DORIS BARNES,

Grievant,

v. **Docket No. 01-52-122**

WETZEL COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Doris Barnes ("Grievant") initiated this grievance on February 21, 2001, alleging flaws in the selection process for the Business Manager/Treasurer position, due to favoritism shown to the successful candidate. She seeks instatement to the position, with back pay. The grievance was denied at level one on February 27, 2001. Upon appeal to level two, a hearing was held on March 14, 2001, followed by a written decision, denying the grievance, dated March 30, 2001. Level three consideration was bypassed, and Grievant appealed to level four on April 4, 2001. A level four hearing was held on May 21, 2001, in the Grievance Board's office in Wheeling, West Virginia. Grievant was represented by Owens Brown, representative for the West Virginia Education Association, and Respondent was represented by counsel, Larry Blalock. This matter became mature for consideration upon receipt of the parties' fact/law proposals on June 28, 2001.

The following findings of fact are made from a preponderance of the evidence of record.

Findings of Fact

1. Grievant has been employed by Respondent Wetzel County Board of Education ("WCBOE") for approximately 24 years as a secretary. She is currently employed at the central office.

2. On December 15, 2000, WCBOE posted a vacancy for Business Manager/Treasurer, listing the following qualifications:

> Bachelor's Degree in Business Administration, Accounting, or Acceptable Alternative Major, required.

_ Master's Degree in business Administration, Accounting, or Acceptable Alternative Major, desired.

_ C.P.A. licensure, desired.

_ A minimum of five years experience in job with duties including business management and accounting, required.

_ Work experience in supervision of other workers, required.

_ A broad knowledge of the financial operation of the school system.

_ Demonstrated ability to communicate effectively.

_ Knowledge of generally accepted accounting principles for governmental entities.

3. Seven candidates applied for the position, including Grievant and Jeff Lancaster, the successful applicant.

4. After all applications were submitted, an interview committee, comprised of Superintendent Martha Dean, Assistant Superintendent Paul Barcus, and Joyce Estep, current Treasurer, reviewed the applications. Upon determining that none of the applicants technically possessed all of the minimum qualifications listed in the posting, the committee prepared a written “screening” test for the applicants, testing their knowledge of basic accounting principles. 5. All of the applicants passed the screening test. Grievant scored 42½, and Mr. Lancaster scored 35, out of a possible 50 points on the test.

6. Grievant received a Bachelor of Science degree in Business Administration in 1997, with a GPA of 3.56. Since 1985, Grievant has assisted with her husband's art print business on a part-time basis, dealing with such matters as financing, marketing, advertising, accounting, and taxes. From 1972-1975, Grievant owned and operated a gift and framing shop, managing all aspects of the business and its employees. As a secretary for WCBOE, Grievant has worked with budgetary

matters, such as budget transfers, purchases and requisitions, and tracking of school funds. She has received an additional 15 hours of accounting credits, qualifying her to sit for the CPA exam, which she had not yet taken at the time of the level four hearing in this grievance.

7. Mr. Lancaster has a Bachelor of Science degree and a Masters degree in Business Administration, which he completed in 1996. He obtained a 3.6 GPA for his undergraduate work and a 3.93 GPA during his graduate coursework. Mr. Lancaster served as a graduate assistant during his master's program, teaching a marketing course. He was employed as Director of Operations for a small wood stove manufacturer, working with sales, purchasing, and shipping, from 1996 to 1998. From 1998 until 2001, he worked for Leggett & Platt, a bed manufacturer, first working in quality control, then being promoted to division manager, developing budgets, heading sales meetings, and developing sales forecasts. He had not previously been employed by Respondent.

8. The interview committee interviewed the seven applicants, using a set of 11 questions they had developed. Responses were rated as 1 through 3, with a 3 being the best possible answer. The interview answers were doubled, and the applicants' test scoreswere added to come up with a final score for each applicant. Based upon the interview responses, Jeff Lancaster was the unanimous choice of the interview committee. After the totals were calculated, he ranked first, and Grievant ranked fifth.

9. Mr. Lancaster was recommended for placement in the position and approved by the Board.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her claims by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); 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 must establish that she was the most qualified applicant or that there was such a substantial flaw in the selection process that the outcome may have been different if the proper process were used. Lilly v. Summers County Bd. of Educ., Docket No. 90-45-040 (Oct. 17, 1990), aff'd Civil Action No. 90-AA-181 (Circuit Court of Kanawha County March, 1993)." Hall v. Mercer County Bd. of Educ., Docket No. 96-27-175 (April 30, 1997).

In evaluating the selection issue, county boards of education have substantial discretion in

matters relating to the hiring of school personnel. The exercise of that discretion must be within the best interests of the schools, and in a manner which is neither arbitrary nor capricious. See Hyre v. Upshur County Bd. of Educ., 186 W. Va. 267, 412 S.E.2d 265 (1991). The arbitrary and capricious standard of review of county board of education decisions 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 thatof the board of education. See generally, Harrison v. Ginsberg, 169 W. Va. 162, 286 S.E.2d 276 (1982). The undersigned cannot perform the role of a "super-interviewer" in matters relating to the selection of candidates for vacant positions. Stover v. Kanawha County Bd. of Educ., Docket No. 89-20-75 (June 26, 1989); Harper v. Mingo County Bd. of Educ., Docket No. 93-29-064 (Sept. 27, 1993). Generally, a board of education's action
is arbitrary and capricious if it 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).

The filling of administrative positions is governed by the "first set of factors" in W. Va. Code § 18A-4-7a. Fittro v. Cabell County Bd. of Educ., Docket No. 97-06-556 (May 22, 1998). The applicable provision of W. Va. Code § 18A-4-7a 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. Further, the county board shall make decisions affecting the hiring of new classroom teachers on the basis of the applicant with the highest qualifications. In judging qualifications, consideration shall be given to each of the following: Appropriate certification and/or licensure; amount of experience relevant to the position or, in the case of a classroom teaching position, the amount of teaching experience in the subject area; the 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, article two of this chapter; and other measures or indicators upon which the relative qualifications of the applicant may fairly be judged.

"The foregoing Code provision does not prioritize the areas of consideration, or mandate that any one area be afforded particular significance. A county board mayobjectively or subjectively assign different weights to the various aspects of the applicants' credentials. Jenkinson v. Greenbrier County Bd. of Educ., Docket No. 95-13-503 (Mar. 31, 1996); Fisher v. Marion County Bd. of Educ., Docket No. 93-24-042 (Mar. 11, 1993); Marsh v. Wyoming County Bd. of Educ., Docket No. 94-55-022

(Sept. 1, 1994). See Saunders v. Cabell County Bd. of Educ., Docket No. 97-06-149 (Dec. 29, 1997); Bell v. Lincoln County Bd. of Educ., Docket No. 97-22-013 (July 28, 1997)." Fittro, supra. Thus, a county board of education may determine that "other measures or indicators" is the most important factor. Baker v. Lincoln County Bd. of Educ., Docket No. 97-22-482 (Mar. 5, 1998).

All that Code §18A-4-7a requires is that the decision is the result of a review of the credentials of the candidates in relation to the seven factors set forth. Once that review is completed, the Board may hire any candidate based solely upon the credentials it feels are of most importance. An applicant could "win" four of the seven "factors" and still not be entitled to the position based upon the Board's discretion to hire the candidate it feels has the highest qualifications. Again, a board is free to give whatever weight it deems proper to various credentials of the candidates and because one of the factors is "other measures or indicators," it is extremely difficult to prove that a decision is based upon improper credentials or consideration of such. Harper v. Mingo County Bd. of Educ., Docket No. 93-29-064 (Sept. 27, 1993).

Grievant contends that Mr. Lancaster did not meet the minimum qualifications set forth in the posting, particularly the experience requirement. “However, the question in these cases is not whether particular qualifications of an individual candidate were considered, but whether the criteria set forth in W. Va. Code § 18A-4-7a were evaluatedand considered.” Talbert v. Wetzel County Bd. of Educ., Docket No. 98-52-499 (Feb. 26, 1999). In the instant case, Respondent has provided ample evidence that each and every one of the selection criteria set forth in the statute was considered with regard to each applicant. In the final analysis, as is the Board's prerogative, the most weight was placed upon the applicants' interviews, after which Mr. Lancaster was the committee's unanimous choice.

With regard to the interviews, Grievant argues that the committee members' evaluation of the applicants' responses was subjective and based upon their own opinions. The undersigned fails to see how this has resulted in any statutory violation or shows that their decision was arbitrary and capricious. The nature of interviews is that one person may view an applicant's responses very differently from the way another may, based upon his or her own experience and viewpoint. Therefore, as Respondent did in this case, the use of a committee of several people ensures that each committee member's personal views or biases will be balanced out by the opinions of the other members. Nevertheless, in this case, despite their different viewpoints, the committee members

individually and independently evaluated Mr. Lancaster as the superior applicant.

Although another person might reasonably have selected Grievant for this position because she had more years of experience and more knowledge of the workings of the school system, the arbitrary and capricious standard of review does not permit an administrative law judge to simply substitute her judgment for that of the school board. Villers v. Kanawha County Bd. of Educ., Docket No. 97-20-294 (Jan. 30, 1998); Bradley v. Bd. of Directors, Docket No. 96-BOD-030 (Jan. 28, 1997). See Harper v. Mingo County Bd. of Educ., Docket No. 93-29-064 (Sept. 27, 1993). See generally, Bedford MemorialHosp., supra; Staton v. Wyoming County Bd. of Educ., 184 W. Va. 369, 400 S.E.2d 613 (1990). Respondent acted within its discretion to place more weight upon the interview process, by which it deemed Mr. Lancaster the superior candidate. Additionally, the evidence establishes that all seven of the statutory criteria were evaluated and considered. Grievant failed to establish that her qualifications were so superior to Mr. Lancaster's that Respondent's failure to select her for this position was necessarily an abuse of the considerable discretion extended school boards when making such professional determinations. See Tracewell v. Wood County Bd. of Educ., Docket No. 90-54-398 (Jan. 30, 1991).

The following conclusions of law support the decision reached.

Conclusions of Law

1. In a non-disciplinary matter, Grievant has the burden of proving her claims by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); 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 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 matter 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 shall make decisions affecting the hiring of professional personnel other than classroom teachers on the basis of the applicant withthe highest qualifications. Further, the county board shall make decisions affecting the hiring of new classroom teachers on the

basis of the applicant with the highest qualifications. In judging qualifications, consideration shall be given to each of the following: Appropriate certification and/or licensure; amount of experience relevant to the position or, in the case of a classroom teaching position, the amount of teaching experience in the subject area; the 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, article two of this chapter; and other measures or indicators upon which the relative qualifications of the applicant may fairly be judged. W. Va. Code § 18A-4-7a.

4. W. Va. Code § 18A-4-7a does not prioritize the areas of consideration, or mandate that any one area be afforded particular significance. A county board may objectively or subjectively assign different weights to the various aspects of the applicants' credentials. Jenkinson v. Greenbrier County Bd. of Educ., Docket No. 95-13-503 (Mar. 31, 1996); Fisher v. Marion County Bd. of Educ., Docket No. 93-24-042 (Mar. 11, 1993); Marsh v. Wyoming County Bd. of Educ., Docket No. 94-55-022 (Sept. 1, 1994). See Saunders v. Cabell County Bd. of Educ., Docket No. 97-06-149 (Dec. 29, 1997); Bell v. Lincoln County Bd. of Educ., Docket No. 97-22-013 (July 28, 1997).

5. Respondent acted within its discretion to place the most weight upon the applicants' interviews, and Grievant has failed to prove by a preponderance of the evidence that WCBOE's selection of Jeff Lancaster for the position at issue was arbitrary and capricious or contrary to law.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the Circuit Court of Wetzel 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: August 20, 2001 _____

DENISE M. SPATAFORE

Administrative Law Judge