GARY CARPENTER,

Grievant,

v. Docket No. 94-06-058

CABELL COUNTY BOARD OF EDUCATION,

Employer.

D E C I S I O N

Gary Carpenter (hereinafter Grievant) filed this complaint pursuant to the provisions of West Virginia Code §18-29-1 et seq., on September 27, 1993, alleging that the Cabell County Board of Education (hereinafter Board) had violated W.Va. Code §18A-4-7a in not selecting him for a vacant half-time health teacher position at Barboursville Middle School. Grievant contends that he is more qualified for the position than the successful applicant and the Board denies such assertion. Grievant received adverse decisions at levels one and two and an appeal was perfected at level four on April 7, 1994; thereafter, a hearing was held on May 24, 1994, atthe Grievance Board's office in Charleston, West Virginia. The case became mature for decision on that date.

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 the schools 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 West Virginia Code §18A-4-7a (1992). This statutory provision states, in pertinent part,

> A county board of education shall make decisions affecting the hiring of professional personnel other than classroom teachers on the basis of the applicant with the highest qualifications. Further, the county board shall make decisions affecting the hiring of new classroom teachers on the basis of the applicant with the highest qualifications. In judging qualifications, consideration shall be given to each of the following: Appropriate certification and/or licensure; amount of experience relevant

> to the position . . .; amount of course work and/or degree level in the relevant field and degree level generally; academic achievement; relevant specialized training; part performance evaluations conducted pursuant to section twelve [§ 18A-2-12]. article two of this chapter, and other measures or indicators upon which the relative qualifications of the applicant may be fairly judged. 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 overallrating 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.

The various county boards of education throughout the state are delegated the authority to interpret the provisions of Code §18A-4-7a. An individual's mere disagreement with that interpretation is not sufficient to show an abuse of discretion. Finally, boards of education are free to determine the weight which is to be applied to each of the first set of criteria listed in section 7a in assessing candidates' qualifications. See, Blair v. Lincoln Co. Bd. of Educ., Docket No. 92-22-009 (July 31, 1991).

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 his judgment for that of the Board. See generally, Harrison v. Ginsberg, __ W.Va. __, 286 S.E.2d 276. 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., Docket No. 93-29-064 (Sep. 27, 1993). Generally, an agency's action is determined to be 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 adecision 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).

The following findings of fact are properly deduced from the evidentiary record developed in the case.

Findings of Fact

1. Grievant has been employed by the Board as a substitute teacher for six years.

2. On or around August 16, 1993, the Board posted a vacant half-time teaching position at Barboursville Middle School. No regularly employed teachers applied for this position; therefore, the Board conducted a review of the personnel files of qualified applicants in order to fill said position. Most of the candidates for this position were substitute employees.

3. Grievant and three other applicants showed an interest in this teaching position by submitting bid sheets to the Board.

4. Grievant was not selected for the teaching position.

5. The successful applicant had been working for the Board as a student teacher and as a coach prior to receiving the position in question.

6. The Board utilized the first set of criteria listed in Code §18A-4-7a in judging the qualifications of the applicants for the teaching position.

7. Both applicants were certified for the position and possessed a Bachelor's Degree in Health Education.

8. The Board did not require any specialized training as a minimum requirement for the position nor did it determine that Grievant or the successful applicant possessed any relevant specialized training related to the teaching of health.

9. Neither candidate had been evaluated as a regular employee. Grievant had been evaluated as a substitute teacher numerous times and had received three evaluations with negative comments.

10. Grievant's receipt of three negative substitute teaching performance evaluations was considered by the Board as a measure or indicator of his relative qualification for the position.

11. The successful applicant's undergraduate grade point average was higher than Grievant's.

12. Grievant has worked as a substitute for more than 133 days in three of the six years he has been employed as a substitute, therefore, he had three years of seniority for purposes of applying for regular employment.

13. The Board considered all seven of the categories equally in terms of the weight applied to each for purposes of determining which one of the candidates was more qualified for the position.

14. Of the seven criteria which were used to judge the relative qualifications of the two candidates, both were determined to be equal in four of the areas. Grievant was determined to be

superior in the category of "amount of experience related to the position," while the successful applicant was determined to besuperior in the categories of degree level and "other measures or indicators."

Discussion

Even though it chose to do so, the Board was not required under Code §18A-4-7a to consider or "weigh" the seven categories of qualifications equally in comparing and contrasting the candidates' credentials for the position in question. This is consistent with the mandates of §18A-4-7a. Of these seven categories, it determined that two were not capable of being judged; there was no relevant specialized training required for the position nor had any of the candidates been evaluated as regular teachers during the past two school years. Further, the appropriate certification and degree level categories were considered to be minimum qualifications for the position which both candidates at issue met. Therefore, there were only three factors which were given any meaningful review in order to determine who was more qualified for the half-time teaching position.

The Board did not abuse its discretion in determining that the successful applicant was more qualified by virtue of the credentials she possesses when related to the categories of consideration established in Code §18A-4-7a. Her undergraduate grade point average was higher than Grievant's, while Grievant had more experience as a teacher stemming from his time spent as a substitute. All inferences from the record lead the Undersigned to the conclusion that the Board considered the successful applicant more qualified for the position, after having reviewed the sevencategories previously discussed, based upon the fact that Grievant had received some negative substitute teacher evaluations while the successful applicant had not been in a position to receive such. While the Undersigned might not have made the same assessment of Grievant's performance as a teacher, as exhibited through the scores given to him on his substitute evaluations, it cannot be determined that the Board acted arbitrary or capricious in making said determination.

In this case, because the factors were given equal weight, the successful applicant and Grievant were tied after consideration of six of the seven factors. In actuality, the successful applicant prevailed because she was given a zero in the last category of consideration while Grievant was given a minus. All things being equal, if this factor had not even been considered, Grievant still would not have been determined to be the most qualified because there would have been a tie. Therefore, it

is determined that Grievant has failed to meet his burden of proof in establishing that the Board abused its discretion is judging the qualifications and credentials of the applicants for the position in question.

The foregoing discussion of the facts of the case and of the law applicable to those facts is hereby supplemented by the following appropriate conclusions of law.

Conclusions of Law

1. Grievant 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 half-time health teacher position at Barboursville Elementary School.

2. Grievant 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 throughout the selection process utilized to fill the vacant position in question.

Therefore, this grievance is hereby **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Cabell 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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ALBERT C. DUNN, JR.

Administrative Law Judge

August 16, 1994