BILL ROSENAU

v. Docket Nos. 94-47-591, 1104

TUCKER COUNTY BOARD OF EDUCATION,

THOMAS GUTSHALL, INTERVENOR

DECISION

Grievant, Bill Rosenau, professionally employed by the Tucker County Board of Education (Board), filed a level four grievance on October 3, 1994, in which he alleged a violation of W.Va. Code §18A-4-16 when the Board rejected Superintendent Mary Alice Klein's recommendation that he be appointed first assistant football coach at Tucker County High School and accepted a less qualified applicant. The grievance was held in abeyance pending receipt of a second grievance filed on December 8, 1994, in which Grievant alleged a violation of State Board of Education Policy 5112 when the Board employed the same individual to simultaneously fill the positions of athletic trainer and first assistant football coach.

The grievances were consolidated for hearing on February 16, 1995. The successful applicant, Thomas Gutshall, appeared as Intervenor. The matter became mature for decision with the submission of proposed findings of fact and conclusions of lawby Grievant and the Board on or before April 7, 1995.

The facts of this matter are as follows:

1. Grievant is employed as a vocational teacher at Tucker County High School where he also functions as the school Athletic Director.

2. In addition to his other duties, Grievant was also first assistant football coach at Tucker County High School for nine years prior to his resignation effective June 21, 1994.

3. On July 13, 1994, the Board posted the position of First Assistant Football Coach at Tucker County High School. The qualifications listed on the notice were:

- WV teacher certification with

employment as a teacher or substitute teacher within the school system.

- Minimum of two (2) years successful teaching experience preferred.

- Demonstrated competencies, aptitude, and interest for performing assigned responsibilities.

- Such alternatives to the above qualifications as the Board may find appropriate and acceptable while remaining in compliance with state policies/regulations regarding extracurricular activities.

4. Superintendent Klein, the principal of Tucker County High School, and the head football coach, interviewed the applicants, including Grievant and Mr. Gutshall.

5. The interview committee completed a three part evaluation for each applicant. The first section, the Applicant Selection Form, set forth the second set of factorsenumerated in W.Va. Code §18A-4-7a, although teaching experience and degree level in the required certification area were not considered. The second section consisted of six standard questions posed during the interview. The third section involved each applicant being ranked in six areas, honors, community relations, cooperation, motivational techniques, organizational skills, and professionalism.

6. Mr. Gutshall was initially determined to be the applicant with the highest qualifications; however, he declined to be recommended for the position in deference to Grievant.

7. Superintendent Klein recommended to the Board that Grievant, determined to be the second best qualified applicant, be awarded the position. The Board did not accept the recommendation and directed the Superintendent to provide another recommendation.

8. Superintendent Klein next recommended Mr. Gutshall for the position and the Board voted to approve that selection. At this time Mr. Gutshall accepted the position.

9. Mr. Gutshall now holds the positions of Assistant Football Coach and Athletic Trainer at Tucker County High School.

Grievant explains the events leading to his resignation as first assistant football coach began with parental inquiries as to what might be done to upgrade the football program at Tucker County High School. Following the 1993season in which Tucker County had compiled an 0-14 record, it was rated the lowest in the state. Grievant testified at level four that, after some consideration, he decided to resign his position for the benefit of the program, to allow

another to offer his services. However, subsequently, the head football coach also resigned and the individual who Grievant anticipated would become first assistant was appointed head football coach. Grievant then applied for reinstatement as first assistant.

Grievant argues that the selection process was flawed in that Code §18A-4-7a criteria are not to be applied to coaching assignments and that portion of the interview process should be discounted. If that procedure is accepted, Grievant then argues that the criteria was erroneously applied to the candidates. Specifically, Grievant asserts that he was given no credit for his nine years experience as first assistant but that Mr. Gutshall was credited for six years experience gained as a volunteer coach while serving as an athletic trainer. Grievant argues that seniority he earned as a coach should have been maintained while serving as Athletic Director, just as professional employees accrue seniority as teachers while assigned to administrative positions. Grievant argues that he outranked Mr. Gutshall on the six areas in the third portion of the evaluation, and had his seniority been properly considered, would have been the most qualified applicant. In consideration of these matters Grievant requests instatementto the position with backpay, interest, and benefits.

Addressing the second issue, Grievant simply relies upon State Board of Education Policy 5112 as authority for his claim that the Board improperly employed the Athletic Trainer as first assistant coach in the same sport. Policy 5112, Section 9.1 states in its entirety that "[a]n individual must serve as an athletic trainer without simultaneous coaching responsibilities in the same sport." Grievant requests no direct relief in this matter, only that the Board comply with the Policy. Grievant may benefit indirectly and be appointed first assistant if Mr. Gutshall should leave the coaching position.

Superintendent Klein testified that the second set of factors listed in Code §18A-4-7a were used in a modified form only as a uniform tool to gather objective data from the applicants. She stated that Grievant's experience was considered, but his seniority was not, inasmuch as it was lost with his resignation. The Superintendent confirmed that the interview committee found both Grievant and Mr. Gutshall to have the appropriate certification/licensure, had obtained specialized training related to the job, and had received satisfactory evaluations in the past. Mr. Gutshall was given additional points for total coaching experience with seventeen years (Grievant had fifteen years experience), and seventeen years seniority. Mr.

Gutshall outscored Grievant on this portion of the review by a score of five to three.

A numerical ranking was not attached to the interview questions and Superintendent Klein determined that both candidates were ranked overall "Strong-Moderate" on the third portion of the review. The consensus of the interview committee was that Mr. Gutshall was the most qualified applicant. Superintendent Klein stated that the Board did not conduct an independent assessment of qualifications when she recommended Grievant for the position.

In reference to the alleged violation of Policy 5112, Superintendent Klein stated that due to a recent revision, it would not be effective in this case. The administrator further noted that should the Board be required to hire a separate athletic trainer it would be necessary to eliminate an assistant coaching position.

The Grievance Board has previously held that W.Va. Code §18A-4-7a criteria do not apply to coaching positions. See, Hanlon v. Logan County Bd. of Educ., Docket No. 93-23-502 (Dec. 29, 1994); Chaffin v. Wayne County Bd. of Educ., Docket No. 92-50-398 (July 27, 1993); Smith v. Logan County Bd. of Educ., Docket No. 91-23-040 (July 31, 1991). Rather, the correct standard of review is whether the decision was arbitrary and capricious or an abuse of discretion. McCoy v. Kanawha County Bd. of Educ., Docket No. 94-20-141 (Oct. 13, 1994).

In the present matter, a modified form of the second set of factors set forth in Code §18A-4-7a was used to gather andevaluate credentials. Scores were assigned to the applicants using this criteria; however, this was not the sole basis for the committee's decision. Although a board of education is not required to apply the statutory criteria, there is no prohibition which would disallow the consideration of those factors which would be applicable to a coaching position. Clearly, a board of education may hire the applicant deemed to be most qualified and the applicants' experience and training are relevant matters properly considered when filling a coaching position.

Grievant's complains that he should be allowed to retain his coaching seniority while serving as Athletic Director and that Mr. Gutshall was improperly given seniority credit for six years as a volunteer coach, each constitute a one point difference in scoring on the first section of the evaluation document. This, along with Grievant's allocation of points to the third section which rated the applicants in six area, showing him to outscore Mr. Gutshall by two points, would numerically indicate Grievant to be the most qualified applicant. However,

as previously noted, the standard of review in cases involving coaching positions is whether the decision was arbitrary and capricious or an abuse of discretion. Because Grievant and Mr. Gutshall present credentials of similar quality, it cannot be determined that the Board's selection of Mr. Gutshall was either arbitrary and capricious or an abuse of discretion.

The Board has acted in violation of State Board of Education Policy 5112 by placing Mr. Gutshall in the position of Athletic Trainer and first assistant coach in the same sport. Administrative notice is taken that Policy 5112, effective November 30, 1990, was in effect when Mr. Gutshall was appointed first assistant in 1994. The Policy has been revised effective March 27, 1995; however, the prohibition has been retained without modification. Therefore, a decision must be made as to which position Mr. Gutshall will retain.

In addition to the foregoing findings of fact and narration it is appropriate to make the following formal conclusions of law.

CONCLUSIONS OF LAW

1. In non-disciplinary matters, such as nonselection, the grievant bears the burden of proving all of the allegations relating to his grievance by a preponderance of the evidence. Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988).

2. The standard of review for selection of personnel to fill a coaching position is not the criteria set forth in W.Va. Code §18A-4-7a, but rather, is whether the Board abused its discretion in the selection or acted in an arbitrary and capricious manner. Dillon v. Bd. of County of Wyoming, 351 S.E.2d 58 (W.Va. 1986); Smith v. Logan County Bd. of Educ., Docket No. 91-23-040 (July 31, 1991).

3. The evidence of record does not demonstrate that theBoard acted in an arbitrary or capricious manner or otherwise abused its discretion when it selected Mr. Gutshall over Grievant for the position of first assistant football coach.

4. The Grievant has proven that the Board appointed Mr. Gutshall as Athletic Trainer and first assistant coach in the same sport, a violation of State Board of Education Policy 5112.

Accordingly, the grievance is DENIED in part and GRANTED to the extent that the Tucker County Board of Education is Ordered to correct the violation of State Board of Education

Policy 5112.

DATED 5/31/95 SUE KELLER, SENIOR ADMN. LAW JUDGE