignments and work as mentors.

6. The performance responsibilities of the successful applicants, noted in the posting, included a total of 20 observations, with conferences following each; and the minimum qualifications included being available to perform mentor duties without the need of interrupting the employee's current assignment.

7. The posting was worded to ensure that the teachers being mentored would receive the maximum benefit of mentors, who had the necessary time to perform all of the duties required of mentors, and improve the mentor program.

8. After reviewing the applicants and consulting with the supervisors of the regularly employed teacher applicants, the Special Education Director who was the supervisor of Grievant, and the assistant superintendent determined that none of the regular full time employees would be available to perform mentor duties without the need of interrupting the employee's current assignment.

9. At its meeting held on October 14, 2014, Respondent approved hiring a number of mentors, 8 out of 10 of whom had been hired as substitute teachers by Respondent at its September 23, 2014, board meeting.

10. The focus of Grievant's claim is not specific to an unsuccessful application for a teacher mentor assignment. The record did not make it possible to compare Grievant's qualifications to those of a successful applicant. The Mentor Teacher positions were filled and the 2014-2015 school year assignment for those mentor teachers has concluded.

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 W.

Va. Public Employees Grievance Board 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). "A preponderance of the evidence is evidence of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997). In other words, "[t]he 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's argument is that she held the extracurricular position of mentor for new teachers the previous year and was not provided the extracurricular contract of mentor for new teachers for the 2014-2015 school year. Grievant asserts that WEST VIRGINIA CODE § 18A-4-16 should have been followed by Respondent in filling the mentor positions. Extracurricular assignments are addressed at WEST VIRGINIA CODE § 18A-4-16, which provides, in pertinent part:

(1) The assignment of teachers and service personnel to extracurricular assignments shall be made only by mutual agreement of the employee and the superintendent, or designated representative, subject to board approval. Extracurricular duties shall mean, but not be limited to, any activities that occur at times other than regularly scheduled working hours, which include the instructing, coaching, chaperoning, escorting, providing support services or caring for the needs of students, and which occur on a regularly scheduled basis: Provided, That all school service personnel assignments shall be considered extracurricular assignments, except such assignments as are considered either regular positions, as provided by section eight [§ 18A-4-8] of this article, or extra-duty assignments, as provided by section eight-b [§ 18A-4-8b] of this article.

* * *

(6) An employee who was employed in any service personnel extracurricular assignment during the previous school year shall have the option of retaining the assignment if it continues to exist in any succeeding school year. A county board of education may terminate any school service personnel extracurricular assignment for lack of need pursuant to section seven, article two of this chapter. If an extracurricular contract has been terminated and is reestablished in any succeeding school year, it shall be offered to the employee who held the assignment at the time of its termination. If the employee declines the assignment, the extracurricular assignment shall be posted and filled pursuant to section eight-b of this article.

Grievant's argument that the above statute is controlling is without merit since it is undisputed in this case that Grievant has been employed by the Upshur County Board of Education as a professional employee. None of Grievant's assertions made on the record of this grievance give rise to a violation of WEST VIRGINIA CODE § 18A-4-16. The standard of review for filling the extracurricular assignment is to assess whether the Respondent abused its discretion in the selection or acted in an arbitrary and capricious manner.¹

The posting, dated October 3, 2014, identified the following minimum qualifications; hold a teaching certificate/license; criminal background check; successful, experienced classroom teachers with a minimum of five years teaching experience; must be available to perform mentor duties without the need of interrupting current assignment. The record not did address a claim that Grievant was more qualified than a successful applicant for

¹"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). 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).

a Mentor Teacher position; therefore, it is not possible to compare her qualifications to those of a successful applicant. Grievant appears to want the posting and application process for a previous school year to start over from scratch. For the undersigned to do so would be an exercise in futility and would likely result in an advisory opinion. In addition, it is well-settled that county boards of education have 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.² The record of this case did not support a finding that Respondent acted in an arbitrary and capricious manner in its selection of mentor teachers.

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 W. Va. Public Employees Grievance Board 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).

2. Grievant has failed to prove that the actions taken by Respondent in filling the mentor positions, as posted, was unreasonable, arbitrary or capricious.

²*Dillion v. Wyoming County Bd. of Educ.*, 177 W.Va. 145, 351 S.E.2d 58 (1986).

3. There is no relief available to Grievant as the year for which the mentors were hired has been completed, the selection process cannot be revisited, nor can priority be given to former mentors as requested by Grievant.

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 Civil Action number should be included so that the certified record can be properly filed with the circuit court. See *a/so* 156 C.S.R. 1 § 6.20 (2008).

Date: March 18, 2016

Ronald L. Reece
Administrative Law Judge