**OLIN L. HOOVER,**

**Grievant,**

**v. DOCKET NO. 95-36-425**

**PENDLETON COUNTY BOARD OF EDUCATION,**

**Respondent.**

**D E C I S I O N**

Grievant, Olin L. Hoover, filed this grievance on August 9, 1995, protesting his non-selection for the position of Director of Administrative/Instructional Programs for the Pendleton County Board of Education ("Board"). Grievant contends he is more qualified than the successful applicant and seeks instatement into the position. The parties agreed to submit the matter on the level two record, and this case became mature for decision on October 6, 1995, the deadline for filing proposed findings of fact and conclusions of law.

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 matter which is neither arbitrary or capricious. Hyre v. Upshur County Bd. of Educ., 412 S.E.2d 265 (W. Va. 1991). With regard to the hiring of professional personnel, boards ofeducation 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:

> 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. . . . In judging qualifications, considerations 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; past 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.

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 (June 26, 1989); Harper v. Mingo Co. Bd. of Educ., Docket No. 93-29-064 (Sept. 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 a decision that is so implausible that it cannot be ascribed to a difference ofview. Bedford County Memorial Hosp. v. Health and Human Serv., 769 F.2d 1017 (4th Cir. 1985).

## Findings of Fact

1. Grievant has been employed by the Board for fifteen (15) years as Principal of Franklin High School.

2. On July 5, 1995, the Board posted a vacancy for Director of Administrative/Instructional Programs with an attached job description, which listed the following qualifications:

> West Virginia Certification in Education Administration
>
> Masters Degree Required
>
> Five Years Administrative Experience Preferred and Five Years Teaching Experience
>
> A demonstrated ability to work as a leader/member of a team in the development and implementation of change process
>
> Demonstrate Computer Skills Applicable to Job

G. Ex. 1.

3. Grievant, Robert Rentschler, the successful applicant, and two other individuals applied for

the position. All applicants were interviewed by the Superintendent and Assistant Superintendent, and were asked the same questions from an Interview Questionnaire. Bd. Ex. 1. Grievant and Mr. Rentschler were chosen as the top two candidates.

4. Both Grievant and Mr. Rentschler met the qualifications listed on the job posting.

5. Assistant Superintendent R. Paul Clayton prepared a matrix for Grievant and Mr. Rentschler, utilizing the first set of factors listed in W. Va. Code § 18A-4-7a. Bd. Ex. 3. The candidates were scored as follows:

| Factors | OH | RR |
|---|---|---|
| Appropriate Certification (both have certification) | 1 | 1 |
| Amount of Experience Relevant to position (both had 15 years) | 1 | 1 |
| Amount of Course Work or degree level (G has Masters+45; RR has Doctorate) | 0 | 1 |
| Academic Achievement (G had 4.0; RR had 3.8) | 1 | 0 |
| Relevant Specialized Training | 0 | 1 |
| Past Performance Evaluations (Both had satisfactory evaluations) | 1 | 1 |
| Other Measures or Indicators upon which the relative qualifications of the applicant may fairly be judged | 0 | 1 |

6. Grievant scored a total of 4 points and Mr. Rentschler scored a total of 6 points.

7. The Board selected Mr. Rentschler for the position and Grievant instituted this grievance.

## Discussion

Grievant alleges that he is the more qualified candidate, and that the Board erred in its awarding of points, specifically in the degree level category. Mr. Clayton testified that he gave Mr. Rentschler a point in that area because he had a Doctorate in the applicable field, while Grievant had a Masters +45. Grievant contends that because the posting and the job description only required a Masters Degree, he should be given a point also in that category.

It was not arbitrary and capricious for the Board to award Mr. Rentschler a point higher for possessing a higher degree level thanGrievant, even though not specified in the qualifications listed on the posting, especially in light of the statute's mandate that the Board fill professional positions other than classroom teachers with the applicant with the highest qualifications. W. Va. Code § 18A-4-7a; see also, Worrell v. Mercer County Bd. of Educ., Docket No. 94-27-054 (Feb. 24, 1995).

With regard to the other scores in which Mr. Rentschler received a higher score, i.e., relevant specialized training and other measures and indicators, Assistant Superintendent Clayton testified that he looked at the candidates' qualifications, reviewed the answers to the interview questions, and compared the candidates to the job description with regard to their experiences and background in reaching a determination that Mr. Rentschler was the most qualified for the job.

Superintendent Donald Bucher testified that Mr. Rentschler far exceeded Grievant in the areas of "relevant specialized training" and "other measures or indicators", which resulted in him receiving a point in those areas. The record supports that Mr. Rentschler has a great amount of training and experience in the relevant field, which he clearly expressed to the Superintendent and Assistant Superintendent during the interview process. Grievant alleges he, too, has an equivalent or greater amount of training and experience, but admits that he did not elaborate on any of these areas during the interview process when asked if there was anything he would like to add to the discussion. While it may be true that Grievant possessed equivalent or greater training andexperience in the field, it is up to the Grievant to convey such experiences to the Board. While job screeners have certain facilitative responsibilities, 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 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).

Grievant has failed to prove the Board erred in its determination that he was less qualified than

Mr. Rentschler. Nor has he established any significant flaw in the selection process. Grievant has not challenged the methodology used by the Board in selecting candidates. He merely challenges the scores he received.

## Conclusions of Law

1. In order to prevail, Grievant must establish the truth of his allegations by a preponderance of the evidence. Black v. Cabell County Board of Education, Docket No. 06-88-238 (Jan. 31, 1989).

2. 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 interests of the schools, and in a manner which is not arbitrary and capricious. State ex. rel. Melchiori v. Board of Educ., 425 S.E.2d 251 (W. Va. 1992); Dillon v. Bd. of Educ., 351 S.E.2d 58 (W. Va. 1986).

3. Grievant has failed to establish a violation of W. Va. Code § 18A-4-7a or prove 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 Pendleton 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 SWARTZ**

**Administrative Law Judge**

**Dated: October 19, 1995**