THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

MARY LESLIE MORTON,
Grievant,

v. **DOCKET NO. 2010-1540-KanED**

KANAWHA COUNTY BOARD OF EDUCATION,
Respondent,

and

VERONICA LYNN COLEMAN
Intervenor.

DECISION

Grievant, Mary Leslie Morton, filed a grievance against her employer, the Kanawha County Board of Education, on June 9, 2010. The statement of grievance reads:

> The BOE violated W. Va. Code 18A-4-7a when they failed to consider the proper criteria during the hiring process and failed to hire the Grievant, who was the most qualified.

As relief Grievant sought "[t]he position, back pay, benefits, attorneys fees and costs."[1]

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[1] It is well established that the Grievance Board does not have the authority to award attorney fees. *Brown-Stobbe/Riggs v. Dep't of Health and Human Resources*, Docket No. 06-HHR-313 (Nov. 30, 2006); *Chafin v. Boone County Health Dep't*, Docket No. 95-BCHD-362R (June 21, 1996). New WEST VIRGINIA CODE § 6C-2-6 is entitled, "Allocation of expenses and attorney's fees." It specifically states: "(a) **Any expenses incurred** relative to the grievance procedure at levels one, two or three **shall be borne by the party incurring the expense**." Emphasis added.

A hearing was held at level one on September 27, 2011,[2] and a level one decision denying the grievance was issued on October 14, 2011. Grievant appealed to level two on November 1, 2011, and a mediation session was held on June 12, 2012. Grievant appealed to level three on June 12, 2012, requesting that the grievance be decided based on the record developed at level one. Grievant was represented by Cynthia Evans, Esquire, Respondent was represented by James W. Withrow, Esquire, General Counsel for Respondent, and Intervenor was represented by Rosemary Jenkins, American Federation of Teachers-West Virginia/AFL-CIO. All parties agreed to submission of this matter for decision based on the level one record, and this matter became mature for decision on July 27, 2012, on receipt of the last of the parties' written Proposed Findings of Fact and Conclusions of Law.

Synopsis

Grievant is employed as a substitute teacher by Respondent. She applied for a posted teaching position, and after application of the second set of factors set forth in the statute, she was tied with two other applicants in the number of points in the seven statutory criteria. Respondent broke the tie by conducting an interview, and Grievant was not selected for the position. Grievant challenged the failure of Respondent to award her points in the statutory criteria specialized training and evaluations. Grievant's argument that she should have been awarded points in the statutory criterion specialized training failed because Respondent could not, by statute, consider specialized training when none was called for in the job description. Likewise, Respondent could not award Grievant a

[2] The record does not reflect the reason for the extensive delay between the filing date and the date of the level one hearing.

point in the criterion evaluations, when, as a substitute employee, Grievant had not received any evaluations. Finally, Grievant did not demonstrate that it was arbitrary and capricious for Respondent to break the tie by conducting an interview.

The following Findings of Fact are properly made from the record developed at level one.

Findings of Fact

1. Grievant is employed by the Kanawha County Board of Education ("KBOE") as a substitute teacher. She has a Masters Degree plus 45 hours, and is certified in gifted K-12, social studies 7-12, journalism 7-12, language and literature for adults, and ESL K-adult.[3]

2. On April 16, 2010, KBOE posted a position for an ESL Instructor. The vacancy was created when an ESL Instructor retired.

3. The posting for the ESL Instructor did not list any specialized training required or preferred for the position. The job description for the position was the job description for a teacher, which listed no specialized training required.

4. The ESL Instructor teaches the English language through the content of the curriculum to students who speak a foreign language as their first language. The ESL Instructor assesses the student to determine the level they are on, and to set the number of times per week that the student receives instruction from the ESL Instructor. The ESL Instructor also makes home visits, and acts as a liaison between the parents and the

[3] ESL is the acronym for English as a Second Language. Kanawha County has 504 students who speak a foreign language at home as their first language.

school, and collaborates with the classroom teacher, attending team meetings, providing input and materials to help with the classroom instruction of the student.

5. Grievant applied for the ESL Instructor position, along with several other individuals, including Intervenor Veronica Lynn Coleman. Ms. Coleman was selected for the position.

6. Intervenor Coleman has been employed by KBOE as a regular employee for 20 years as a teacher, and also taught in Baltimore, Maryland for three years. She has a Masters Degree plus 30 hours, and is certified in ESL.

7. Bill Buchanan, KBOE's Director of Professional Personnel, ranked the applicants in the seven statutory critieria, applying the second set of factors, and completing a matrix. Three applicants were tied after completion of the matrix, Grievant, Intervenor Coleman, and a third applicant, Susan Kehoe.

8. Mr. Buchanan assigned no points to any applicant in the criterion specialized training, as no specialized training was listed in the posting or in the job description.

9. Mr. Buchanan assigned no points to Grievant in the statutory criterion related to satisfactory evaluations because, as a substitute, she had not received formal evaluations. Mr. Buchanan rarely finds a formal evaluation in a substitute employee's personnel file, and it has been his practice throughout his career to not award points in this criterion to applicants who have not received formal evaluations.

10. Grievant's teaching was observed on May 6, 2010, by Carol Thom, KBOE's Director of Professional Development. Ms. Thom completed a teacher observation/data collection form which provided a space for Ms. Thom to comment on specific aspects of

Grievant's performance during a portion of that day. This observation form was completed after the posting period closed for the position at issue.

11. Kathy Brown, KBOE"s lead ESL teacher, observed Grievant's teaching on February 23, 2010, as part of her duties in coaching ESL teachers, while Grievant was working in a substitute ESL position. Ms. Brown documented her observation in writing describing her observations, the strengths of the lesson she observed, and making suggestions. The written documentation does not offer an evaluation of Grievant's performance.

12. Since at least 1999, KBOE has broken ties among teacher applicants by conducting interviews.

13. An interview committee was formed to interview the three applicants who were tied after application of the second set of factors. Those serving on the committee were Mr. Buchanan, Cindy Daniels, Assistant Superintendent of Curriculum for KBOE, Ms. Brown, and Ms. Thom, who, as Director of Professional Development, is responsible for overseeing and monitoring the county's ESL program.

14. All those interviewed were asked the same six questions, which had been developed by Ms. Brown, Ms. Daniels, and Ms. Thom. Ms. Brown and Ms. Daniels also prepared a document which listed what information to look for in the answers. Each member of the committee rated each interviewee's answer to each question, and the ratings for each interviewee were totaled to determine who had the highest score.

15. Intervenor Coleman received the highest score in the interview of 98 out of a possible 120. Ms. Kehoe received a score of 73, and Grievant received a score of 54.

Discussion

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 Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). *See also 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). "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

The selection of candidates for educational positions, such as is the case here, is not simply a "mechanical or mathematical process." *Tenney v. Bd. of Educ.*, 183 W. Va. 632, 398 S.E.2d 114 (1990). Moreover, county boards of education have substantial discretion in matters relating to the hiring of school personnel so long as the decisions are made in the best interests of the schools, and are not arbitrary and capricious. *Dillon v. Bd. of Educ.*, 177 W. Va. 145, 351 S.E.2d 58 (1986); *Christian v. Logan County Bd. of Educ.,* Docket No. 94-23-173 (Mar. 31, 1995). Consistent with these standards of review, the grievance procedure is not intended as a "super interview," but merely an analysis of the legal sufficiency of the selection process at the time it occurred. *Stover v. Kanawha County Bd. of Educ.*, Docket No. 89-20-75 (June 26, 1989). *See Sparks v. Mingo County Bd. of Educ.,* Docket No. 96-29-447 (Feb. 18, 1997).

In order to obtain relief, Grievant must establish a significant flaw in the selection process sufficient to suggest that the outcome might reasonably have been different. *Hopkins v. Monroe County Bd. of Educ.,* Docket No. 95-31-477 (Feb. 21, 1996); *Stover, supra*. The standard to use in this review is the arbitrary and capricious standard.

"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 Res.,* 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,* 198 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 of review does not permit an administrative law judge to simply substitute her judgment for that of the school board. *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).

With regard to hiring for a classroom teaching position, boards of education must exercise their discretionary authority by considering the "qualifying factors" set forth in W. VA. CODE § 18A-4-7a. The parties agreed that the “second set of factors” was applicable

to the selection at issue here. W. VA. CODE § 18A-4-7a requires that, in applying the second set of factors, each factor be weighted equally, and the applicant with the highest qualifications, as determined by use of these factors, must be selected. The second set of factors is as follows:

> (d) If one or more permanently employed instructional personnel apply for a classroom teaching position and meet the standards set forth in the job posting, the county board of education shall make a decision affecting the filling of the position on the basis of the following criteria:
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> (1) Appropriate certification, licensure or both;
> (2) Total amount of teaching experience;
> (3) The existence of teaching experience in the required certification area;
> (4) Degree level in the required certification area;
> (5) Specialized training directly related to the performance of the job as stated in the job description;
> (6) Receiving an overall rating of satisfactory in the previous two evaluations conducted pursuant to section twelve [§ 18A-2-12], article two of this chapter; and
> (7) Seniority.

Grievant asserted that Respondent erred in its consideration of the qualifications of Grievant on two of the statutory criteria. The application of no other statutory criterion was challenged by Grievant, and will not be addressed.

Grievant asserted first, that with Grievant's extensive training, Respondent erred in not considering what she asserted was her specialized training, "even though W. VA. CODE § 18A-4-7a requires it." Grievant is incorrect in her reading of the statute, and chooses to ignore prior case law which has clearly explained how this factor is to be applied. As the Grievance Board has previously discussed, for many years, the statute is quite clear in stating that, "[s]pecialized training directly related to the performance of the job <u>as stated in the job description</u>," is to be considered when the second set of factors is applicable to the selection process. (Emphasis added.) Grievant's argument ignores the *essential*

element that the specialized training *must be stated in the job description* in order to be considered. W. VA. CODE § 18A-4-7a. "This Grievance Board has previously made it quite clear that, when the second set of criteria is applicable to the selection for a classroom teaching position, any specialized training required for the job must be set forth in the posting clearly enough so that it provides notice to the applicants of exactly what specialized training is required for the position. *Walker v. Harrison County Bd. of Educ.,* Docket No. 99-17-520 (Apr. 19, 2000)." *Mitchell v. Wetzel County Bd. of Educ.*, Docket No. 02-52-341 (Feb. 26, 2003). (Emphasis in original.) "[T]he Legislature intended that such training should be afforded weight only if the job description for a posted position *required* such training. Unless a county board has exercised its discretion to include a training *requirement* over and above what is necessary to obtain a degree and/or licensure in a particular field, the criterion must be excluded from consideration." *Monk v. Mercer County Bd. of Educ.*, Docket No. 95-27-245 (Sept. 28, 1995). (Emphasis added.) The job description for the position, as referred to in the posting, is a generic job description for classroom teacher, and it does not list any specialized training requirement. Neither the posting nor the job description set forth any required specialized training, and accordingly, this criterion *could not be considered* in evaluating the qualifications of the applicants.

Grievant further asserted that it was arbitrary and capricious not to include specialized training in the posting, however, Grievant presented nothing other than her own assertion to demonstrate that anything other than ESL certification was needed in order to be able to perform the duties of the position. Respondent's witnesses testified that no specialized training was required. Respondent's witnesses further testified that the training

Grievant had listed on her resume would not be considered "specialized" training, but rather was simply continuing education and in-service training. Grievant failed to demonstrate that specialized training should have been considered.

Grievant also asserted that she should have received a point on the matrix for good evaluations based on the observation form and the memorandum prepared by Ms. Brown which were placed into evidence. The statute states specifically that the evaluations to be considered are those "conducted pursuant to section twelve [§ 18A-2-12], article two of this chapter." W. VA. CODE § 18A-2-12 sets forth the requirements for the state board of education to adopt "a written system for the evaluation of the employment of personnel, which shall be applied uniformly by county boards of education in the evaluation of the employment performance of personnel employed by the board." The State Board of Education has in place Policy 5310 (126 C.S.R. 142 §§ 1, et seq.), which sets forth evaluation procedures. Mr. Buchanan stated that Grievant, as a substitute employee, had not received a formal evaluation. Grievant placed into the record an observation form and a memorandum completed by Ms. Brown, and asserted that these were evaluations. It is clear from the face of these two documents, as well as a cursory reading of Policy 5310, that neither represents a formal evaluation of Grievant's performance pursuant to Policy 5310. The observation form is simply that; it is an observation of Grievant's teaching on one day. The memorandum completed by Ms. Brown does not attempt to offer an evaluation of Grievant's performance as good or bad, rather, it states factually what she observed and then lists the strengths of the lesson, and offers suggestions for improvement. The Grievance Board has determined that when an employee does not receive a formal evaluation, the board of education cannot award the employee any credit

in this criterion. *Mitchell, supra; Defazio v. Harrison County Bd. of Educ.*, Docket No. 01-17-054 (May 7, 2001).[4]

Finally, Grievant asserted that, even if it were accepted that the applicants were tied after application of the statutory criteria, Respondent could not decide which candidate was the best qualified based on an interview, because the statute does not list an interview as one of the factors. Grievant asserted that Respondent should have instead broken the tie based on the criterion specialized training. Respondent pointed out that the statute does not address how Respondent is to proceed when there is a tie, and it has been using an interview as the tie-breaker for many years.

This is another area which has repeatedly been addressed by the Grievance Board, as well as the Supreme Court of Appeals of West Virginia. It is clear that the applicable statute does not address how a board of education is to resolve ties. The Grievance Board has stated on more than one occasion that the standard of review of the tie-breaking method is whether the method chosen was arbitrary and capricious. *Prichard v. Lincoln County Bd. of Educ.*, Docket No. 04-22-241 (Aug. 11, 2004); *Jones v. Summers County Bd. of Educ.*, Docket No. 97-45-147 (Jan. 7, 1998).

> However, it is left to the sound discretion of a county board of education to resolve ties between candidates. *State ex rel. Monk v. Knight, et al.,* [201 W. Va. 535, 499 S.E.2d 35 (1997).][5] Challenges to the method of resolving ties

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[4] Grievant also argued it was not her fault that she did not receive a formal evaluation. Whether Grievant should have been evaluated or not is not properly before the undersigned in this grievance, and that issue will not be addressed. If Grievant believed she was entitled, as a substitute employee, to a formal evaluation, she should have brought that issue to her supervisor's attention, or filed a grievance related to that issue.

[5] The West Virginia Supreme Court of Appeals restricted the methods by which ties can be resolved in filling vacant teaching positions in *Monk*, by ruling that random

> should be reviewed under the "arbitrary and capricious" standard pronounced in *Dillon v. Bd. of Educ. of the County of Wyoming,* 351 S.E.2d 58 (W.Va. 1986). *See, Cummings v. Lincoln County Bd. of Educ.*, Docket No. 97-22-324 (Dec. 3, 1997).

Jones, supra. Further,

> When a board of education establishes hiring procedures, it is bound by these practices. *State ex rel. Hawkins v. Tyler County Bd. of Educ.,* 166 W. Va. 363, 275 S.E.2d 908 (1981); *Tallman v. Wetzel County Bd. of Educ.,* Docket No. 52-86-270-3 (Mar. 20, 1987). It is likewise well established that "[a]n administrative body must abide by the remedies and procedures it properly establishes to conduct its affairs." Syl. Pt. 1, *Powell v. Brown,* 160 W. Va. 723, 238 S.E.2d 220 (1977). *See Bailey v. W. Va. Dept. of Transp.*, Docket No. 94-DOH-389 (Dec. 20, 1994); *Wright v. McDowell County Bd. of Educ.*, Docket No. 93-33-115 (Nov. 30, 1993). In *Spolarich v. Wyoming County Board of Education,* Docket No. 99-55-452 (Dec. 23, 1999), it was held that a board of education was bound by the unwritten selection criteria it had used for similar positions in the past, as enunciated by the person making the selection recommendation. It was found to be an arbitrary and capricious decision, indicating an abuse of discretion, for the board to fail to employ the selection process in place at the time of the hiring decision at issue.

Walker v. Harrison County Bd. of Educ., Docket No. 99-17-520 (Apr. 19, 2000). In *Walker*, the Board of Education had used seniority as the tie-breaker in the past, and it was determined that this should also be the tie-breaker used for that selection.

Grievant asserted in her written argument that the "phantom questions that were asked of the candidates [were designed] to subjectively deliver the result they intended;" however, Grievant did not indicate how the questions were "phantom" or what was meant by this. The questions asked appear to the undersigned to be quite relevant and straightforward. The first one was "[w]hat experience have you had with ESL students?"

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selections or lotteries cannot be used absent specific statutory authorization.

The second question inquires as to challenges faced by ESL students and strategies to overcome them. The third question relates to collaboration with classroom teachers, the fourth to experience with technology for the classroom, the fifth with being a team player, and the sixth with formative and summative assessment. Grievant produced no evidence that it was arbitrary and capricious or an abuse of discretion for Respondent to use an interview to break the tie, or that the interviews were in any way improperly conducted. Rather, Grievant simply indicated that it was her belief that her training should have been used as the tie-breaker. As noted in *Walker, supra,* however, absent some good reason to depart from its past practice, Respondent was bound to use the interview as the tie-breaker, and any decision to deviate from that practice and rely on training instead could have been found to be arbitrary and capricious.

The following Conclusions of Law support the Decision reached.

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 Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va. Dep't of Health & Human Res*., Docket No. 89-DHS-72 (Nov. 29, 1990). *See also 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). "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

2. The selection of candidates for educational positions is not simply a "mechanical or mathematical process." *Tenney v. Bd. of Educ.*, 183 W. Va. 632, 398 S.E.2d 114 (1990). Moreover, county boards of education have substantial discretion in matters relating to the hiring of school personnel so long as the decisions are made in the best interests of the schools, and are not arbitrary and capricious. *Dillon v. Bd. of Educ.*, 177 W. Va. 145, 351 S.E.2d 58 (1986); *Christian v. Logan County Bd. of Educ.,* Docket No. 94-23-173 (Mar. 31, 1995). Consistent with these standards of review, the grievance procedure is not intended as a "super interview," but merely an analysis of the legal sufficiency of the selection process at the time it occurred. *Stover v. Kanawha County Bd. of Educ.*, Docket No. 89-20-75 (June 26, 1989). *See Sparks v. Mingo County Bd. of Educ.,* Docket No. 96-29-447 (Feb. 18, 1997).

3. In order to obtain relief, a grievant must establish a significant flaw in the selection process sufficient to suggest that the outcome might reasonably have been different. *Hopkins v. Monroe County Bd. of Educ.,* Docket No. 95-31-477 (Feb. 21, 1996); *Stover, supra*. The standard to use in this review is the arbitrary and capricious standard.

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 Res.,* 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,* 198 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 of review does not permit an administrative law judge to simply substitute her judgment for that of the school board. *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).

5. With regard to hiring for a classroom teaching position, boards of education must exercise their discretionary authority by considering the "qualifying factors" set forth in W. VA. CODE § 18A-4-7a (1992). W. VA. CODE § 18A-4-7a requires that, in applying the second set of factors, which is the applicable statutory provision in this case, each factor be weighted equally, and the applicant with the highest qualifications, as determined by use of these factors, must be selected.

6. "[W]hen the second set of criteria is applicable to the selection for a classroom teaching position, any specialized training required for the job *must* be set forth in the posting clearly enough so that it provides notice to the applicants of exactly what specialized training is required for the position. *Walker v. Harrison County Bd. of Educ.,* Docket No. 99-17-520 (Apr. 19, 2000)." *Mitchell v. Wetzel County Bd. of Educ.*, Docket No. 02-52-341 (Feb. 26, 2003). (Emphasis in original.) If no specialized training is called for in the job description, then this criterion cannot be considered in the initial evaluation and

comparison of the qualifications of the applicants. *Id.*; *Monk v. Mercer County Bd. of Educ.*, Docket No. 95-27-245 (Sept. 28, 1995).

7. When an employee does not receive a formal evaluation, the board of education cannot award the employee any credit in the criterion evaluations. *Mitchell, supra; Defazio v. Harrison County Bd. of Educ.*, Docket No. 01-17-054 (May 7, 2001).

8. The applicable statute does not address how a board of education is to resolve ties in the selection process for a teaching position. The Grievance Board has previously determined that the standard of review of the tie-breaking method is whether the method chosen was arbitrary and capricious. *Prichard v. Lincoln County Bd. of Educ.*, Docket No. 04-22-241 (Aug. 11, 2004); *Jones v. Summers County Bd. of Educ.*, Docket No. 97-45-147 (Jan. 7, 1998).

9. "In *Spolarich v. Wyoming County Board of Education,* Docket No. 99-55-452 (Dec. 23, 1999), it was held that a board of education was bound by the unwritten selection criteria it had used for similar positions in the past, as enunciated by the person making the selection recommendation. It was found to be an arbitrary and capricious decision, indicating an abuse of discretion, for the board to fail to employ the selection process in place at the time of the hiring decision at issue." *Walker v. Harrison County Bd. of Educ.*, Docket No. 99-17-520 (Apr. 19, 2000).

10. Grievant did not demonstrate a flaw in the selection process, or that the selection decision made was arbitrary and capricious or an abuse of discretion.

Accordingly, this grievance is **DENIED.**

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. *See* W. VA. CODE § 6C-2-5. Neither the West Virginia Public 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 certified record can be prepared and properly transmitted to the Circuit Court of Kanawha County. *See also* 156 C.S.R. 1 § 6.20 (2008).

BRENDA L. GOULD
Acting Deputy Chief
Administrative Law Judge

Date: September 10, 2012