JEROME DEAN,

Grievant,

v. Docket No. 97-51-232

WEBSTER COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Jerome Dean, employed by the Webster County Board of Education (WCBOE or Respondent), filed a grievance directly to level four, as is permitted by W. Va. Code §18A-2-8, on May 5, 1997, following a decision by Respondent on April 30, 1997, to terminate his extracurricular contract as head varsity football coach at Webster County High School (WCHS). Grievant asserts that the action was in violation of W. Va. Code §§18A-2-8 and 18A-2-6, and requests reinstatement with back pay and benefits. Following three continuances granted for cause, level four proceedings were conducted by Administrative Law Judge Jeffrey N. Weatherholt, on September 3, and November 5, 1997. Grievant appeared in person and was represented by Stephen G. Jory, Esq., Jessica M. Baker, Esq., and Gary Archer, WVEA Uniserv Consultant. Respondent was represented by Basil Legg, Esq., and Superintendent Mark A. Manchin. The matter became mature for decision with the submission of proposed findings of fact and conclusions of law on or before December 12, 1997. The case was subsequently transferred to the undersigned for administrative reasons.

The facts of this matter are as follows. Athletic Director Glen Bragg attended the September 19, 1996, practice of the WCHS football team from 4:00 to 6:20 p.m. He noted that some elements of the practice were not appropriate for all members of the team, that coaches were wandering around with apparently no responsibilities, and that one or more students used foul language and were not corrected. On September 24, 1996, Grievant was given an Improvement Plan relating tohis performance as head football coach. This plan cited the following deficiencies:

A. Student supervision - students were not supervised all of the time they were under the Coach's control.

B. Relationships with students, parents, and colleagues - only 5 of 11 Seniors finished the season,

and there was evident dissent between the Coach and his assistant coaches.

C. Complaints had been made by parents and assistant coaches that the assistant coaches had not been assigned responsibilities during practices or games, that student discipline was not uniform and impartial, and that the students did not receive positive reinforcement from the Head Coach.

To cure the deficiencies, Grievant was required to submit a weekly practice plan to the Athletic Director for approval by 2:00 p.m., on each Monday, beginning September 30. If not returned for revision, the plan was to be given to each Assistant Coach prior to the first practice of the week. The plan was to minimally include a statement of goals and timed activities for each day's practice, written daily assignments for each assistant coach that was to maximize the use of coaching time, and an effective game plan for the next opponent, or a statement of how the plan would be developed.

The second component of the plan required Grievant to develop a duty roster equitably assigning the coaching staff to supervise players at all relevant times. The roster was to maximize the time coaches spent with players, and was to be submitted to the Athletic Director by 3:30 p.m. on September 30. Upon approval, the plan was to be provided to the Assistant Coaches before the end of the following day.

Third, rules for student conduct were to be posted in the dressing room, discussed with the players, and enforced impartially by all coaching personnel. Failure to correct observed violationsof the rules would be deemed wilful neglect of duty. Poor conduct by players, in the absence of evidence to the contrary, would be considered indicative of failure to enforce rules.

The final component required Grievant to implement a program of positive reinforcement by October 6, providing reward/recognition to deserving players on a regular basis during the season. Evidence of the program was to be provided to the Athletic Director.

The plan was to continue through the remainder of the 1996 season. Developed by WCHS Principal Daniel N. Bean, the plan was discussed with, and signed by, Grievant.

On October 30, 1996, Mr. Bragg completed a formal observation report for Grievant, based upon practice that day from 4:30 to 5:00, and seven games. Mr. Bragg noted that while the offensive team was practicing scrimmages against the anticipated Clay defense, several false starts were made, and that those mistakes needed immediate correction to stress concentration, and eliminate such problems during the actual game. Mr. Bragg suggested that the line coach should work with the

offensive line during the scrimmage, and that he was looking for maximum use of personnel during scrimmages. Under a “general comments” section, Mr. Bragg stated that the “weekly practice plans submitted have been good - specific assignments for ass't coaches are included - I was dismayed by the number of penalties (9 major) in the Braxton Co. game - This number of major penalties (9) could well indicate a continued lack of team discipline.”

By report dated October 14, 1996, Principal Bean memorialized a meeting attended by Grievant, Mr. Bragg, Superintendent Manchin, and himself, concerning “an unpleasant drama, involving verbal conflict between our own football players, between our players and our adult fans, between our players and Coach Dean, and between players, coaches and game officials” at the Pocahontas County High School game on October 4, 1996. He specifically noted one player whowas disrespectful to the coaches, at one point yelling “F_ You !” to Grievant, in a voice easily heard by spectators. Mr. Bean noted that one of the provisions of the improvement plan was the enforcement of rules for student conduct, and that the failure to correct rule violations would be deemed wilful neglect of duty. While Grievant confirmed the conduct, he did not indicate that any punishment had been, or would be, imposed. When no corrective action had been taken by October 14, Mr. Bragg suspended the player for one game.

By letter dated October 21, 1996, Grievant responded to Mr. Bean that while the incident embarrassed everyone, he disagreed that he had failed to correct an observed violation of rules or engaged in wilful neglect of duty, because he had verbally reprimanded two boys about their behavior prior to the conference. Grievant acknowledged that Mr. Bean wanted a harsher penalty imposed, but that he did not believe it was warranted, and did not understand that he had been given a direct order to suspend any student.

Following the conclusion of the season, Mr. Bragg completed an evaluation of Grievant, dated December 13, 1996, finding that he did not meet standards in the follow areas:

1.4 Establishes, models, and maintains an exemplary code of conduct among students in all situations.

1.6 Demonstrates effectiveness in assigned area as evidenced by successful competitiveness which is exhibited through individual and team competition, win-loss record, and performance, etc. in the school and community.

2.21 Facilitates open communications with athletes' parents, school faculty and administration to keep them informed.

3.3 Demonstrates the ability to initiate progressive change.

4.1 Models positive interpersonal relationships with students, colleagues, parents and community in a manner which isapproachable, responsible and supportive.

4.3 Fosters and develops individual and team sportsmanship by:
(b) Demonstrating high ideals, good habits, and desirable attitudes in personal behavior and demanding the same standards of the participants.

(f) Prohibiting gambling, profanity, abusive language, and similar violations of the true sport[s]man's code.

Mr. Bragg advised Mr. Bean, by letter dated December 13, 1996, of Grievant's noncompliance with the improvement plan. He found the written practice plans “in general were well done but became more routine as the season progressed.” He noted that a recognition program was established and reported in the local paper, but that “[f]ollow through with the program needs completion.” Mr. Bragg noted that discipline of individual students, and the team in general, continued to be a problem. He specifically cited verbal abuse of Grievant without penalty, on at least two occasions, the team reported “out-of-control team problem at Pocahontas County that dissolved to parental involvement on behalf of their sons”, and abusive language used by members of the teams as reported by fans at the Braxton County game, as well as his own observation of such at a practice. He continued that Grievant failed to demonstrate the ability to control dissension among team members and the coaching staff, or the ability to inspire the team to accept the decisions of the head coach.

In addition to the failure to fully comply with the improvement plan, Mr. Bragg noted that the morale of the players and staff was extremely low and public support for the program was likewise affected. After speaking with several players, he concluded that their confidence in the leadership of Grievant had eroded, and that it was unlikely that he could re-establish confidence in the team. In conclusion, Mr. Bragg opined that “it would be extremely difficult, it not impossible,for [Grievant] to turn the football program into a successful and esteemed program in the near future.”

Apparently, no further action was taken until March 14, 1997, when Mr. Bean wrote to Superintendent Manchin to recommend that Grievant's contract as head football coach at WCHS not be renewed for the 1997-98 term. Mr. Bean stated that “[i]t is my conclusion that [Grievant] has lost his effectiveness in that position, and that a new head coach is an essential part of any effort to improve our football program.” By certified letter of March 18, 1997, Superintendent Manchin notified Grievant that he would recommend the Board terminate his extra- curricular contract as head football coach at WCHS, due to unsatisfactory performance. Following a hearing held on April 30, 1997, the Board accepted Superintendent Manchin's recommendation, and voted to not renew Grievant's contract as football coach.

Discussion

The record includes documentation which refers to the action taken by the Board as both a termination and as a nonrenewal of a contract. Prior to the level four hearing, ALJ Weatherholt ruled that the grievance would be reviewed as a termination. Consistent with that ruling, the Board bears the burden of proving that the action taken was proper. W. Va. Code §18-29-6; Lilly v. Fayette County Bd. of Educ., Docket No. 97-10-084 (Feb. 10, 1998); Hoover v. Lewis County Bd. of Educ., Docket No. 93-21-427 (Feb. 24, 1994); Landy v. Raleigh County Bd. of Educ., Docket No. 89-41- 232 (Dec. 14, 1989).

The Board argues that the termination of Grievant's contract as football coach was properly taken after certain deficiencies with Grievant's performance were identified. The Board asserts that the deficiencies were brought to Grievant's attention through the performance evaluation system,when Athletic Director Bragg completed observation reports, and through counseling by Mr. Bragg and Principal Bean. A plan of improvement was developed, and accepted, by Grievant. The plan was of an appropriate length, lasting throughout the football season. At the conclusion of the season, both Mr. Bragg and Principal Bean determined that while Grievant had successfully completed certain portions of the plan, he did not fully comply with all of the requirements of the plan, and did not improve to a level of meeting the overall performance standards for coaches established by the Board. After notification from the Superintendent that he would recommend that Grievant not be retained as football coach, Grievant was provided a hearing prior to the Board's vote on the matter. Based upon the foregoing, the Board concludes that the action was taken for cause, while providing Grievant all the due process to which he was entitled.

Grievant asserts that he complied completely with all aspects of the improvement plan, and was given no indication by his supervisor that his performance was not satisfactory. Grievant argues that factors other than those listed in the improvement plan were considered in his termination. Specifically, Grievant suggests that the true reason for the action was that the team had suffered losing records for several seasons. Grievant supports this argument by noting that Mr. Bragg could not define what aspect of the plan he had failed to complete, with the possible exception of one incident in which he disagreed with Grievant's method of disciplining a student. Grievant suggests that the primary problem cited by Mr. Bragg involved student cursing during a practice, which he did not hear, and during an away game, after which he spoke to the student. Grievant concedes that while the Board may have complied with the letter of the law in performing observations, evaluations, and developing a plan of improvement, the fact that he was terminated after fully complying with the plan establishes that the Board's action was pretextual. It is well established that the procedural requirements mandated under W. Va. Code §18A-2- 7 apply to all school personnel positions, including those defined as extra-curricular, with separate contracts entered into pursuant to W. Va. Code §18A-4-16. Smith v. Bd. of Educ. of County of Logan, 341 S.E.2d 685 (W. Va. 1985); Hartlieb v. Ohio County Bd. of Educ., Docket No. 93-35-300 (Mar. 16, 1994); Banfi v. Lincoln County Bd. of Educ., Docket No. 92-22-120 (June 30, 1992). Further, a written plan of improvement shall be specific as to what improvements are needed, and shall clearly set forth recommendations for improvements. The employee shall be given a reasonable period of time for remediation of the deficiencies. W. Va. Code §18A-2-12.

In the present matter, specific deficiencies were identified, and specific recommendations for improvement were provided. Grievant's claim that the plan of improvement was pretextual is not persuasive, although his perception that the underlying reason for his nonretention was a failure to win games, is undoubtedly correct. During the 1996 season, WCHS compiled a record of 0-10. The 1995 record was 2-8. Grievant claims that he is entitled to continued employment because, in his opinion, he satisfactorily completed the individual components of the improvement plan, and that the plan did not require that the team win games. The Board disagrees that Grievant successfully completed the plan. A review of the record establishes that Grievant completed each of the components of the plan, which were developed to help him achieve the ultimate goal of turning the team around. However, in the opinion of his supervisor, Grievant did not successfully complete the

plan of improvement. Failure to perform duties satisfactorily, and the subsequent failure to successfully complete a plan of improvement, constitutes a valid basis for the nonretention of a coach.

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

Findings of Fact

1. Grievant is employed by the Webster County Board of Education as a teacher, and served approximately eight years as head football coach at WCHS.

2. Following an observation by Athletic Director Glen Bragg on September 19, 1996, Grievant was given a plan of improvement which required that he submit a weekly practice plan to the Athletic Director for approval, keep a duty roster equitably assigning coaching staff to supervise players, post and discuss rules for student conduct and enforce the rules impartially, and implement a program of positive reinforcement for the players.

3. The plan of improvement continued throughout the 1996 football season.

4. Mr. Bragg evaluated Grievant on December 13, 1996, and concluded that while he completed the plan, Grievant still failed to meet standards in several areas of the evaluation and the improvement plan.

5. Daniel Bean, principal, recommended that Grievant's contract as head football coach not be renewed for the 1997-98 school year.

6. The board accepted Superintendent Mark Manchin's recommendation that Grievant not be re-employed as head football coach at WCHS.

Conclusions of Law

1. School board actions relating to extracurricular contracts entered into pursuant to W. Va. Code §18A-4-16 are not exempt from the procedural requirements mandated under W. Va. Code §§18A-2-7, 18A-2-8. Therefore, coaches are to be given the same general procedural andsubstantive protection afforded to teachers. Smith v. Bd. of Educ. of County of Logan, 341 S.E.2d 685 (W.Va. 1985); Hartlieb v. Ohio County Bd. of Educ., Docket No. 93-35-300 (Mar. 16, 1994); Banfi v. Lincoln County Bd. of Educ., Docket No. 92-22-120 (June 30, 1992).

2. A county board of education meets its requirements for substantive and procedural due process by affording an employee notice of deficiencies, an adequate improvement period, timely

notice and an opportunity for a hearing prior to a final non-renewal action. Hartlieb, supra.

3. In order for a county board of education to legally terminate an extracurricular contract of a coach, it must evaluate the coach unfavorably and place him/her on an appropriate improvement plan. If, at the conclusion of the plan, the coach does not improve to an overall satisfactory level, the contract may be terminated. Wright v. Gilmer County Bd. of Educ., Docket No. 95-11-100/254 (Sept. 8, 1995).

4. Respondent has proven that the termination of Grievant's contract as head football coach was based upon unsatisfactory performance, which was not corrected by a plan of improvement.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Webster County and such appeal must be filed within thirty (30) days of receipt of thisdecision. 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. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate Court.

Date: April 29, 1998 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE