THOMAS H. DANIELS,

Grievant,

v. **Docket No. 01-55-109R**

WYOMING COUNTY BOARD OF EDUCATION,

Respondent.

DECISION ON REMAND

Thomas Daniels ("Grievant") originally initiated this proceeding on November 13, 2000, alleging he should have been selected for the position of girls' basketball coach at Wyoming East High School. Grievant appealed to Level IV, and a decision was rendered on June 6, 2001. Grievant appealed that decision to the Circuit Court of Kanawha County, the Grievance Board decision was reversed, and case was remanded to the Grievance Board "for a determination of which applicant satisfies the criteria established in *Price* (See footnote 1) and *Spolarich*." (See footnote 2) Daniels v. Wyoming County Bd. of Educ., Kanawha Cir. Court, Civil Action No. 01-AA-92 (Oct. 3, 2002).

A hearing was held to gather evidence on remand on April 8, 2003, at which time the parties clarified the data previously submitted. This case became mature for decision on May 12, 2003, after receipt of the parties' proposed findings of fact and conclusions of law. (See footnote 3)

Issues and Arguments

The key issue to decide is whether WCBOE's decision to select Jerry Thomas for the position of head girls' basketball coach is correct when the criteria in Price and Spolarich are applied to the facts at the time the candidates were assessed.

Additionally, the undersigned Administrative Law Judge is charged with applying the criteria first designated in Price. Where the dictum in Spolarich is contradicted by the specifications in Price, the undersigned Administrative Law Judge has applied the standard set out in Price. Additionally, where a criterion is not set forth on an issue in either Price or Spolarich, the undersigned Administrative Law Judge has applied the arbitrary and capricious standard to assess the Board's determination.

After a detailed review of the entire record, the undersigned Administrative Law Judge makes the

following Findings of Fact.

Findings of Fact

1. Grievant has been employed by Respondent as a teacher for approximately 30 years. 2. Price identified the following selection criteria as key: (See footnote 4)

1) Whether the applicant was currently serving in a similar coaching position;

2) Years of experience coaching in the sport at the specified level, i. e., head or assistant coach. Volunteer coaching experience was counted:

and

3) Experience coaching other areas was not considered important.

3. In Spolarich, the administrative law judge credited a coach who had two teams simultaneously during one year, with two years of coaching experience. (See footnote 5)

4. Grievant was not currently employed as a coach at the time of the selection.

5. Grievant has served as a head coach in the following basketball coaching positions:

1970-1974

7th-8th Grade Boys

Herndon Grade School

1978-1986

6th Grade Boys

1981-1986 7th-8th Grade Girls

1986-1989 7th-8th Grade Boys

Pineville Middle School

1988-1998

Girls Varsity

Pineville High School

4. At the time of the selection, the successful applicant, Mr. Thomas, was employed as a head girls' basketball coach and served as a volunteer, girls basketball coach at Mullens Middle School. He had been so employed since 1995.

5. Mr. Thomas has served in the following basketball coaching positions:

1995-2000 7th-8th Grade Girls (See footnote 6)

Mullens Middle School

1999-2000 5th-6th Grade Girls

Mullens Middle School

1990-2000 Iddy Biddy Buddy Boys and Girls

1996-2000 Wyoming County Summer League Teams

1996-2000 AAU Girls 12 and under

1999-2000 YBOA Girls 13 and under

1994-1995 7th-8th Grade Boys

Mullins Middle School

1988-1989 Boys Varsity

Mullins High School

4. On August 30, 2000, Respondent posted a vacancy for the position of girls' varsity basketball coach at Wyoming East High School. Six applicants, including Grievant and Mr. Thomas, made timely applications for the position. 5. An interview committee consisting of Raymond Rose, Principal of Wyoming East High School, and Assistant Superintendent Frank Mann interviewed the applicants, asking all candidates the same series of questions. (See footnote 7)

6. Mr. Rose and Mr. Mann independently ranked the top two candidates as Jesse Lester and Mr. Thomas. After Mr. Lester withdrew his application, Mr. Thomas was offered the position and placed in it by the Board.

7. Both Mr. Rose and Mr. Mann rated Grievant fifth out of the six candidates.

8. At the time of the original selection, experience with girls' teams was considered significant.

9. Using the calculation guidelines set out in Spolarich and the directions set out in Price, Grievant has thirty years of basketball coaching experience and fifteen years experience coaching girls' basketball. At the time of the selection, Mr. Thomas had thirty- one years of basketball coaching experience and twenty-four years experience coaching girls' basketball. (See footnote 8)

10. Grievant had thirty years of head coaching experience, fifteen of which were with girls. Mr. Thomas had twenty-nine years of head coaching experience, nineteen of which was with girls.

11. At the time of the selection, Mr. Thomas was currently employed as a head girls' basketball coach; Grievant was not.

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 § 4.21 (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.

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). 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 ofWyoming, 177 W. Va. 145, 351 S.E.2d 58 (1986); 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)." 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)). The arbitrary and capricious standard is a high one, requiring willful and unreasonable action and disregard of known facts.

Grievant makes several arguments. He contends the Price standard requires coaches to be selected based upon overall coaching experience, and coaching experience at the applicable level, such as varsity. Pursuant to this “standard," Grievant contends that he would be the successful candidate, based upon his superior overall coaching experience and coaching at the varsity level.

Unfortunately for Grievant, the Price transcript does not support Grievant's allegations. In Price, Superintendent Blackwell explained that, because the new high school was created through the consolidation of two other schools, individuals who hadheld the coaching positions at either of those schools were given priority in filling positions at the new school. Then, each applicant's seniority in the particular type of position--such as girls' varsity basketball or boys' varsity football--was the determining factor in who was placed in the position. In Price, a wrestling coach position was at issue. The successful applicant was selected over Mr. Price because, although he did not have as much overall coaching experience, he was currently serving as the head wrestling coach at one of the consolidated schools, and he had greater experience in coaching the sport, including one year as a volunteer. (See footnote 9)

When all the criteria from Price are applied to the facts of this grievance, it is clear WCBOE's

selection of Mr. Thomas for the position was not arbitrary and capricious. One key criterion was a current position in the sport. Mr. Thomas was currently serving as a head girls' basketball coach and an assistant girls' basketball coach at the time of the selection; Grievant was not. The next key criterion is coaching experience in the sport. Grievant had thirty years of basketball coaching experience and fifteen years coaching girls; Mr. Thomas had thirty-one years of basketball coaching experience and twenty-four years coaching girls.

Grievant seeks to discount Mr. Thomas' experience as a volunteer coach, but the Price criteria clearly reflect volunteer coaching experience is to be counted. While people may disagree with this determination, the undersigned Administrative Law Judge has been directed to follow the Price decision, and Mr. Thomas's volunteer coaching experience must be counted. Additionally, the Spolarich decision directed the undersignedAdministrative Law Judge to count each coaching experience as a year, thus increasing the number of "years" for each candidate. (See footnote 10)

Another issue raised by Grievant is the specific counting of girls' basketball experience versus all basketball experience. Superintendent Blackwall testified the experience to be counted was gender specific, and the experience to be counted for a girls basketball coach was coaching girls' basketball. The undersigned Administrative Law Judge cannot find this decision to be arbitrary and capricious, as it is not "unreasonable, without consideration, and in disregard of facts and circumstances of the case," especially since both Grievant and Mr. Thomas testified at Level II that coaching girls was harder and different. Eads, supra. Additionally, and in the interest of caution, the undersigned Administrative Law Judge examined the selection question without differentiating the coaching experience by gender, and given the other criteria, the selection of Mr. Thomas was still not arbitrary and capricious.

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 his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (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 assignment of school personnel, so long as they act reasonably, in the best interests of the school, and in a manner which is not arbitrary and capricious. Hyre v. Upshur County Bd. of Educ., 186 W. Va. 267, 412 S.E.2d 265 (1991).

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, 177 W. Va. 145, 351 S.E.2d 58 (W. Va. 1986); 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 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)).

5. The arbitrary and capricious standard is a high one, requiring willful and unreasonable action and disregard of known facts. 6. Counting experience in girls basketball for a girls' basketball coaching selection is not arbitrary and capricious.

7. The application of the Price criteria and the Spolarich calculation method to the facts in this case would require Mr. Thomas to be selected for the position.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the Circuit Court of Wyoming 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.

JANIS I. REYNOLDS

ADMINISTRATIVE LAW JUDGE

Dated: August 25, 2003

Footnote: 1

As this case only went to Level II, there is no Grievance Board Docket Number.

Footnote: 2

The full case cite is Spolarich v. Wyoming County Board of Education, Docket No. 99-55-452 (Dec. 23, 1999), aff'd Wyoming Cir. Court, Civil Action No. 00-C-18 (Aug. 9, 2001).

Footnote: 3

Grievant was represented by Ben Barkey of the West Virginia Education Association previously and was represented by J. W. Barringer at the remand hearing.Respondent was represented by counsel, Gregory W. Bailey, Bowles Rice McDavid Graff and Love.

Footnote: 4

It should be remembered the pool of applicants for the positions discussed in Price was limited, as they were only from the two schools being consolidated. Accordingly, some criteria were not developed because of lack of need at that time.

Footnote: 5

Dicta in Spolarich also indicated overall coaching experience should be considered. Since this criteria was specifically rejected in Price, the undersigned Administrative Law Judge did not apply this criterion.

Footnote: 6

There was some testimony the head coach was ill during this time, and Mr. Thomas probably assumed the head coaching duties for a time. Since this testimony was not definitive, this time was classified as a volunteer, assistant head coaching.

Footnote: 7

Contrary to Superintendent Blackwell's testimony at Level IV, he did not interview the candidates.

Footnote: 8

The undersigned Administrative Law Judge counted the Iddy Biddy Buddy experience as it was both boys and girls.

Footnote: 9

The successful applicant was also employed as a substitute teacher.

Footnote: 10

Grievant also speaks to overall coaching experience. This type of experience was specifically rejected in Price.