

SHANN ELKINS,

Grievant,

v. Docket No. 00-03-209

BOONE COUNTY BOARD OF EDUCATION,

Respondent, and

SHANE GRIFFITH,

Intervenor.

DECISION

Grievant, Shann Elkins, filed this grievance against the Boone County Board of Education ("BBOE") when he was not selected for a posted coaching position. The statement of grievance reads:

Shane Griffith was awarded the Scott High School head football coaching position on April 6, 2000. I feel the board[']s decision was in violation of 18A-4-7a, which states 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 consideration shall be given: Highest qualifications, experience/seniority, relevant specialized training related to the performance of the job and past evaluations. Any criteria used by the board should have recieved [sic] equal weight to which I don't believe it was. I further feel the board acted in an arbitrary and capricious manner when not approving the interview committee's and Superintendent's first recommendation to the board.

As relief Grievant sought to be placed in the head coach position at Scott High School, back pay, and legal expenses. [\(See footnote 1\)](#) At the Level IV hearing, Grievant also asked for interest, and Respondent did not object to this amendment to the relief sought. Grievant also asked that, if he were to prevail in this grievance, the instatement not occur until after the end of the current football season, including any playoffs in which the football team were involved, as to change the head coach at this point in the season would be too disruptive to the team. The parties all agreed that this would

be best. [\(See footnote 2\)](#)

The following Findings of Fact are made from the evidence presented at Level IV.

FINDINGS OF FACT

1. Grievant is employed by BBOE as a Science teacher at Scott High School. He has been teaching for 10 years. He was assistant freshman football coach at Scott High School for three years, and has been an assistant varsity football coach for the last six years at Scott High School under Doug Collins. [\(See footnote 3\)](#) Before that, he volunteered to assist with the program for about five years. He also served as head track coach at Scott High School one year.

2. Intervenor was head freshman basketball coach for two years, Junior Varsity basketball coach for two years, and an assistant football coach for two years at Scott High School under Coach Collins. Before that he volunteered to assist with the program for three years. He has taught at Scott High School for two years.

3. Coach Collins resigned as head football coach at Scott High School sometime during the 1999-2000 school year, and that position was posted. Grievant, Intervenor, and four others applied for the position. 4. An interview committee was appointed by BBOE Superintendent Gary Sumpter. The members of the committee were Dr. Richard Adkins, Executive Director for Curriculum and Instruction, Staff Development, Technology, and Personnel, Steve Pauley, Assistant Superintendent of Secondary Schools, and Jim Booth, the Scott High School Principal.

5. A matrix is always completed when a position is being filled by BBOE. In this case, the interview committee decided the factors specialized training related to the position, total amount of experience relevant to the position, previous extracurricular evaluations, interview, and principal recommendation should be used to evaluate the applicants. These are the criteria which are normally used in Boone County in selecting coaches. Each of the criteria was given equal weight by the committee.

6. Four of the six applicants were interviewed, and each applicant interviewed was asked the same questions. Mr. Pauley also asked the departing head football coach at Scott High School what role each applicant had played in the football program.

7. Derek Christian had the most coaching experience of the applicants. Grievant had the most specialized training relevant to the position, and he was the principal's choice. In evaluating

specialized training, the committee considered the quality and quantity of the training, and Grievant was far ahead of the other candidates in this category. Grievant and Intervenor both had good evaluations. Intervenor had the best interview, and did a much better job in the interview than any of the other applicants. Principal Booth recommended Grievant for the position. Grievant had checks in three factors, while Intervenor had checks in two. The interview committee recommended Grievant for the position.

8. Superintendent Sumpter recommended Grievant for the position. After some discussion by the BBOE members in executive session, it became clear that Grievant would not be selected. BBOE exited the executive session and the Superintendent then recommended Intervenor. BBOE selected Intervenor for the position.

9. Grievant was an instructor at the Concord College football camp from 1993 through 1995; he participated in a Boone County coach's clinic for little league players for two years and a summer football camp for youth. He has attended 30 or more football clinics.

10. Intervenor attended two football clinics, some basketball clinics, and he has attended college football practice sessions. He owned a health club while he was in college, and was a personal trainer at his health club.

11. Intervenor grew up in Boone County and graduated from Scott High School. He played point guard on the high school basketball team, was named most valuable player, and was elected to the first team All Kanawha County Conference in 1988. He was the high school quarterback, and received the award his senior year as the most outstanding football player at Scott High School.

12. Intervenor had a conversation with BBOE member Ricky Boggs prior to the time the position was posted, in which Intervenor told him that Grievant and himself should both be considered for the position.

13. Grievant graduated from Duval High School in Lincoln County.

14. The BBOE selected Intervenor because two of the members were vocal in their support for him. This support was based upon the fact that they had known Intervenor practically all his life, and believed he had good leadership skills, could rally community support, and had charisma. These board members did not know Grievant as well, and did not compare his leadership skills to those of Intervenor, nor did they compare the qualifications of the two candidates. One of the board members, BBOE President Bobby Hale, who is also a lawyer, gave no weight to the principal's

recommendation, because he had heard rumors that Principal Booth had already decided Grievant should be selected, and he decided the principal had just gone through the motions. Boardmember Boggs gave little consideration to the principal's recommendation because he thought as a board member, his own recommendation was just as important, if not more so, than the principal's.

DISCUSSION

Grievant bears the burden of proving the elements of his grievance by a preponderance of the evidence. Tibbs v. Mercer County Bd. of Educ., Docket No. 96-27- 074 (Oct. 31, 1996). Coaching positions are professional extracurricular assignments. In a grievance challenging the selection process used for a coaching position, the provisions of W. Va. Code § 18A-4-7a are not applicable. 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). The standard of review for filling coaching positions is whether the Board abused its discretion in the selection or acted in an arbitrary or capricious manner. Dillon v. Bd. of Educ. of County of Wyoming, 177 W. Va. 145, 351 S.E.2d 58 (1986); Butta v. Wood County Bd. of Educ., Docket No. 99-54-466 (Dec. 23, 1999); Chaffin v. Wayne County Bd. of Educ., Docket No. 92-50-398 (July 27, 1993); Smith v. Logan County Bd. of Educ., Docket No. 91-23-040 (July 31, 1991).

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 judgement for that of the decision-maker. See generally, Harrison v. Ginsberg, 169 W. Va. 162, 286 S.E.2d 276 (1982). Generally, an action is arbitrary and capricious if the body taking the action did not rely on factors that were intended to be considered, 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). Grievant argued that the criteria for the position were established by Boone County. He pointed out that a matrix is always used when filling a coaching position. He argued that the interview committee determined he had prevailed in three of the five criteria, and that BBOE failed to utilize the selection criteria in selecting Intervenor for the position. By doing so, Grievant argued that BBOE did not rely on factors that were intended to be considered, resulting in a decision that was not legally sufficient, and was arbitrary and capricious.

BBOE argued that the interview process and the matrix resulted in Grievant and Intervenor being very closely matched. BBOE made its choice based upon the personal characteristics of the two, such as leadership skills, ability to motivate students, and charisma, which it argued were vital to coaching, with charisma being the primary consideration when hiring a coach; and BBOE was permitted to utilize these criteria, and would have been derelict in its duty if it did not consider these factors. It argued that Intervenor has a lot of charisma, is the kind of person kids want to please, and is the type of personality who will make a great coach. It also pointed to his extreme work ethic, although the undersigned did not find evidence that Intervenor's work ethic was any different from that of Grievant. BBOE denied that it had a practice in place that it was bound to follow, stating in argument that there were a number of other occasions when BBOE had not followed the Superintendent's recommendation, and that it is BBOE's role to make the selection decision, noting that an interview committee is not mentioned in the statute. The evidence was that BBOE had not accepted the Superintendent's recommendation on one or two other occasions in the last two years.

Two BBOE members, Bobby Hale and Ricky Boggs, testified that Superintendent Sumpter did not present a recommendation to BBOE initially, while one member, Letha Dent, as well as Superintendent Sumpter, testified he first recommended Grievant for the position. Superintendent Sumpter testified he would have chosen Intervenor, but he accepted his staff's recommendation. BBOE went into executive session, Superintendent Sumpter said two of the applicants were very close in their qualifications, and he wanted to hear what the BBOE members had to say. Grievant did not have support from any of the BBOE members. Ms. Dent, stated she would support the Superintendent's recommendation, whoever that might be. Superintendent Sumpter provided the BBOE members with the matrix, but not the portfolios submitted by the applicants. When BBOE exited the executive session, Superintendent Sumpter presented Intervenor to BBOE as his recommendation, and that recommendation was accepted by BBOE.

BBOE member Ricky Boggs testified that several years ago the Scott High School football program was in trouble, and the community was in an uproar about it, and wanted to see a change in the coaching staff. The football program turned around two years ago. He knows both Grievant and Intervenor. He stated his son played football and other sports at Scott High School, and he and his friends made comments about Grievant and Intervenor to him. He stated he had also talked to 8 to 10 members of the community as to their preferences, and they supported various applicants. He

took the lead role in advocating that BBOE select Intervenor for the position, based upon his personal experience with Intervenor, and his belief that he had contributed to the community. He had seen Intervenor conduct himself off the field, and had witnessed his leadership skills. He found Intervenor demanding, "not to say that Mr. Elkins wasn't." He stated that the superintendent had told the Board members that Intervenor gave a really good interview, whereas Grievant had the Scott High School principal's recommendation. Mr. Boggs felt his recommendation was as important, or more important than the principal's. He believed Intervenor would be able to gain the respect of the community and get the community behind him more so than Grievant could, because Intervenor was from the community. He has known Intervenor for four or five years, and has seen him coach basketball and football. He has seen Grievant coach football. He stated he believes experience is an important part of coaching, but not the most important part. He had seen Intervenor involved after school in athletics. He stated the matrix is a good measuring stick, but is only good if you have no personal knowledge of the individuals. He felt the training Grievant had attended was important, but did not feel training would necessarily make someone a better coach, although it did show incentive. He stated the decision had to be based upon personal knowledge of the individuals.

BBOE President Bobby Hale stated he had known Grievant and Intervenor about five to six years, and had known Intervenor's family for many years. He noted that a petition had circulated at one point to get rid of the head football coach at Scott High School, but he believed there was dissatisfaction with the entire coaching staff. He felt Intervenor would be able to bring more public support to the Scott High School football program, because Grievant was part of the old coaching regime. Intervenor, however, had also been an assistant football coach at Scott High School for the previous two years. He knew Intervenor to be an outstanding person in the community, and that he had a lot of public support and public respect. He gave the principal's choice no weight at all, because he felt the principal had simply gone through the motions, noting there were rumors in the community long before the interviews took place that Grievant would be the principal's choice. He took the position that the principal would have recommended Grievant regardless of the credentials of the other applicants, although he had never talked to the principal about his recommendation. He felt the most important aspects of a head coach to be his ability to motivate the players, his ability to rally public support, the type of role model he provides to his players, and his record.

Intervenor downplayed his lack of specialized training, stating that he had attended several

coaching clinics, and did have the training needed to be a coach. He stated most of the specialized training takes place during the school week, and funds for attendance often come from the boosters organizations. He felt the clinics were not as important for him as his teaching, and the money could be better spent elsewhere. He noted that clinics were available in manuals and on the internet, although he did not indicate that he had availed himself of these options, or that Grievant had not. He noted that he had joined the Scott High School football program as an assistant coach two years ago, and that was when the program had taken a turn for the better.

Interestingly, Intervenor testified that Principal Booth stopped Grievant and him in the hallway one day and asked them if one of them were not selected, would that person stay at Scott High School. It would appear that Principal Booth had not made his decision at that point, regardless of the rumors in the community.

Dr. Adkins explained that the principal's recommendation is normally one of the criteria because he is the person who is most familiar with the extracurricular program at his school. Mr. Boggs and Mr. Hale obviously disagree with this, and believe they know more about the program than Principal Booth. Mr. Hale went so far as to basically state that Principal Booth's opinion was worthless, and threw the criterion out entirely, even though it is a factor typically weighed in evaluating applicants for coaching positions in Boone County.

The case of Cromley v. Mason County Board of Education, Docket No. 94-26-573, decided by this Grievance Board on April 27, 1995, bears a striking resemblance to the facts of this case. In Cromley, the qualifications of the grievant and the successful applicant were found to be basically equal. In that instance, the superintendent rejected the recommendation of the selection committee. The Administrative Law Judge concluded that, "[a] superintendent may reject the recommendation of the individual he designated to interview the applicants, but he must then conduct a meaningful review of the candidates' qualifications. Smith/Jarvis v. McDowell County Bd. of Educ., Docket No. 89- 33-588/586 (June 19, 1990); Surber v. Greenbrier County Bd. of Educ., Docket No. 89-13- 233 (Nov. 20, 1989)." The Administrative Law Judge found that no meaningful review of the qualifications of the candidates was conducted by the superintendent, rather he based his decision on community acceptance of the successful applicant.

When the factor of community acceptance, not related to the qualifications of the applicants, is given "inordinate and inappropriate weight" and results in a selection which is arbitrary and capricious, the decision will be overturned. Milam v. Kanawha County Bd. of Educ., Docket No. 20-87-270- 1 (May 2, 1988); Smith, supra. . . . The

weight given community input resulted in a selection that was arbitrary and capricious and beyond the discretion a county board of education may exercise in personnel matters. Milam, supra; Smith, supra.

Id.

Respondent argued that the board of education is not required to conduct an independent review of the qualifications of the applicants when it rejects the Superintendent's recommendation, citing Stinn v. Calhoun County Board of Education, Docket No. 98-07-085 (Aug. 28, 1998). Indeed this is an accurate portrayal of one of the conclusions reached in that decision, which states at Conclusion of Law Number 5, "[a] board of education need not make a detailed, independent review of the other available candidates, if it instead asks the county superintendent, who has reviewed the candidates, to recommend another qualified applicant." However, that decision also stated in Conclusion of Law Number 3 that, "[i]t is the duty of the county board of education to consider the candidates recommended or nominated by the county superintendent in a thoughtful manner, and with the best interest of the schools in mind. The rejection of the recommended or nominated candidate, must not be arbitrary and capricious or demonstrate an abuse of discretion."

The interview committee gave equal weight to each of the five factors used to evaluate the candidates. Certainly, neither they nor BBOE were required to give equal weight to each factor, and BBOE could have evaluated the importance of the factors and weighted them differently, and then picked the applicant who had the most points, assuming this was done fairly without a predetermined outcome in mind. However, it is clear this is not what happened here, and that the factors relied upon by the members of the board of education were not related to the qualifications of Grievant or Intervenor.

Charisma has never been one of the factors utilized by any Boone County interview committee in selecting a coach before, let alone the most important factor; however, the interview committee did consider the applicants' leadership skills and reputation in evaluating how the applicants did in the interview, and charisma, no doubt played some role in the interview. Certainly those at Indiana who have weathered the storms of the successful Bobby Knight would not agree with the assertion that charisma is the key to coaching, and to raising community support for a program; although he may well have masked his undesirable character traits at some point with his charisma. Charisma is not a quality which is measurable, and it means different things to different people. Respondent cites Joe

Paterno as an example of a great coach. While that portrayal is certainly accurate, opinions would vary on whether the man who rarely cracks a smile has charisma. Someone with charisma may indeed be able to gather community support, as long as his team is winning; however, the ability to gather community support cannot be the sole criterion for the selection of a coach, as it has nothing to do with the qualifications of the applicants. Cromley, supra.

If charisma is going to be a valid basis for selecting coaches, employees would never be able to prevail in a coaching selection grievance. A board of education could easily say, well the successful applicant just had more charisma than grievant. How is a grievant to demonstrate he has more charisma than the successful applicant? While BBOE may believe that it should be allowed to choose whoever it wants for whatever reason it wants, and perhaps that is as it should be with coaching positions, that is not the system which is in place. The system which is in place, and the system which must be followed by every school board in this state, is that the selection of coaches must be based upon the qualifications of the applicants.

While there is no doubt that in this case that Grievant's qualifications for the position were very close to those of Intervenor, BBOE did not review the qualifications of the applicants in rejecting the recommendation of the interview committee and the Superintendent. It is apparent here that Intervenor grew up in the community, while Grievant did not; his family owned and operated a local business, while Grievant's did not; and Mr. Boggs and Mr. Hale liked him. That is why they were so vocal in their support of him. It is quite obvious that they knew Intervenor much better than Grievant, and based their decision on their personal knowledge of Intervenor, while making no effort to ascertain the facts about Grievant so that a meaningful comparison could be made. While Intervenor may well make a fine head football coach, the Boone County Board of Education did not make its decision based upon the qualifications of the candidates. BBOE did not rely upon factors which were intended to be considered, and their rejection of the Superintendent's recommendation and selection of Intervenor for the position was accordingly arbitrary and capricious.

The following Conclusions of Law support the Decision reached.

CONCLUSIONS OF LAW

1. The burden of proof is upon Grievant to prove the elements of his grievance by a preponderance of the evidence. Tibbs v. Mercer County Bd. of Educ., Docket No. 96- 27-074 (Oct.

31, 1996).

2. “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).” Butta v. Wood County Bd. of Educ., Docket No. 99-54-466 (Dec. 23, 1999).

3. Generally, an action is considered arbitrary and capricious if the decisionmaker did not rely on criteria that were intended to be considered, explained or reached the 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 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).

4. “When the factor of community acceptance, not related to the qualifications of the applicants, is given 'inordinate and inappropriate weight' and results in a selection which is arbitrary and capricious, the decision will be overturned. Milam v. Kanawha County Bd. of Educ., Docket No. 20-87-270-1 (May 2, 1988); Smith, supra.” Cromley v. Mason County Bd. of Educ., Docket No. 94-26-573 (Apr. 27, 1995).

5. The selection of Intervenor for the head coach position at Scott High School by the Boone County Board was not based upon the qualifications of the applicants, and was arbitrary and capricious.

Accordingly, this grievance is **GRANTED**. Respondent Boone County Board of Education is **ORDERED** to place Grievant in the head coach position at Scott High School effective at the end of this football season, and to pay him all back pay to which he is entitled, in the amount of the difference between his current salary and his salary as head coach, plus interest at the statutory rate, as though he had been placed in the position the day Intervenor was placed in the position.

Any party may appeal this Decision to the Circuit Court of Kanawha County or to the Circuit Court of Boone County. Any 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 Grievance Board with the civil action number so that the record can be prepared and transmitted to the circuit court.

BRENDA L. GOULD

Administrative Law Judge

Dated: September 7, 2000

[Footnote: 1](#)

There was no indication that Grievant had any legal expenses for which he was seeking reimbursement; however, the Grievance Board has no authority to award attorney fees. Stollings v. Div. of Env'tl. Protection, Docket No. 97-DEP-411 (June 8, 1998); Chafin v. Boone County Health Dep't and Div. of Personnel, Docket No. 95-BCHD-362 (June 21, 1996). See e.g., Smarr v. Wood County Bd. of Educ., Docket No. 54-86-062 (June 16, 1986).

[Footnote: 2](#)

The grievance was filed on May 1, 2000. His supervisor responded on that same date that he had no hiring authority. The grievance proceeded to Level II, where a hearing was held on June 13, 2000. A Level II decision denying the grievance was issued on June 21, 2000. Grievant waived Level III, appealing to Level IV on June 22, 2000. A Level IV hearing was held on August 11, 2000. Grievant was represented by Anita Mitter, Respondent was represented by Timothy Conaway, Esquire, and Intervenor was represented by Gary Archer. This grievance became mature for decision on August 23, 2000, upon receipt of Respondent's reply brief.

[Footnote: 3](#)

Although the parties referred to the previous head coach as Doug Cox, the Level II record refers to him as Doug Collins.