**GLADINE BARNER,**

**Grievant,**

**v.** **Docket No. 01-24-107**

**MARION COUNTY BOARD OF EDUCATION,**

**Respondent.**

## DECISION

Gladine Barner ("Grievant") initiated this grievance on November 28, 2000, challenging Respondent Marion County Board of Education's ("MCBOE") decision to discontinue its prior practice of refusing to allow athletic directors to coach sports teams. As relief, she seeks back pay for coaching from 1992 to the present. The grievance was denied at level one on November 30, 2000. Grievant appealed to level two on December 5, 2000, and a hearing was held on February 7, 2001. The grievance was denied in a written level two decision dated February 15, 2001. Level three consideration was waived, and Grievant appealed to level four on March 22, 2001. The parties agreed to submit this matter for a decision based upon the record developed below, supplemented by fact/law proposals submitted on April 13, 2001. Grievant was represented by Don Craft of the West Virginia Education Association, and Respondent was represented by counsel, Stephen R. Brooks. This grievance was assigned to the undersigned administrative law judge for a final decision on April 17, 2001.

The following findings of fact are made from a preponderance of the evidence of record.

## Findings of Fact

1. Grievant has been employed by MCBOE as a classroom teacher for approximately 23 years.

2. In addition to her teaching assignment, Grievant held the positions of head coach for the North Marion High School girls' basketball and track teams from 1979 until 1991.

3. In 1991, Grievant applied for the position of athletic director at North Marion High School. In order to be awarded that position, Grievant was required to resign her coaching positions. This was

pursuant to the MCBOE's practice at the time of refusing to allow athletic directors to also work as coaches.

4. Grievant has served as North Marion High School's athletic director since 1991, and, pursuant to MCBOE's requirement, has not held any coaching positions.

5. Shortly after the beginning of the 2000-2001 school year, MCBOE hired Dick Hawkins to serve as athletic director at Fairmont Senior High School. MCBOE decided to change its previous practice, and Mr. Hawkins was allowed to retain his position as swimming coach at that school, along with serving as athletic director.

6. Prior to Mr. Hawkins' hiring as athletic director, no other athletic directors were allowed to continue coaching.

## Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her claims 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. LoganCounty 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.

Grievant contends that, after having established a practice or policy forbidding athletic directors from coaching, it was obligated to continue that practice. She also argues that, since Mr. Hawkins has been allowed to continue coaching, the policy is not being enforced, entitling her to back pay for all the years she was not allowed to coach. In dealing with this issue, it is important to note that county boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel so long as that discretion is exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious. Syl. Pt. 3, Dillon v. Bd. of Educ., 177 W. Va. 145, 351 S.E.2d 58 (1986). Further, county boards of education are expected to abide by the policies and regulations they promulgate, even if those rules bestow rights upon employees which are not provided by statute. Hall v. Mingo County Bd. of Educ., Docket No. 95-29-529 (Mar. 28, 1996). See Powell v. Brown, 160 W. Va. 723, 238 S.E.2d 220 (1977); Wright v. McDowell County Bd. of Educ., Docket No. 93-33-115 (Nov. 30, 1993). It is the holding in Powell, supra, upon which Grievant bases most of her argument, wherein the Supreme Court ruled that an

administrative body must abide by the remedies and procedures it properly establishes to conduct its affairs.

Nevertheless, in the absence of a legal requirement to do so, a board of education is not required to follow the same informal personnel practices year after year. Conner v. Barbour County Bd. of Educ., Docket No. 93-01-246 (Apr. 28, 1994). See e.g., Taylor v. Monongalia County Bd. of Educ., Docket No. 92-30-314 (Nov. 30, 1992); Biller v. Upshur County Bd. of Educ., Docket No. 90-49-533 (Sept. 27, 1991); Napier v. Lincoln County Bd.of Educ., Docket No. 89-23-635 (May 25, 1990); Isaacs v. Lincoln County Bd. of Educ., Docket No. 89-22-555 (Jan. 12, 1990); Terek v. Ohio County Bd. of Educ., Docket No. 35-87-294-3 (July 20, 1988). “Informal practices” which have been discontinued and upheld by this Grievance Board have included such issues as flex time (Smith v. Department of Health and Human Resources, Docket No. 00-HHR-271 (Feb. 22, 2001)), the employment of unneeded coaches (Reed v. Kanawha County Board of Education, Docket No. 99-20-111 (May 27, 1999)), and methods of assigning extra bus runs (Conner, supra).

A deviation from past practice simply represents one of a number of factors to be considered when determining if a discretionary decision by the county board or a school administrator is arbitrary and capricious. See Cromley v. Mason County Bd. of Educ., Docket No. 94-26-573 (Apr. 27, 1995). Generally, a board of education's action is arbitrary and capricious if it did not rely on factors that were intended to be considered, entirely ignored important aspects of the problem, explained its decision in a manner contrary to the evidence before it, or reached a decision that is so implausible that it cannot be ascribed to a difference of view. Bedford County Memorial Hosp. v. Health and Human Serv., 769 F.2d 1017 (4th Cir. 1985).

Assistant Superintendent Dennis Edge testified at level two that the current superintendent simply decided that current needs made the previous policy regarding athletic directors and coaching unnecessary. The previous practice was implemented nearly twenty years ago, when there were not nearly as many sports to be coached and no shortage of individuals who wanted to coach them. However, in recent years it has become increasingly difficult for boards of education to find enough people who want tocoach, and filling vacant coaching positions has become increasingly difficult. Therefore, when Mr. Hawkins was hired as athletic director, it became clear to MCBOE officials that its prior practice needed to be changed. Pursuant to the discussion above, the undersigned finds that MCBOE acted within its discretion in doing so, and there has been no showing that this decision was

arbitrary and capricious.

Consistent with the foregoing, the following conclusions of law are made.

**Conclusions of Law**

1. Grievant has the burden of proving her claims 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 hiring, assignment, transfer, and promotion of school personnel so long as that discretion is exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious. Syl. Pt. 3, Dillon v. Bd. of Educ., 177 W. Va. 145, 351 S.E.2d 58 (1986).

3. In the absence of a legal requirement to do so, a board of education is not required to follow the same informal personnel practices year after year. Reed v. Kanawha County Bd. of Educ., Docket No. 99-20-111 (May 27, 1999); Conner v. Barbour County Bd. of Educ., Docket No. 93-01-246 (Apr. 28, 1994). See e.g., Taylor v. Monongalia County Bd. of Educ., Docket No. 92-30-314 (Nov. 30, 1992); Biller v. Upshur County Bd. of Educ., Docket No. 90-49-533 (Sept. 27, 1991); Napier v. Lincoln County Bd. of Educ., Docket No.89-23-635 (May 25, 1990); Isaacs v. Lincoln County Bd. of Educ., Docket No. 89-22-555 (Jan. 12, 1990); Terek v. Ohio County Bd. of Educ., Docket No. 35-87-294-3 (July 20, 1988).

4. Grievant has failed to establish by a preponderance of the evidence that Respondent's change in its practice which previously prohibited athletic directors from coaching was contrary to any law, policy, rule, regulation, or written agreement.

Accordingly, this grievance is **DENIED**.

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

**Date: May 4, 2001** _____

**DENISE M. SPATAFORE**

**Administrative Law Judge**