JAMES BUTTA,

Grievant,

v v.

Docket No. 99-54-466

WOOD COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

James Butta (Grievant) alleges that the Wood County Board of Education (WCBOE) selected a less qualified candidate for a coaching position at Williamstown High School, for which he applied. This grievance was initiated at level one on August 13, 1999, where it was denied on August 27, 1999. Grievant appealed to level two on August 30, 1999, and a level two hearing was held on October 12, 1999. The grievance was denied in a written level two decision dated October 25, 1999. Level three consideration was waived, and Grievant appealed to level four on October 28, 1999. The parties agreed to submit this grievance for a decision based upon the record developed below, supplemented by written submissions. (See footnote 1) This matter was assigned to the undersigned administrative law judge for a decision on December 8, 1999.

The following findings of fact are made, based upon the evidence of record.

Findings of Fact

1. Grievant is employed at Williamstown High School as a classroom teacher.

2. On June 25, 1999, WCBOE posted the position of Head Cross CountryCoach at Williamstown High School.

3. Three individuals applied for the coaching position, including Grievant, Teresa Pickens--also a classroom teacher employed by WCBOE--and a layperson who had not been previously employed

by the Board.

4. Ms. Pickens was selected by Principal Mike Boyd to fill the coaching position.

5. Grievant has approximately fifteen years of coaching experience with GCBOE, most of which has been in the track and field areas.

6. During the 1998-1999 school year, Ms. Pickens served as Head Girls Varsity Track Coach and also assisted with the cross country team.

7. Ms. Pickens coaching experience prior to 1998 is not reflected in the record.

8. On April 14, 1997, Grievant received a written admonishment from Superintendent Daniel Curry regarding “inappropriate language” Grievant had printed on the shirts of the members of the girls' track team that he was coaching at that time. (See footnote 2) As a result of this incident, Grievant agreed to temporarily resign his coaching duties. This letter was placed in Grievant's personnel file.

9. Ms. Pickens has no record of disciplinary incidents or any similar matters in her employment history.

10. Formal interviews for the coaching position were not conducted by Principal Boyd.

11. GCBOE has no policies regarding the filling of coaching or extracurricularpositions.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.19 (1996); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code § 18-29-6. Grievant contends that he was simply more qualified than Ms. Pickens to fill this coaching position, so he should have been selected.

Coaching positions are considered to be extracurricular assignments, which are governed by the provisions of W. Va. Code § 18A-4-16, which sets forth the legal requirements for the employment of persons in these types of positions. In essence, under W. Va. Code § 18A-4-16, the terms and conditions of the extracurricular assignment must be mutually agreed upon by the employer and employee, and formalized by a contract separate from the worker's regular contract of employment. Spillers v. Brooke County Bd. of Educ., Docket No. 95-05-329 (Sept. 18, 1995). See Ramey v. Mingo

County Bd. of Educ., Docket No. 93-29-470 (May 12, 1994). However, the statute does not designate how, or under what standard, extracurricular coaching assignments are to be made. Ramey v. Mingo County Bd. of Educ., Docket No. 95-29-483 (Apr. 30, 1996).

This Grievance Board has previously determined that the provisions of W. Va. Code § 18A-4-7a are not applicable in the selection of professional personnel for extracurricular assignments. Hall v. Mingo County Bd. of Educ. Docket No. 95-29-529 (Mar. 28, 1996);Foley v. Mineral County Bd. of Educ., Docket No. 93-28-255 (Oct. 29, 1993); Smith v. Logan County Bd. of Educ., Docket No. 91-23-040 (July 31, 1991). Nevertheless, it has been determined that the standard of review for filling coaching positions is to assess whether the Board abused its discretion in the selection or acted in an arbitrary or capricious manner. Dillon v. Bd. of County of Wyoming, 351 S.E.2d 58 (W. Va. 1986); Hanlon v. Logan County Bd. of Educ., Docket No. 93-23-502 (Dec. 29, 1994), aff'd Circuit Court of Kanawha County, Civil Action No. 95-AA-15 (July 8, 1996); Chaffin v. Wayne County Bd. of Educ., Docket No. 92-50-398 (July 27, 1993).

Generally, an action is considered arbitrary and capricious if the agency did not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that was so implausible that it cannot be ascribed to a difference of opinion. See Bedford County Memorial Hosp. v. Health and Human Serv., 769 F.2d 1017 (4th Cir. 1985); Yokum v. W. Va. Schools for the Deaf and the Blind, Docket No. 96-DOE-081 (Oct. 16, 1996). While a searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute her judgment for that of the board of education. See generally, Harrison v. Ginsberg, 169 W. Va. 162, 286 S.E.2d 276, 283 (1982).

Grievant simply has not met his burden of proof in this case. While it is clear that Grievant has extensive coaching experience, years of experience does not necessarily mean he was more qualified. See Sparks v. Mingo County Bd. of Educ., Docket No. 96- 29-447 (Feb. 18, 1997). Moreover, Grievant has failed to provide evidence regarding Ms.Pickens' experience prior to 1998, making a comparison of their qualifications virtually impossible.

Grievant also contends that it was improper for Principal Boyd to consider the 1997 admonishment Grievant had received from Superintendent Curry, when he made this selection decision. Principal Boyd testified that, because both candidates had “real good experiences as far as

coaches," he felt a review of their personnel files would be helpful in making his decision. Because Ms. Pickens had nothing on file, and Grievant had received an admonishment related to his coaching duties, Mr. Boyd felt the school, the students, and the community would be better served by having Ms. Pickens placed in the position.

___Grievant has failed to establish that the selection of Ms. Pickens was arbitrary and capricious or an abuse of the Board's broad discretion. Both Grievant and Principal Boyd testified that Mr. Boyd was acquainted with Grievant's coaching experience. Also, Ms. Pickens clearly had prior experience in the same type of position. In addition, it was not inappropriate for Principal Boyd to look to the applicants' personnel files to assist him in making this hiring decision. Because the incident for which Grievant was admonished was directly related to his previous coaching duties, specifically a girls' track team, it was not arbitrary and capricious for it to be considered by Principal Boyd. Under the circumstances presented, Grievant has failed to establish that he was more qualified than the successful applicant or that GCBOE's decision was legally insufficient.

Consistent with the foregoing findings and discussion, the following conclusions of law are made.

Conclusions of Law

1. In non-disciplinary matters, Grievant has the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.19 (1996); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); 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 are authorized to hire coaches under extracurricular contracts pursuant to W. Va. Code 18A-4-16. However, Code 18A-4-16 does not designate how, or under what standard, extracurricular assignments to professional personnel for coaching positions are to be made. Ramey v. Mingo County Bd. of Educ., Docket No. 95-29-483 (Apr. 30, 1996).

3. The standard of review for filling coaching positions is to assess whether the Board abused its discretion in the selection or acted in an arbitrary or capricious manner. Dillon v. Bd. of County of Wyoming, 351 S.E.2d 58 (W. Va. 1986); Hanlon v. Logan County Bd. of Educ., Docket No. 93-23-502 (Dec. 29, 1994), aff'd Circuit Court of Kanawha County, Civil Action No. 95-AA-15 (July 8, 1996); Chaffin v. Wayne County Bd. of Educ., Docket No. 92-50-398 (July 27, 1993).

4. Generally, an action is considered arbitrary and capricious if the agency did not rely on criteria intended to be considered, explained or reached the decision in a manner contrary to the evidence before it, or reached a decision that was so implausible that it cannot be ascribed to a difference of opinion. See Bedford County Memorial Hosp. v. Health and Human Serv., 769 F.2d 1017 (4th Cir. 1985); Yokum v. W. Va. Schools forthe Deaf and the Blind, Docket No. 96-DOE-081 (Oct. 16, 1996). While a searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute her judgment for that of the board of education. See generally, Harrison v. Ginsberg, 169 W. Va. 162, 286 S.E.2d 276, 283 (1982).

5. Grievant has failed to prove by a preponderance of the evidence that the selection of Teresa Pickens for the Head Cross Country Coach position was arbitrary and capricious or an abuse of discretion.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the Circuit Court of Wood 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. However, the appealing party is required by W. Va. Code § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

Date: December 23, 1999 _____

DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

Grievant was represented by Rosemary Jenkins of the West Virginia Federation of Teachers, and Respondent was represented by counsel, Dean A. Furner.

Footnote: 2

The content of this "language" was not provided in the record, but, from context, the undersigned assumes that it was sexual in nature.