SHERRI GIBSON,

Grievant,

v. **Docket No. 04-55-104**

WYOMING COUNTY
BOARD OF EDUCATION,

Respondent.

DECISION

The grievant, Sherri Gibson ("Gibson"), (See footnote 1) is employed as a teacher by the respondent, the Wyoming County Board of Education ("BOE"). She grieves the fact that she was not awarded an extracurricular assignment as the cheer coach at Road Branch Grade School. As relief, she requests that she be placed in that position.

The grievance, which was filed on September 23, 2003, could not be resolved at Level I. A Level II decision denying the grievance was issued on January 29, 2004, after a Level II hearing was conducted on December 17, 2003. An appeal to Level IV wasbrought on March 10, 2004, after BOE waived Level III consideration. By agreement of the parties, this grievance was submitted on the underlying record. It matured for decision on May 3, 2004, by which date both parties had submitted proposed findings of fact and conclusions of law.

Gibson is represented by Ben Barkey, WVEA Region VII UniServ Consultant. BOE is represented by attorney Howard E. Seufer, Jr.

Discussion

Gibson and another teacher, Barbara Fleenor ("Fleenor"), were the only two applicants for the

posted position of cheer coach at Road Branch Grade School for the 2003-2004 school year. At the time she applied for the extracurricular assignment, Gibson was scheduled to be transferred to teach at Road Branch Grade School during the 2003- 2004 school year. However, before the coaching position was filled, the transfer was rescinded and it was determined that Gibson would continue teaching at Berlin McKinney Elementary School.

James McGrady, Assistant Superintendent for Elementary and Middle Schools ("the Assistant Superintendent"), reviews applications and makes recommendations to the Superintendent about filling elementary school vacancies. Without consulting Gibson, the Assistant Superintendent assumed that after her transfer was rescinded Gibson was no longer interested in coaching at Road Branch Grade School. Acting on the Assistant Superintendent's advice, the Superintendent recommended Fleenor for the position. BOE approved her appointment on August 4, 2003.

Thereafter, Gibson informed the Assistant Superintendent that she had not withdrawn her application and was still interested in the coaching assignment. Traditionally, the Assistant Superintendent recommended the candidate with the most coaching experience in the sport for which there was a coaching vacancy at the elementary school level. Therefore, he offered to reexamine the applications to determine whether Gibson had more experience than Fleenor. If that were the case, the Assistant Superintendent was willing to ask BOE to rescind Fleenor's appointment so that Gibson could receive the assignment.

Fleenor had more than fourteen years of relevant coaching experience as compared to Gibson's five years of experience. Fleenor retained the position. Nonetheless, Gibson asserts that the assignment should have been awarded on the basis of seniority as a teacher, in which case Gibson would be the successful applicant. She also argues that she had more overall coaching experience than Fleenor.

After careful review of the entire record, the undersigned finds that the following pertinent facts were proven by a preponderance of the credible and relevant evidence:

Findings of Fact

1 1. Gibson was employed by BOE as a teacher at Berlin McKinney Elementary School during the 2002-2003 school year but was scheduled to transfer to Road Branch Grade School for the following school year.

2 2. An extracurricular assignment as the cheer coach at Road Branch Grade School was posted on May 13, 2003.

3 3. Gibson applied for the position.

4 4. The only other applicant for that assignment was Fleenor, who was teaching at Road Branch Grade School at the time she submitted her application.

5 5. Coaching assignments at the elementary school level are traditionally filled on the basis of a recommendation by the Assistant Superintendent.

6 6. The Assistant Superintendent was not aware of any written policy in the county regarding hiring coaches.

7 7. The Assistant Superintendent made it a practice to recommend the applicant with the most coaching experience in the sport for which there was a coaching vacancy.

8 8. Before making a recommendation as to which of the two applicants should receive the coaching assignment at Road Branch Grade School, the Assistant Superintendent learned that Gibson's anticipated transfer to that school had been cancelled.

9 9. Without contacting Gibson, the Assistant Superintendent wrongly presumed that Gibson would no longer be interested in coaching at Road Branch Grade School, in part because it would require travel over a mountain road that could be treacherous in bad weather.

10 10. The Assistant Superintendent then recommended Fleenor for the position.

11 11. On August 4, 2003, BOE approved Fleenor's appointment to the extracurricular assignment as cheer coach at Road Branch Grade School.

12 12. Upon learning that Gibson remained interested in the position even after her transfer to Road Branch Grade School had been rescinded, the Assistant Superintendent offered to review the applications and, if necessary, take steps to rescind Fleenor's appointment so that whichever applicant had the greater relevant coaching experience could receive the extracurricular assignment as cheer coach.

13 13. Despite a request by the Assistant Superintendent, Gibson failed to provide him with a written summary of her coaching experience.

14 14. Gibson had five years of cheer coaching experience. Board Exhibit 1 at Level II.

15 15. Fleenor provided the Assistant Superintendent a written summary that reflected she had more than fourteen years of relevant coaching experience. Board Exhibit 4 at Level II.

16 16. Fleenor retained the position.

17 17. In terms of regular teaching seniority, Fleenor has approximately five years while Gibson has approximately fifteen years.

18 18. Regular teaching seniority was used as a tie-breaker for a coaching position at Westside High School when two applicants had the same amount of coaching experience.

Based upon the foregoing, a review of the applicable law, and the arguments of the parties, the undersigned hereby concludes as follows:

Conclusions of Law

1 1. This is not a disciplinary grievance. Therefore, Gibson bears the burden of proof. 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).

2 2. Gibson's allegations must be proven by a preponderance of the evidence. 156 W. Va. C.S.R. 1 § 4.21. "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely truethan not." *Leichliter v. W. Va. Dep't of Health and Human Resources*, Docket No. 92-HHR- 486 (May 17, 1993).

3 3. West Virginia Code section 18A-4-16 describes the mechanism for contracting for extracurricular assignments, such as coaching, but fails to set forth any guidance regarding the criteria to be used in the selection process.

4 4. The provisions of West Virginia Code section 18A-4-7a do not apply to the selection of professional personnel for extracurricular assignments. *Lusher v. Putnam County Bd. of Educ*., Docket No. 99-40-061 (May 7, 1999).

5 5. “The appropriate standard for reviewing the selection of professional personnel for extracurricular coaching positions is whether the board acted in an arbitrary and capricious manner or otherwise abused its broad discretion in matters relating to the hiring of school personnel.” *McCoy v. Kanawha County Bd. of Educ*., Docket No. 94-20- 141 (Oct. 13, 1994).

6 6. An action is recognized as “arbitrary and capricious when it is unreasonable, without consideration, and in disregard of facts and circumstances of the case.” *State ex rel. Eads v. Duncil*, 196 W.Va. 604, 614, 474 S.E.2d 534, 544 (1996) (citing *Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)).

7 7. “Simply because [a] Grievant disagrees with the factors considered, or the weight they were given, does not render the decision arbitrary or capricious. Past experience in the same level and activity as the posted vacancy is a reasonable consideration and is not an abuse of discretion.” *Clinton v. Monongalia County Bd. of Educ.,* Docket No. 95-30-451 (Mar. 30, 1996).

8 8. The Assistant Superintendent's practice of selecting the applicant with the most relevant coaching experience is not arbitrary and capricious, nor is it an abuse of discretion.

9 9. The Assistant Superintendent's error in assuming that Gibson was no longer interested in the extracurricular assignment after her transfer was rescinded is harmless because, in any event, Fleenor would have received the position based on years of relevant coaching experience.

10 10. Gibson's argument that her total coaching experience exceeds that of Fleenor is not supported by the record and will not be addressed further.

11 11. Gibson's argument that a coach at Westside High School was selected on the basis of regular teaching seniority is not supported by the record, which reflects that seniority was merely a tie-breaker between equally experienced applicants.

12 12. Gibson failed to prove that there was a violation of West Virginia Code section 18A-4-16 or any other relevant law, policy or regulation with respect to filling the extracurricular cheer coach position at Road Branch Grade School.

13 13. Gibson failed to prove that the selection of Fleenor for the assignment at issue herein was arbitrary and capricious, an abuse of discretion, or not in the best interests of the school.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Wyoming 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 tosuch appeal, and should not be so named. However, the appealing party is required by West Virginia Code section 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: June 18, 2004 _____

JACQUELYN I. CUSTER

Administrative Law Judge

Footnote: 1

Gibson's first name is spelled variantly throughout the underlying record. For purposes of this decision her name is spelled as it appears on her coaching resume, which was presumably prepared or adopted by Gibson.