**MINDY GLICK,**

**Grievant,**

**v.** **Docket No. 97-23-435**

**LOGAN COUNTY BOARD OF EDUCATION,**

**Respondent,**

**and**

**EVONNE DOTSON,**

**Intervenor.**

**DECISION**

Mindy Glick (Grievant) filed this grievance pursuant to W. Va. Code §§ 18-29-1, et seq., on March 31, 1997, alleging that Respondent Logan County Board of Education (LCBE) violated W. Va. Code § 18A-4-7a when it selected Evonne Dotson (Intervenor) for a newly created position at Logan Middle School. Following denial of her grievance at Level I, Grievant proceeded to Level II where an evidentiary hearing was conducted by LCBE Superintendent John D. Myers on May 7, 1997. Intervenor intervened in this grievance pursuant to W. Va. Code § 18-29-3(u) on May 14, 1997. Following the Level II hearing, Superintendent Myers was appointed Superintendent of Schools for Marion County, West Virginia. He issued a decision denying this grievance at Level II on August 8, 1997. Grievant appealed the Level II decision to Level III where another hearing was conducted before the school board on September 25, 1997. LCBE voted to deny the grievance at Level III, and Grievant appealed to Level IV, requesting a decision on the record below. However, Intervenor requested an opportunity to present additional evidence at Level IV. In accordance with Hale v. Mingo County Board of Education, 484 S.E.2d 640 (W. Va. 1997), a Level IV hearing was conducted in this Grievance Board's office in Charleston, West Virginia, on November 24, 1997. Thereafter, this

matter became mature for decision on December 10, 1997, upon receipt of Intervenor's post-hearing brief.

The following Findings of Fact pertinent to resolution of this matter have been determined based upon a preponderance of the credible evidence of record, including the transcript of the hearings at Levels II and III, the testimony of the witnesses who appeared at Level IV, and documentary evidence admitted at all levels.

## FINDINGS OF FACT

1. Grievant is employed by Respondent Logan County Board of Education (LCBE). From 1986 through the end of the 1995-96 school year, she was the Librarian at Logan Junior High School.

2. Grievant is currently employed by LCBE as an Adult Basic Education teacher at the Ralph R. Willis Vocational School.

3. Grievant holds a Master's Degree in Library Science in addition to a Bachelor's Degree in Secondary Education and Language Arts. Grievant is certified in Library Science, K-12.

4. Intervenor is certified in Library Science, K-12. She has a Bachelor's Degree in Library Science and a Master's Degree in Reading. 5. Logan County Schools Policy VI.1, Staffing, states:

> Because the quality of staff hired by the Board is essential to an effective, productive educational program, the Board and the Administration shall make every effort possible to attract and retain the best qualified personnel.

6. On February 13, 1997, LCBE posted a number of professional teaching positions at its new Logan Middle School, scheduled to open for the 1997-98 school term. There was one vacancy posted for a Librarian. See G Ex 3 at L II. Grievant and Intervenor timely applied for this newly created position.

7. The same posting contained two positions in Computer Technology and one position in Technology Education, each of which specified certain computer training and/or experience required for the position. See G Ex 3 at L II. Approximately 50 other positions at Logan Middle School listed in that posting, including Librarian, did not contain any specialized training requirements.

8. The new Logan Middle School will have a state-of-the-art automated library, the first such library in the Logan County school system.

9. In accordance with W. Va. Code § 18A-4-7a, both Grievant and Intervenor held the required

certification for the position, had experience in the required certification area, and had satisfactory evaluations for the past two years. Grievant holds a higher degree level in the required certification area than Intervenor. Intervenor has greater seniority and teaching experience than Grievant. The seventh criterion, specialized training directly related to the job, was not considered, because no specialized training was specified in the job posting. See G Ex 4 at L II. 10. Applying the six applicable criteria equally in accordance with W. Va. Code § 18A-4-7a, LCBE determined that Intervenor was better qualified for the Librarian position at issue than Grievant.

**DISCUSSION**

As nonselection to a teaching vacancy does not involve a disciplinary matter, Grievant has the burden of proving each allegation in her claim by a preponderance of the evidence. Educ. & State Employees Grievance Bd. Procedural Rule 4.19, 156 C.S.R. 1 (1996); Williams v. Lincoln County Bd. of Educ., Docket No. 93-22-386 (Mar. 7, 1994); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code § 18-29-6. Hiring decisions relating to classroom teachers in West Virginia are governed by the provisions of W. Va. Code § 18A-4-7a (1993). Portions of that statute pertinent to this grievance provide:

> 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 past two years; and seniority. Consideration shall be given to each criterion with each criterion being given equal weight.
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> Boards shall be required to post and date notices of all openings in established, existing or newly created positions in conspicuous working places for all professional personnel to observe for at least five working days. The notice shall be posted within twenty working days of such position openings and shall include the job description. Any special criteria or skills that are required by the position shall be specifically stated in the jobdescription and directly related to the performance of the job. (Emphasis added.)

Because at least one currently employed teacher applied for the position at issue, LCBE

appropriately looked to the second set of criteria in W. Va. Code § 18A-4-7a, quoted above, in choosing the best-qualified applicant. West v. Wetzel County Bd. of Educ., Docket No. 96-52-172 (Feb. 18, 1997). See Ellis v. Mingo County Bd. of Educ., Docket No. 96-29-164 (June 28, 1996). Moreover, LCBE correctly applied each of the six applicable criteria equally, resulting in Intervenor's selection as the Librarian at Logan Middle School.

Nonetheless, Grievant contends that the "best qualified" applicant for the position was not selected because LCBE failed to include appropriate specialized training in the posting, thereby bringing the seventh criterion in W. Va. Code § 18A-4-7a into the equation. In particular, Grievant argues that, although LCBE elected to require certain specialized training for other posted teaching vacancies in its schools, no such specialized training was included in this posting, despite recent developments in library science, primarily technological changes, which would warrant inclusion of such job-related training in the posting at issue.

It is well-recognized that county boards of education have substantial discretion in matters related to hiring, assignment, transfer, and promotion of school personnel. However, that discretion must be tempered in a manner that is reasonably exercised, in the best interest of the schools, and in a manner which is not arbitrary and capricious. Syl. Pt. 3, Dillon v. Bd. of Educ., 177 W. Va. 145, 351 S.E.2d 58 (1986). Consistent with this principle, a county board of education has substantial discretion when establishing the qualifications for a position at the time of posting. See Cowen v. Harrison County Bd. ofEduc., 196 W. Va. 377, 465 S.E.2d 648 (1995); Mounts v. Mingo County Bd. of Educ., Docket No. 96-29-479 (June 27, 1997); Bailey v. Mingo County Bd. of Educ., Docket No. 95-29-346 (Feb. 21, 1996); Spaulding v. Mingo County Bd. of Educ., Docket No. 95-29-357 (Jan. 31, 1996).

In order for Grievant to prevail on her contention that LCBE improperly stated the qualifications for the position, she must demonstrate that the school board's decision was either arbitrary and capricious, or an abuse of discretion. See Cowen, supra; Pockl v. Ohio County Bd. of Educ., 185 W. Va. 256, 406 S.E.2d 687 (1991); McCune v. Kanawha County Bd. of Educ., Docket No. 94-20-265 (Oct. 31, 1994). In applying an "arbitrary and capricious" standard, a reviewing body applies a narrow scope of review, limited to determining whether relevant factors were considered in reaching that decision, and whether there has been a clear error of judgment. Bowman Transp. v. Arkansas-Best Freight System, 419 U.S. 281, 285 (1974); Harrison v. Ginsberg, 169 W. Va. 162, 286 S.E.2d 276

(1982). Moreover, a decision of less than ideal clarity may be upheld if the agency's path in reaching that conclusion may reasonably be discerned. Bowman, supra, at 286.

According to the record, while posting over fifty teaching positions at Logan Middle School, LCBE indicated that specialized training was required for only three positions. Those were new positions titled "Computer Technology" and "Technology Education." See G Ex 3 at L II. Comparable specialized training was not specified for Librarian, or any other positions in the new school. Further, there was no evidence that LCBE had included specialized training in any other posting for a Librarian vacancy. Likewise, it was notshown that any other county board has included specialized training requirements in a Librarian posting for a modern, automated school library.

Thus, the record indicates that LCBE decided certification as a Librarian by the West Virginia Department of Education, without any specialized training on computer technology as it applies to library services, was sufficient to meet the educational needs of the students to be served by the new library at Logan Middle School. Although Grievant's evidence indicates that job-related specialized training and experience, which she had obtained, would have been useful in the position, this evidence did not indicate that such training or experience was essential to perform the required duties of the position. In these circumstances, Grievant failed to establish that LCBE's determination was either arbitrary and capricious or an abuse of discretion. See Hill v. Kanawha County Board of Education, Docket No. 94-20-537 (Mar. 22, 1995), aff'd sub nom. Hill v. Raglin, Cir. Ct. of Kanawha County, No. 95-AA-106 (Jan. 8, 1997).

Consistent with the foregoing discussion, the following Conclusions of Law are appropriate in this matter.

## CONCLUSIONS OF LAW

1. In a grievance which is not disciplinary in nature, the grievant has the burden of proving the allegations in her complaint by a preponderance of the evidence. W. Va. Educ. & State Employees Grievance Bd. Procedural Rule 4.19, 156 C.S.R. 1 (1996); Williams v. Lincoln County Bd. of Educ., Docket No. 93-22-386 (Mar. 7, 1994); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code § 18-29-6. 2. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel so long as that discretion is exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious. Syl. Pt. 3, Dillon v. Bd. of Educ., 177 W. Va. 145,

351 S.E.2d 58 (1986).

3. A county board of education has substantial discretion when establishing the qualifications for a position at the time of posting. See Cowen v. Harrison County Bd. of Educ., 196 W. Va. 377, 465 S.E.2d 648 (1995); Mounts v. Mingo County Bd. of Educ., Docket No. 96-29-479 (June 27, 1997); Bailey v. Mingo County Bd. of Educ., Docket No. 95-29-346 (Feb. 21, 1996); Spaulding v. Mingo County Bd. of Educ., Docket No. 95-29-357 (Jan. 31, 1996).

4. In applying an "arbitrary and capricious" standard, a reviewing body applies a narrow scope of review, limited to determining whether relevant factors were considered in reaching that decision, and whether there has been a clear error of judgment. Bowman Transp. v. Arkansas-Best Freight System, 419 U.S. 281, 285 (1974); Harrison v. Ginsberg, 169 W. Va. 162, 286 S.E.2d 276 (1982). A decision of less than ideal clarity may be upheld if the agency's path in reaching that conclusion may reasonably be discerned. Bowman, supra, at 286.

5. Grievant failed to establish that LCBE's decision to post the Librarian vacancy at its new Logan Middle School without specifying any specialized training relevant to that particular position was either arbitrary and capricious or an abuse of discretion. See Hill v. Kanawha County Board of Education, Docket No. 94-20-537 (Mar. 22, 1995), aff'd sub nom. Hill v. Raglin, Cir. Ct. of Kanawha County, No. 95-AA-106 (Jan. 8, 1997).

Accordingly, this Grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Logan 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.

**LEWIS G. BREWER**

**ADMINISTRATIVE LAW JUDGE**

**Dated: January 29, 1998**