LARRY MAYNARD,

Grievant,

v. **Docket No. 05-29-058**

MINGO COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

The grievant, Larry Maynard ("Maynard"), is employed by the respondent, Mingo County Board of Education ("BOE"), as a teacher at Williamson High School. He grieves "[n]ot being able to bid on head basketball positions at all high schools throughout the county being a full-time contract teacher." His request for relief is limited to "posting and bidding of Tug Valley High School and Williamson High School positions."

After a Level One conference, Maynard's supervisor issued a letter, dated January 13, 2005, denying this grievance at Level One both on the merits and on the grounds that it was not timely filed. By correspondence, dated January 15, 2005, Maynard appealed to Level Two, asserting that timeliness was not an issue because he was concerned with "12/17/04 forward." He also asserted that "[n]o substitute or teacher employed in another state should be employed over an interested Mingo County resident and contracted teacher for any extracurricular team."

An evidentiary hearing at Level Two was held on February 3, 2005. Before the Level Two hearing was held, the position of head boys' basketball coach at Tug Valley High School had been vacated and posted. Maynard applied for this position but a selection had not been made as of the Level Two hearing. A written Level Two decision denying thegrievance was issued on February 17, 2005.

The upshot of the Level Two decision was that the grievance was untimely. Although Maynard did not file his grievance as the result of a specific incident, the Level Two evaluator attempted to

determine whether the grievance was timely by looking at Maynard's assertion that the two coaching positions he coveted should have been posted. If basketball coaching positions are posted, this must be done by mid-October, based on when basketball season begins. If the fact that the two positions were not posted is treated as the triggering event for filing a grievance on that issue, then Maynard needed to file his grievance within fifteen days of “mid-October.”

This grievance was not filed until December. This is more than fifteen days after *any* date in October. Because an education employee must file a grievance within fifteen days of the grievable event, the Level Two grievance evaluator reasoned that Maynard's grievance was untimely filed.

In addition, the Level Two decision stated that Maynard could not have prevailed on the merits because there was no vacancy in either of the two coaching positions that Maynard particularly wanted to have posted. Nor could Maynard cite any legal authority to support his proposition that coaching positions filled by substitute teachers should be posted each school year.

Maynard exercised his right to forego Level Three of the grievance process. Instead, he submitted a Level Four appeal to the West Virginia Education and State Employees Grievance Board (“the Grievance Board”). A Level Four evidentiary hearing was held in the Grievance Board's offices in Charleston on April 7, 2005. Maynard represented himself. BOE was represented by attorney Howard E. Seufer, Jr. The parties agreed that, if they chose to do so, they would submit proposed findings of fact and conclusions of law on or before April 21, 2005. BOE submitted its proposed findings and conclusions from Level Two. No post-hearing submission was received from Maynard. This action matured for decision on April 21, 2005.

As discussed more fully below, it appears that Maynard has failed to state a grievable claim. Therefore, this grievance must be denied.

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

Findings of Fact

1 1. Maynard is a regular, full-time teacher who was first employed by BOE in the fall of 2003.

2 2. Curt Fletcher (“Coach Fletcher”) has served continuously as the head coach for boys' basketball at Williamson High School (“WHS”) since he was first appointed several years before Maynard became a BOE employee.

3 3. Coach Fletcher's position as head coach for boys' basketball at WHS has not been vacant since Maynard became a BOE employee.

4 4. At the time he was awarded the coaching position, Coach Fletcher was a full- time teacher at WHS. Although he has retired from full-time teaching, Coach Fletcher is still employed by BOE as a substitute teacher.

5 5. Roger Harless ("Coach Harless") was serving as the head coach of boys' basketball at Tug Valley High School ("Tug Valley") at the time Maynard was hired. Coach Harless continuously served in that capacity until after the Level One decision was issued in this grievance. 6 6.

Coach Harless was a substitute teacher at the time he received the coaching position at Tug Valley.

7 7. Shortly after the Level One decision was issued in this grievance, Coach Harless resigned from his position as head coach for boys' basketball at Tug Valley, citing health issues.

8 8. When it was subsequently posted, Maynard applied for the Tug Valley coaching position that had been vacated by Coach Harless.

9 9. Coach Fletcher and Coach Harless remained under continuing contract for their respective coaching positions from school year to school year.

10 10. At the time this grievance was filed, Coach Fletcher had held the head coach position since in or about the 1999-2000 school year or the 2000-2001 school year. Prior to that he had served as the assistant boys' basketball coach for approximately 16 or 18 years.

11 11. At the time this grievance was filed, Coach Harless had held the head coach position at Tug Valley since in or about the 1998-1999 school year.

Discussion

The gravamen of this grievance is that Maynard takes issue with the BOE policy that allows substitute teachers to receive coaching assignments. Maynard argues that, because Coach Fletcher and Coach Harless were both substitute teachers, their assignments should have been posted annually between mid-September and mid-October and, if any regularly employed, full-time teachers applied for the coaching positions, the substitute teachers should have been displaced as coaches.

Maynard does not cite any statute, policy, rule, regulation or other legal authority forthe proposition that, because the incumbent coaches were substitute teachers, their coaching assignments should have been posted annually and awarded to any regularly employed full-time

teacher who might apply. Under BOE's Policy 814.01, “Employment of Coaches,” a coaching position must be posted annually if it is filled by a “citizen coach.” This is someone who is not otherwise employed by BOE as a teacher and only holds a temporary authorization to coach. This provision is inapplicable to substitute teachers, such as Coach Fletcher, who hold coaching positions.

There is not really a grievable event at the heart of Maynard's complaint. This is not a case in which the grieving party applied for a position and it was awarded to someone else. As noted, Maynard just wants the Grievance Board to compel BOE to manage its affairs in a manner that comports with Maynard's perception of how things should be done. As such, this is not properly a grievance, which is defined as a claim by an employee or employees

> alleging a violation, a misapplication or a misinterpretation of the statutes, policies, rules, regulations or written agreements under which such employees work, including any violation, misapplication or misinterpretation regarding compensation, hours, terms and conditions of employment, employment status or discrimination; any discriminatory or otherwise aggrieved application of unwritten policies or practices of the board; any specifically identified incident of harassment or favoritism; or any action, policy or practice constituting a substantial detriment to or interference with effective classroom instruction, job performance or the health and safety of students or employees.

W. Va. Code § 18-29-2(a). It is not necessary to analyze the foregoing definition in detail to realize that Maynard has not made any allegation that properly falls within the scope of what constitutes a grievance.

Maynard obviously disapproves of BOE's practice in employing substitute teachersto fill coaching positions. However, his disapproval of such management decision, standing alone, does not provide a viable predicate for a grievance. “'A grievant's belief that his supervisor's management decisions are incorrect is not grievable unless these decisions violate some rule, regulation, or statute, or constitute a substantial detriment to, or interference with, the employee's effective job performance or health and safety.'” *Viski v. Preston County Bd. of Educ.,* Docket No. 99-39-271 (November 30, 1999)(quoting *Rice v. Div. of Highways*, Docket No. 96-DOH-247 (Aug. 29, 1997)).

As noted, Maynard has not alleged that the practice with which he takes issue violates any rule, regulation, statute, or other controlling legal authority. Nor has he alleged that BOE's practice is a detriment to, or interfered with, his job performance, his health, or his safety.

The Grievance Board is vested with authority to dismiss a grievance “if no claim upon which relief can be granted is stated or a remedy wholly unavailable to the grievant is requested.” W. Va. Code St. R. § 156-1-4.12 (2004). Because Maynard has failed to state a claim, this action is subject to

dismissal. There is nothing upon which Maynard can prevail. Therefore, this action must be denied.

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. The Grievance Board is vested with authority to dismiss a grievance "if no claim upon which relief can be granted is stated or a remedy wholly unavailable to the grievant is requested." W. VA. CODE ST. R. § 156-1-4.12 (2004).

2 2. Maynard has failed to state a claim that falls within the definition of a grievance, as set forth in West Virginia Code section 18-29-2(a).

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mingo 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 to such 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 27, 2005

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JACQUELYN I. CUSTER

Administrative Law Judge