JOYCE VESSEY SWANSON, (See footnote 1)

Grievant,

v. **Docket No. 02-40-004**

PUTNAM COUNTY BOARD OF EDUCATION,

Respondent.

and

WILLIAM HUGHES,

Intervenor.

D E C I S I O N

Grievant, Joyce Vessey Swanson, is employed as a principal at Buffalo High School ("BHS"), with the Putnam County Board of Education ("PCBOE"). She filed this grievance on September 26, 2001. Her Statement of Grievance reads:

> **Violation of WV Code 18A-4-7a and Putnam County Board of Education Policy P.7.8, hiring with regard to grievant's nonselection for the posted position of principal at Winfield High School.** (See footnote 2)
>
> **Relief Sought: Relief sought is to the granted the position and any compensation due.**

Grievant appealed to Level IV on January 10, 2002, and Intervenor, William Hughes, asked to intervene at the Level IV hearing held on May 24, 2002, and this request was granted. This case became mature for decision on June 18, 2002, after receipt of the parties' proposed findings of fact and conclusions of law. (See footnote 3)

Issues and Arguments

Grievant asserts she was the most qualified applicant for the position of principal at Winfield High School ("WHS"), and Respondent acted in an arbitrary and capricious manner

when it did not select her to fill the position. Grievant also maintains the proper policy for filling vacancies was not followed, and Superintendent Sam Sentelle used improper input in making his recommendation to PCBOE. **(See footnote 4)**

Respondent agrees the usual method for filling a principal's position was not followed because the time frame before school would start was too short. Although the usual process was not followed, all the required criteria were examined. The successful applicant was chosen because of his better "people skills," and Superintendent Sentelle believed this was a key characteristic needed for the position. Respondent notes the burden of proof in this type of case is the arbitrary and capricious standard, and this burden is difficult for a grievant to meet.

After a detailed review of the entire record, the undersigned Administrative Law Judge makes the following Findings of Fact.

Findings of Fact

1. Grievant is currently a principal at BHS, and at the time of the posting, had 13 years of experience in administrative positions, including 12 years as an assistant principal and one year as a principal. Grievant also had approximately 28 years ofteaching experience and a total amount of seniority with the Putnam County School System of 25 years.

2. Intervenor, at the time of the posting, was a vice-principal at BHS, and at the time of the posting, had three years of experience in administrative positions. Intervenor also has 28 years of teaching/counseling experience and a total amount of seniority with the Putnam County School System of 26 years. **(See footnote 5)**

3. Previously, both Grievant and Intervenor had applied for two administrative positions. Grievant was selected to fill both of these positions.

4. Although the basic characteristics needed for principal positions are similar, each school has different needs and each posting for a principal position identifies the needed qualifications and the expected responsibilities.

5. Shortly before the start of the 2001 - 2002 school year, the principal at WHS unexpectedly resigned.

6. Superintendent Sentelle wanted to fill this position before the start of the school year,

as he wanted the leader of the building to be in place before the arrival of the faculty. Superintendent Sentelle hoped to have a recommendation to put before PCBOE at the August 20, 2001 meeting.

7. The position was posted on August 8, 2001, and six or seven people applied. After a review of the applicants, three people were chosen to interview with Superintendent Sentelle.

8. The usual interview process is to form an Interview Committee of five or six people who get together and formulate a list of questions, and then interview the applicants. The Interview Committee then reviews all the information, examines the criteria, and makes a recommendation to the Superintendent. The Superintendent then reviews all the information and makes a recommendation to PCBOE. There have been times when this process has not been used in administrative selections, and the process is not required by any policy.

9. Superintendent Sentelle attempted to contact the president of the Faculty Senate at WHS, but she was out of town. He did talk to other WHS faculty members, whom he believed were not affiliated with either candidate, to assess their opinions of who would be more effective at WHS.

10. Because time was short, Superintendent Sentelle decided to interview the applicants himself. He was also aware of each applicants strengths, weakness, and abilities, especially of Intervenor and Grievant, as they had both applied for administrative positions in the recent past. He reviewed the summary sheets provided to him, which noted the applicants' ratings in the statutory criteria. On these sheets, the scores of Grievant and Intervenor were tied.

11. Each applicant was given very little notice before the interview. Grievant did not like this short notice, but did not say anything about it to Superintendent Sentelle. Superintendent Sentelle did not ask the applicants identical questions, nor did he score their answers. His questions focused mostly on their decision-making process and leadership. 12. WHS has had very strong faculty leadership in the past, and this school is viewed as a productive and effective school. These faculty leaders will be retiring soon, and Superintendent Sentelle's main focus was what would each applicant DOH to maintain the momentum at the school, and how would they develop leadership within the faculty. He also asked each candidate about decisions they had recently made.

13. Both Grievant and Intervenor were highly qualified for the position. Superintendent

Sentelle described both Grievant and Intervenor as "outstanding."

14. He found the views of the WHS faculty he interviewed to support his; Intervenor would be more effective at WHS.

15. Superintendent Sentelle recommended Intervenor for the position because he believed Intervenor had better "people skills" as was evidenced by his counseling degree and his years in counseling. Superintendent Sentelle thought this trait would be key in leading WHS.

16. PCBOE Policy p.1.12., "Hiring Selection Criteria" states:

> **The following objective criteria may be used in selecting new employees and in transferring, promoting, and dismissing employees as it may apply to the posted job vacancy:**
>
> **<u>Professional</u>**
>
> **College transcript**
>
> **Certification endorsements**
>
> **Experience in education**
>
> **Past evaluations**
>
> **Experience in area of application**
>
> **Physical and mental health**
>
> **Education, degrees, additional hours beyond degrees**
>
> **Participation in seminars and workshops**
>
> **Recommendations/references**

A subjective evaluation shall be derived from an interview and based upon the following criteria: past performance, ability, leadership, and personality.

<u>Discussion</u>

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance 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.

W. Va. Code § 18A-4-7a sets forth the criteria to be used in filling administrative positions. That Code Section directs county boards of education to hire "professional personnel other than classroom teachers on the basis of the applicant with the highest qualifications." Further, in judging qualifications, consideration shall be given to each of the following:

> **Appropriate certification and/or licensure; amount of experience relevant to the position . . . 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 . . . and other measures or indicators upon which the relative qualifications of the applicant may be fairly judged.**

W. Va. Code § 18A-4-7a.

It is well settled that county boards of education have substantial discretion in matters relating to the hiring of school personnel as long as their decisions are in the best interest of the school, and are not arbitrary and capricious. Dillon v. Bd. of Educ. of County of Wyoming, 177 W. Va. 145, 351 S.E.2d 58 (1986). Additionally, a county board ofeducation is free to determine the weight to apply to each of the above-stated factors when assessing an applicant's qualifications for an administrative position, as long as this substantial discretion is not abused. Hughes v. Lincoln County Bd. of Educ., Docket No. 94-22-543 (Jan. 27, 1995); Blair v. Lincoln County Bd. of Educ., Docket No. 92-22-009 (July 31, 1992).

Once a county board of education reviews the criteria, it has "wide discretion in choosing administrators . . . ." March v. Wyoming County Bd. of Educ., Docket No. 94-55- 022 (Sept. 1, 1994). The standard of review in cases brought by unsuccessful candidates for administrative posts generally entails an inquiry into whether the criteria set forth in W. Va. Code § 18A-4-7a were accurately assessed for each applicant; whether favoritism and/or discrimination played a role in the selection process; and whether flaws in the process were so significant that the outcome might reasonably have been different. Stover v. Kanawha County Bd. of Educ.,

Docket No. 89-20-75 (June 26, 1989). See Mills v. Wayne County Bd. of Educ., Docket No. 99-50-016 (Feb. 22, 1999). Ultimately, it must be decided whether the Board abused its considerable discretion in personnel matters, or if its decision was arbitrary and capricious. See Dillon, supra; Stinn v. Calhoun County Bd. of Educ., Docket No. 98-07-85 (Aug. 28, 1998); Elkins v. Boone County Bd. of Educ., Docket No. 95-03-415 (Dec. 28, 1995); Amick v. Nicholas County Bd. of Educ., Docket No. 95-34-037 (Aug. 23, 1995).

"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 itcannot 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)." Trimboli v. Dep't of Health and Human Resources, Docket No. 93-HHR-322 (June 27, 1997). Arbitrary and capricious actions have been found to be closely related to ones that are unreasonable. State ex rel. Eads v. Duncil, 196 W. Va. 604, 474 S.E.2d 534 (1996). An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." Eads, supra (citing Arlington Hosp. v. Schweiker, 547 F. Supp. 670 (E.D. Va. 1982)). "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 a board of education. See generally, Harrison v. Ginsberg, [168 W. Va. 162], 286 S.E.2d 276, 283 (W. Va. 1982)." Trimboli, supra.

Grievant has not proven the Board violated any statute, policy, rule, or regulation in assessing the criteria. As previously noted, the Board has wide discretion in matters involving the selection of administrative personnel, and has broad discretion to determine the weight to be afforded a particular criterion. Christian v. Logan County Bd. of Educ., Docket No. 94-23-173 (Mar. 31, 1995). W. Va. Code § 18A-4-7a contemplates that county boards may look beyond certificates, academic training, and length of experience in assessing the relative qualifications of the applicants. Alt v. Mineral County Bd. of Educ., Docket No. 97-28-015 (Aug. 25, 1997); Anderson v. Wyoming County Bd. of Educ., Docket No. 93-55-183 (Sept. 30, 1993). Thus, the fact Superintendent Sentelle gaveweight to Intervenor's communication skills

and counseling degree does not render the selection process flawed.

Grievant claims she is more qualified for the position than the successful applicant. She pointed to her greater administrative experience, and asserted this administrative seniority proved her claim. She also believed her better qualifications were demonstrated by the fact that she had been chosen twice over Intervenor in the recent past.

The matrix confirms Grievant and Intervenor were both qualified for the position, and there is no evidence that Superintendent Sentelle ignored any aspects of the applicants' qualifications or experience. Superintendent Sentelle testified he considered the factors listed in W. Va. Code § 18A-4-7a and Policy 1.12. He decided to give possession of the counseling degree and presence of better communication/interpersonal skills great weight. That fact does not make his decision arbitrary and capricious; thus, Superintendent Sentelle's decision cannot be seen as an abuse of discretion. While it is understandable Grievant is disappointed because she was not selected, Superintendent Sentelle's decision to select the candidate he believed had better interpersonal skills is not unreasonable.

The above-discussion will be supplemented by the following Conclusions of Law.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance 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. W. Va. Code § 18A-4-7a sets forth the criteria to be used in filling administrative positions. That Code Section directs county boards of education to hire "professional personnel other than classroom teachers on the basis of the applicant with the highest qualifications." Further, in judging qualifications, consideration shall be given to each of the following:

> **Appropriate certification and/or licensure; amount of experience relevant to the position . . . 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 . . . and other measures or indicators upon which the relative qualifications of the applicant may be fairly judged.**

W. Va. Code § 18A-4-7a.

3. It is well settled that county boards of education have substantial discretion in matters relating to the hiring of school personnel as long as their decisions are in the best interest of the school, and are not arbitrary and capricious. Dillon v. Bd. of Educ. of County of Wyoming, 177 W. Va. 145, 351 S.E.2d 58 (1986).

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 for the Deaf and the Blind, Docket No. 96-DOE-081 (Oct. 16, 1996)." Trimboli v. Dep't of Health and Human Resources, Docket No. 93-HHR-322 (June 27, 1997). Arbitrary andcapricious actions have been found to be closely related to ones that are unreasonable. State ex rel. Eads v. Duncil, 196 W. Va. 604, 474 S.E.2d 534 (1996). An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." Eads, supra (citing Arlington Hosp. v. Schweiker, 547 F. Supp. 670 (E.D. Va. 1982)). "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 a board of education. See generally, Harrison v. Ginsberg, [168 W. Va. 162], 286 S.E.2d 276, 283 (W. Va. 1982)." Trimboli, supra.

5. Additionally, a county board of education is free to determine the weight to apply to each of the above-stated factors when assessing an applicant's qualifications for an administrative position, as long as this substantial discretion is not abused. Hughes v. Lincoln County Bd. of Educ., Docket No. 94-22-543 (Jan. 27, 1995); Blair v. Lincoln County Bd. of Educ., Docket No. 92-22-009 (July 31, 1992). Once a county board of education reviews the criteria, it has “wide discretion in choosing administrators . . . ." March v. Wyoming County Bd. of Educ., Docket No. 94-55-022 (Sept. 1, 1994).

6. The standard of review in cases brought by unsuccessful candidates for

administrative posts generally entails an inquiry into whether the criteria set forth in W. Va. Code § 18A-4-7a were accurately assessed for each applicant; whether favoritism and/or discrimination played a role in the selection process; and whether flaws in the process were so significant that the outcome might reasonably have been different. Stover v. Kanawha County Bd. of Educ., Docket No. 89-20-75 (June 26, 1989). Ultimately, it mustbe decided whether the Board abused its considerable discretion in personnel matters. See Dillon, supra; Stinn v. Calhoun County Bd. of Educ., Docket No. 98-07-85 (Aug. 28, 1998); Elkins v. Boone County Bd. of Educ., Docket No. 95-03-415 (Dec. 28, 1995); Amick v. Nicholas County Bd. of Educ., Docket No. 95-34-037 (Aug. 23, 1995).

7. The Board has wide discretion in matters involving the selection of administrative personnel, and has broad discretion to determine the weight to be afforded a particular criterion. Christian v. Logan County Bd. of Educ., Docket No. 94-23-173 (Mar. 31, 1995). W. Va. Code § 18A-4-7a contemplates that county boards may look beyond certificates, academic training, and length of experience in assessing the relative qualifications of the applicants. Alt v. Mineral County Bd. of Educ., Docket No. 97-28-015 (Aug. 25, 1997); Anderson v. Wyoming County Bd. of Educ., Docket No. 93-55-183 (Sept. 30, 1993).

8. Grievant has failed to prove by a preponderance of the evidence that the selection criteria of W. Va. Code § 18A-4-7a were not utilized and considered, or that the decision to award the position to the successful applicant was arbitrary and capricious.

9. Grievant has also failed to demonstrate the selection process was so flawed that the outcome might reasonably have been different. Stover, supra.

10. Grievant has failed to prove she was more qualified than Intervenor.

Accordingly, this grievance is DENIED.

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

JANIS I. REYNOLDS

ADMINISTRATIVE LAW JUDGE

Dated: August 27, 2002

Footnote: 1

After Grievant filed this grievance, she changed her name and asked to be addressed as Ms. Swanson, not Vessey.

Footnote: 2

This Policy was not placed into evidence.

Footnote: 3

Grievant was represented by Susan Hubbard from the West Virginia Education Association, and Respondent was represented by Attorney Greg Bailey.

Footnote: 4

At Level IV, Grievant asserted Superintendent Sentelle was retaliating against her for filing this grievance, and for opposing him on several issues. Some of these issues occurred after the filing of this grievance, and cannot be considered in this case. The timing on other issues was unclear.

Footnote: 5

Intervenor worked for PCBOE during the 1971 - 1972 school year, had a break of one year in his seniority during the 1972 - 1973 school year, and returned to PCBOE for the 1973 - 1974 school year.