

BRUCE CLINTON

v. Docket No. 95-30-451

**MONONGALIA COUNTY BOARD OF EDUCATION and
DICK PARSONS, Intervenor**

DECISION

___Grievant, Bruce Clinton, employed by the Monongalia County Board of Education (Board) as a teacher and coach , filed a grievance at level one on June 5, 1995, in which he alleged:
I feel that I have been unfairly treated and discriminated against by Mr. Harvey, Mr. Wilson, Dr. Dulaney and The Board of Education in the recent appointment of Mr. Parsons as Head Boys Basketball Coach. They are telling me that I can only coach football, but I've demonstrated my ability in basketball as well. This can be resolved by appointing me to the position and paying all of my legal fees.

An Addendum attached to the grievance form stated:

I did not see any criteria for this position.

I did not see any qualifications for the position.

I was not given a plan of improvement.

I was not given a concrete reason for not getting the position.

There was no evaluation instrument used to rate the applicants.

I was told by Mr. Harvey that two candidates would be recommended to Dr. Dulaney and they only recommended one.

The grievance was denied at levels one and two. Grievant elected to bypass level three and appeal was made to level four on October 13, 1995. An evidentiary hearing was held on February 6, 1996, for the purpose of supplementing the lower-level record. The matter became mature for decision with the filing of post-hearing submissions on or before March 8, 1996.

The facts of this matter are as follows. The position of Boys Basketball Coach (Extra Duty

Contract), effective the 1995-96 school year, at University High School (UHS) was posted on April 3, 1995. The posting did not include a position description or list any qualifications but required the successful applicant be a teacher, or a substitute teacher. UHS Principal William Wilson recommended Intervenor Dick Parsons and Grievant for the position; however, Superintendent Jack Dulaney directed Mr. Wilson to reopen the posting and expand the applicant pool. Eventually, eight individuals submitted applications and five, including Grievant and Intervenor, were interviewed for the position.

Mr. Wilson and Athletic Director John Harvey reviewed the applicants' resumes and conducted standard interviews. Each applicant was allocated a score of 0-5 on each of fourteen questions, on their resumes, and on their references. [\(See footnote 1\)](#) Also considered were the number of years' experience coaching basketball, total number of years coaching, number of years coaching at the high school level, and the total number of basketball games coached. The grid scores for Grievant and Intervenor are reproduced below.

	Intervenor	Grievant
Question 1	5	2
Question 2	4	4
Question 3	5	2
Question 4	5	2
Question 5	5	5
Question 6	5	5
Question 7	5	5
Question 8	5	5
Question 9	5	2
Question 10	5	2
Question 11	5	4
Question 12	5	5
Question 13	5	3
Question 14	5	1
Resume	5	3

Years Coaching BB	17	2
Years Coaching	17	15
BB Coaching-HS	9	0
No. Games	698	369JH
References	5	0

At the conclusion of the interview process the Committee ranked the applicants in order of preference. Intervenor was ranked first and Grievant fifth, or last. By memorandum dated May 17, 1995, Mr. Wilson forwarded the results of the Committee's review to Superintendent Dulaney who, in turn, recommended to the Board that Intervenor be awarded the position. The Board voted unanimously to approve the recommendation.

Grievant alleges that his evaluation was flawed because he was not credited with sixteen games of high school coaching experience earned during the 1993-94 school year, and was given a "0" for his references. Additionally, the points were never totaled to rank order the applicants, and Mr. Wilson had indicated that Mr. Harvey might be harboring some ill will towards Grievant. Mr. Harvey assigned the points on the grid and Mr. Wilson did not conduct an independent assessment of the applicants. Grievant further notes that the Committee did not verify information on any of the resumes or investigate their outside activities to evaluate experiences for relevancy, equivalency, or applicability to the position of head boys basketball coach. For example, the Committee did not inquire as to Intervenor's level of participation in various camps, etc. Nor did the members credit Grievant for experience gained as a basketball official or his other coaching experiences in hockey, track and football. Grievant concludes that the Committee members based their assessment on personal knowledge of the applicants rather than on objective criteria.

Intervenor's assignment as a teacher at UHS is questioned by Grievant who opines that Intervenor's placement on staff was for the purpose of denying Grievant the opportunity to obtain the coaching position. Grievant asserts that the failure to post objective criteria for the evaluation of the applicants allowed the Committee to structure the instrument as they wished and allowed the members to emphasize any particular item they wished, which resulted in their ability to favor certain applicants, while discriminating against others. In this instance, the Committee favored high school basketball coaching experience, the one area in which Grievant was most disadvantaged. This, he claims, was an act of discrimination. Grievant argues that the foregoing factors are evidence that the

Board acted in an arbitrary and capricious manner or otherwise abused its discretion when it selected Intervenor for the position of head boys basketball coach.

The Board denies that it acted in an arbitrary and capricious manner or abused its discretion in selecting Intervenor for the coaching position. It also argues that while Grievant is a member of a protected group under the Human Rights Act, he has not established a prima facie case of discrimination nor has he offered any evidence that “but for” his protected status the adverse decision would not have been made. [\(See footnote 2\)](#) In the alternative, if it is determined that Grievant has established a prima facie case of discrimination, the Board argues that it has successfully rebutted the presumption by establishing legitimate and nondiscriminatory reasons for its selection of Intervenor, while Grievant has offered no evidence to suggest that the reasons advanced by the Board for its decision were merely a pretext for unlawful discrimination.

Intervenor asserts that Grievant has failed to show that the selection process was so significantly flawed that he might reasonably have been the successful applicant if the process had been conducted in a proper fashion. Although Grievant did establish that the Committee members did not verify the references of the applicants, Intervenor notes that Grievant did not prove what, if any, effect that particular fact had on his case. Intervenor testified at level four that the information on his resume was accurate and correct.

Because the nonselection of an employee for a position is a non-disciplinary matter, it is incumbent upon the Grievant seeking relief pursuant to W.Va. Code §§18-29-1, et seq., to prove all of the allegations constituting the grievance by a preponderance of the evidence. Rosenau v. Tucker County Bd. of Educ., Docket Nos. 94-47-591, 1104 (May 31, 1995); Hanshaw v. McDowell Co. Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). All the parties agree that a county board of education's selection of coaching personnel is not controlled by statute and that decisions relating to such positions are to be reviewed under the broad “arbitrary and capricious” standard pronounced in Dillon v. Wyoming County Bd. of Educ., 351 S.E. 2d 58 (W.Va. 1986). See also, Hopkins v. Monroe County Bd. of Educ., Docket No. 95-31-477 (Feb. 21, 1996); Chaffin v. Wayne County Bd. of Educ., Docket No. 92-50-419 (Aug. 20, 1993). Under the arbitrary and capricious standard, county boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel, provided that such discretion must be exercised reasonably, and in the best interests of the school. Pockl v. Ohio County Bd. of Educ., 406 S.E.2d 687 (W.Va. 1991).

Further, a county board of education's decision by appropriate personnel as to which candidate is the most qualified for a position vacancy will be upheld unless shown to be arbitrary or capricious or clearly wrong. Hanlon v. Logan County Bd. of Educ., Docket No. 93-23-502 (Dec. 29, 1994).

In general, the arbitrary and capricious standard of review requires a searching and careful inquiry into the facts; however, the scope of review is narrow, and the undersigned may not substitute her judgment for that of the board of education or perform the role of a "super-interviewer" in matters relating to the selection of candidates for vacant positions. See generally, Stover v. Kanawha County Bd. of Educ., Docket No. 89-20-75 (June 26, 1989); Harrison v. Ginsberg, 286 S.E.2d 276 (W.Va. 1982). An act may be determined arbitrary and capricious if a board of education 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 the 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); Beckley v. Lincoln County Bd. of Educ., Docket No. 92-22-107 (Feb. 29, 1995).

To a great extent, Grievant's complaints relating to the selection process are unsubstantiated. He offers no evidence that Intervenor had been improperly assigned to UHS as a teacher or for the purpose of blocking his appointment to the coaching position. Although he testified at level two and was present at the level four hearing, no testimony was elicited from Mr. Harvey regarding any ill feelings he may have held toward Grievant, and whether his ability to provide an objective evaluation was compromised.

Grievant's concern that the Committee members utilized personal knowledge of the applicants in making their recommendation, and their failure to question the breadth and depth of their outside experiences, is not without merit. However, the Board has shown that the applicants were reviewed primarily on a standardized, albeit nonmathematical, basis. Clearly, Grievant would be more comfortable had the recommendation been made based upon factors in which he excels. While this practice provides the evaluator with an outcome which is more easily justified, it is not required. At the level four hearing, Mr. Wilson stated that the scores were not averaged or otherwise processed to give the applicants a numerical ranking. Instead, he and Mr. Harvey generally considered the scores along with the information provided on the resumes and their own personal knowledge of the applicants. The interview questions and personal knowledge were considered equally; however, Mr.

Wilson stated that experience was the factor most heavily weighted. Thus, the grid provided a general overview of the applicants.

Mr. Wilson's testimony also establishes that the determining factor in their selection was the total amount of high school basketball coaching experience. Grievant is naturally opposed to this because it is an area in which he did not excel. Simply because Grievant disagrees with the factors considered, or the weight they were given, does not render the decision arbitrary or capricious. Past experience in the same level and activity as the posted vacancy is a reasonable consideration and is not an abuse of discretion.

Discrimination is defined by W.Va. Code §18-29-2(m) as "any differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing by the employees." To make a prima facie case of discrimination under this statute the Grievant must show

(a) that he is similarly situated in a pertinent way, to one or more other employee(s);

(b) that he has to his detriment, been treated by his employer in a manner the other employee(s) has/have not, in a significant particular;

and,

(c) that such differences were unrelated to actual job responsibilities of the Grievant and/or the other employee(s), and were not agreed to by the Grievant in writing.

Ferguson v. Mingo County Bd. of Educ., Docket No. 95-29-175 (Jan. 29, 1996).

If Grievant establishes a prima facie case, a presumption of discrimination exists, which the Board may rebut by showing a legitimate, nondiscriminatory reason for its action. If the Board provides said reason, the Grievant may still prevail by demonstrating the reason was pretextual. Steele v. Wayne County Bd. of Educ., Docket No. 89-50-260 (Oct. 19, 1989). Grievant may be credited with proving that he is similarly situated to other employees, and that he was treated differently than Intervenor by not receiving the position. However, Grievant has failed to establish a prima facie case of discrimination because he has not proven that the difference in treatment was unrelated to the actual job responsibilities of the coaching position. Even if it should be determined that Grievant did meet his burden of establishing a prima facie case of discrimination, the Board has successfully shown a

legitimate, nondiscriminatory reason for its action.

In addition to the foregoing narration it is appropriate to make the following formal findings of fact and conclusions of law.

FINDINGS OF FACT

___1. In April 1995, Grievant, Intervenor, and several other individuals filed applications for the position of boys head varsity basketball coach at University High School.

2. The Evaluation Committee, composed of UHS Principal William Wilson and Athletic Director John Harvey, interviewed five of the applicants. Each candidate was asked fourteen standard questions. Further evaluation was based on objective factors, including years of experience, experience coaching at the high school level, etc., and on subjective factors, i.e., the Committee members' personal knowledge of the applicants.

3. Experience coaching at the high school level was more heavily weighted than any other factor considered.

4. The Committee recommended Intervenor be awarded the position, having ranked him first of the five applicants who were considered.

5. Grievant had virtually no experiencing coaching high school basketball and was ranked fifth.

CONCLUSIONS OF LAW

___1. In non-disciplinary cases, including nonselection for a position, it is incumbent upon a grievant seeking relief pursuant to W.Va. Code §§18-29-1, et seq., to prove all of the allegations constituting the grievance by a preponderance of the evidence. Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88 130 (Aug. 19, 1988).

2. The appropriate standard for reviewing the selection of professional personnel for coaching positions is whether the county board of education acted in an arbitrary and capricious manner or otherwise abused its broad discretion. Foley v. Mineral County Bd. of Educ., Docket No. 93-28-255 (Oct. 29, 1993).

3. Grievant has failed to prove that the Board acted in an arbitrary and capricious manner or abused its discretion in selecting Intervenor for the position of boys' varsity basketball coach at UHS.

4. Grievant failed to prove that the Board's decision to award the coaching position to Intervenor

was an act of discrimination under W.Va. Code §18-29-2(m).

Accordingly, the grievance is **DENIED**.

March 30, 1996

[Footnote: 1](#)

The scoring grid, admitted as Exhibit 12 at the level two hearing, includes a note under the “references” section which states “relevant to B.B. or under supervision.”

[Footnote: 2](#)

Grievant did not allege a violation of the Human Rights Act in this action; however, the Grievance Board does not have the authority to determine liability under that provision in any event. Vest v. Bd. of Educ. of the County of Nicholas, 193 S.E.2d 222 (W.Va. 1995).