JUDI VONKALLIST,

Grievant,

v. DOCKET NO. 94-27-073

MERCER COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Judi Vonkallist, contends that the Mercer County Board of Education (Board) violated W. Va. Code § 18A-4-7a in selecting another applicant over her for a Social Studies teaching position at Pikeview High School. Ms. Vonkallist appealed adverse decisions at the lower grievance levels to Level IV on February 28, 1994. This grievance was initially scheduled for hearing at Level IV, but the parties agreed to submit the case on the record developed below, which consists of the transcript, exhibits and decision entered at Level II and the Board's affirmation of the Level II decision at Level III. (See footnote 1)

County boards of education have substantial discretion in matters relating to the hiring of school personnel and they must exercise that discretion only within the best interests of theschools and in a manner which is neither arbitrary nor capricious. See, Hyre v. Upshur County Bd. of Educ., 412 S.E.2d 265 (W. Va. 1991). With regard to the hiring of professional personnel, boards of education must exercise their discretionary authority by reviewing the candidates' qualifications under the categories contained in W. Va. Code § 18A-4-7a (1992). This statutory provision states, in pertinent part:

> . . . If one or more permanently employed instructional personnel apply for a classroom teaching position and meet the standards set forth in the job posting, the county board of education shall make decisions affecting the filling of such positions on the basis of the following criteria: Appropriate certification and/or licensure; total amount of teaching experience; the existence of teaching experience in the required certification area; degree level in the required certification area; specialized training directly related to the performance of the job as stated in the job description; receiving an overall rating of satisfactory in evaluations over the previous two years; and seniority. Consideration shall be given to each criterion with each criterion being given equal weight. If the applicant with the most seniority is not selected for the position,

> upon request of the applicant a written statement of reasons shall be given to the applicant with suggestions for improving the applicant's qualifications.

Although the arbitrary and capricious standard of review of administrative agency decisions requires a searching and careful inquiry into the facts, the ultimate scope of review is narrow, and the undersigned may not substitute her judgment for that of the Board. See generally, Harrison v. Ginsberg, 286 S.E.2d 276 (W. Va. 1982). The Grievance Board cannot perform the role of a "super-interviewer" in matters relating to the selection of candidates for vacant positions. Stover v. Kanawha Co. Bd. of Educ., Docket No. 89-20-75 (Jun. 26, 1989); Harper v. Mingo Co. Bd. of Educ., DocketNo. 93-29-064 (Sep. 27, 1993). Generally, an agency's action is determined to arbitrary and capricious if the agency 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 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).

Findings of Fact

1. The Board posted Administrative Memo No. 34 on May 27, 1993, which advertised five Social Studies teaching positions at Pikeview High School. Tr., p. 6. Certification in Social Studies 7-12 was required and specialization in World History was desired. Tr., pp. 6-7.

2. Ms. Vonkallist wrote to Mr. Roger Daniels, Administrative Assistant/Human Resources Director for Mercer County Schools on June 7, 1993, as follows:

> I wish to apply for a social studies position at Pike View High School. I am certified in social studies comprehensive, grades seven through twelve.

Board Exhibit 2. No other information was included in Ms. Vonkallist's letter of application.

3. Mr. Wayne H. Pelts, another teacher, wrote to the Director of Personnel, Mercer County Schools, on June 8, 1993, applying for "(1) Social Studies teacher, with specialization in World History, (2) English/Language Arts teacher, and (3) English/Language Arts/Journalism teacher." Board Exhibit 1. Mr.Pelts is certified in Social Studies 7-12, English 7-12, and Speech 7-12. Mr. Pelts

described his educational background and experience in great detail in his letter of application, including additional training he received "in the West Virginia Writing Project. the (sic) Program of Instructional Effectiveness, and the Writing to Learn program." Id.

4. An interview committee made up of three individuals met with all applicants for the posted positions. The committee used the seven criteria specified in W. Va. Code § 18A-4-7a (the second set of factors) to determine the best qualified person for each position. Each category was given equal weight. Questions were asked of each applicant directly relating to the seven criteria. The applicants were given the opportunity to list or to furnish whatever evidence they wanted to show in any of the categories to the committee. Tr., p. 16.

5. The committee placed all of the information obtained from the applicants on grids developed by the Personnel Department and each column was given a total number of 20 points. Some of the columns were simply yes or no and points awarded on that basis. For instance, if an applicant had the required certification, he or she was given 20 points for that category. In other columns, such as years of teaching experience, seniority, degree level, or specialized training, the applicant with the most years would get 20 points, the next highest applicant would get 19 points, and so on, decreasing by a gradient of 1. Tr., p. 16. No other criteriawas used to determine the best qualified person for the job postings. Tr., p. 29.

6. Each applicant was asked during the interview whether they had received any specialized training directly related to the performance of the job as stated, including any workshops, seminars, etc. that they may have attended in relation to the position. Tr., pp. 12, 19.

7. Ms. Vonkallist answered "none" to the question regarding specialized training. Tr., pp. 12, 21. Consequently, Ms. Vonkallist was awarded no points for that category.

8. Mr. Pelts listed several seminars and workshops, which were also listed in his letter of application, and was awarded 18 points for that category.

9. Ms. Vonkallist did not receive any of the social studies positions. Mr. Pelts was awarded one of the positions.

Discussion

Ms. Vonkallist contends that she should have been awarded the social studies teaching position held by Mr. Pelts. Mr. Pelts has less seniority than Ms. Vonkallist, and, she contends, is less qualified

than she.

Ms. Vonkallist and Mr. Pelts were evaluated as follows:

	Vonkallist	Pelts
1. Appropriate certification and/or licensure	20	20
2. Total amount of teaching experience	15	13
3. Teaching experience in the certification area	20	20
4. Degree level in the required certification area	16	15
5. Specialized training directly related to the performance of the job as stated in job description	0	18
6. Overall rating of satisfactory in evaluations over past two years	20	20
7. Seniority	15	13
TOTAL	106	119

As the grid shows, category 5, specialized training, was the determinative factor in giving Mr. Pelts a higher score than Ms. Vonkallist. (See footnote 2) Ms. Vonkallist does not take issue with the scoring of any of the other categories. The issue then, is whether the Board erred in the manner in which it awarded points for the specialized training category.

Ms. Vonkallist asserts she did not understand the question when asked about any specialized training, and that she has as much or more specialized training than Mr. Pelts. Ms. Vonkallist testified that she had computer training, attended an assertive discipline class, and had several graduate education classes dealing with meeting and identifying student needs. Tr., p. 21. She testified that

she indicated to the interview committee when asked that she had no specialized training, but thought that meant related directly to teaching World History. She testified that shedid tell the committee about the other training she had, computer and education classes, but not in direct answer to the specialized training question. Tr., p. 21.

Mr. Dan Zirkle, Principal, Pikeview High/Athens High School, was a member of the interview committee and testified at Level II on behalf of the Board. Mr. Zirkle testified that the grids were developed after the interviews relying on the notes that were taken by each interviewer. Mr. Zirkle had the notes of the three interviewers at Level II (they were not introduced into evidence) and there was nothing on any of the notes from Ms. Vonkallist's interview mentioning any specialized training or additional classes. Mr. Zirkle also did not recall Ms. Vonkallist telling them about any of her additional training or classes at the interview. Tr., p. 25. The other committee members were not called as witnesses at Level II.

Where oral testimony conflicts on a particular piece of evidence, it is a question for the trier of fact. Ms. Vonkallist has presented no evidence other than her testimony to prove that she told the interview committee about her specialized training, or that the committee ignored this information in ranking her on the personnel grids. The Board, through Mr. Zirkle, had the notes of the three interviewers from Ms. Vonkallist's interview, none of which made reference to any specialized training or additional classes. In addition, Mr. Zirkle did not remember Ms. Vonkallist telling them about her training during the interview.

While job screeners have certain facilitative responsi-bilities, applicants have a like duty to inform them of any experience or credentials believed pertinent to the position. See Stover v. Kanawha County Bd. of Educ., Docket No. 89-20-75 (June 26, 1989). That a grievant did not do so while given full opportunity to do so cannot be considered a flaw in the selection process on the Board's part. Green v. Mason County Bd. of Educ., Docket No. 91-26-176 (July 26, 1991).

Ms. Vonkallist has not proven by a preponderance of the evidence that the Board erred in its determination that she was less qualified than Mr. Pelts. Nor has she established any significant flaw in the selection process. Ms. Vonkallist has not challenged the methodology used by the interview committee in selecting candidates. She merely challenges the score she received on one of the categories.

Ms. Vonkallist cannot previal in her grievance. Her failure to communicate effectively her

credentials to the interview committee does not justify requiring the Board to reevaluate a position which was filled properly in accordance with the statutory requirements of W. Va. Code § 18A-4-7a.

Conclusions of Law

1. Ms. Vonkallist has failed to establish that the Board, or any agent thereof, violated, misinterpreted or misapplied W. Va. Code § 18A-4-7a, in the process of hiring an employee for a Social Studies position at Pikeview High School.

2. Ms. Vonkallist has failed to establish by a preponderance of the evidence that the Board, or any agent thereof, abused its discretion by acting arbitrarily or capriciously in the selection process utilized to fill the position in question.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mercer County and such appeal must be filed within thirty (30) 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. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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MARY JO ALLEN

Administrative Law Judge

Dated: August 8, 1994

Footnote: 1 *This grievance was assigned to the undersigned from another Administrative Law Judge for administrative reasons.*

Footnote: 2 *No scores from the other applicants were introduced into evidence. Therefore, while it is clear that if Ms. Vonkallist is correct and Respondent erred in not awarding her any points for specialized training, she may have received a total higher score than Mr. Pelts, it is unclear that she would necessarily have been next in line for a position.*