LAWRENCE E. WRIGHT,
Grievant,

v. **DOCKET NO. 05-26-367**

MASON COUNTY BOARD
OF EDUCATION,
Respondent.

DECISION

Grievant Lawrence Wright filed a grievance on March 21, 2005, claiming he should have been selected for a softball coach position, and seeking to be put in that job.

After being denied at the lower levels, a level four hearing was held in the Grievance Board's Charleston office on November 7, 2005. Grievant was represented by Susan Hubbard of the West Virginia Education Association, and Respondent was represented by counsel, Gregory W. Bailey of Bowles Rice McDavid Graff & Love LLP. The matter became mature for decision on December 9, 2005, the deadline for submission of the parties fact/law proposals.

Issues and Arguments

Grievant claims he was more qualified than the applicant who received the position he seeks, and that he was not selected as a result of discrimination. He claims Respondent changed the criteria for selecting the successful candidate after he was initially selected for the job. Respondent contends it made the proper choice based on its written policy for filling these types of jobs, and that Grievant did not submit a complete application. It

claims Grievant's name was initially recommended in error, and the error was corrected before he was recommended to the Board.

Based on a preponderance of the evidence adduced at the hearing, I find the following material facts have been proven:

Findings of Fact

1. Grievant has been employed by the Mason County Board of Education (MCBOE) for 24 years, and is a classroom teacher at Wahama Junior/Senior High School.

2. MCBOE posted a position for a girls' softball coach at Point Pleasant High School (PPHS), for which Grievant and another employee, Tracy Price, applied.

3. Grievant had previously served as the head girls' softball coach at PPHS for nine years. He has also coached football and girls' and boys' basketball. In all, he has twenty years of coaching experience.

4. Ms. Price is a substitute teacher, and had been Grievant's Assistant Coach when he last coached softball. She also played softball at PPHS while Grievant was coaching. She had a total of one year of coaching experience.

5. Vana Boardman is the Director of Personnel for MCBOE. Under an old version of MCBOE Policy 807, which addresses employment of coaches and assistant coaches, the applicant with the most coaching experience was selected. Following this policy, Ms. Boardman caused Grievant's name to be placed on the Board's agenda for placement in the position. His name was removed from the agenda after Ms. Price's father called her and asked her why the new policy had not been followed.

6. In August 2003, the Policy was changed by the Board, so Ms. Boardman was following the dictates of an outdated policy. Under the new policy, "Coach selection recommendations shall be based upon information related to the categories covered in the

letter of application and other information relevant to the applicant's coaching ability learned about the applicant during interviews with the applicant. . . . *[L]ongevity and winning are not the only important considerations in selecting a coach*." (Emphasis supplied.) The policy further requires all candidates to submit a timely letter of application that shall include:

- Descriptions of any college courses in coaching theory and techniques;
- Descriptions of any sports clinics, coaches' conferences, workshops or professional meetings attended;
- Descriptions of prior service as a coach, including community coaching, student coaching or youth league coaching;
- Description of prior participation in organized sports at high school level or above; and
- Descriptions of all coaching experience of any sport at any level.

7. Ms. Price timely submitted a detailed letter of application. Grievant did not.

8. On February 15, 2005, Ms. Boardman sent Grievant a letter informing him of his interview date and time, and in the letter she reproduced verbatim the application letter requirement contained in Policy 807. Mr. Wright acknowledged to the interview committee that he had received this letter, but did not provide the required information. Although Grievant, like Ms. Boardman, was not aware of the policy change at the time he made his application, Ms. Boardman informed him verbally of the requirements several days before sending him the same information in writing.

9. Ms. Price was sent the same letter on the same day, and had just as much time to prepare for the interview as Grievant. Although Grievant complained that he did not have time to prepare an application letter because his mother was ill, he did not ask for an alternate interview date.

10. Grievant was, by all accounts, a successful coach with no negative evaluations. He had a record of championship seasons and he works well with booster clubs.

11. Grievant was given an opportunity to prepare and submit a letter of application after the interview, but it was uninformative and basically just disputed that he had been able to take the same college courses in coaching that Ms. Price took, because they were not taught when he went to school. He did not explain why he was unable to take them after they became available.

12. Ms. Price's application letter detailed her softball experience, including camps, clinics and summer league coaching.

13. An interview committee consisting of Ms. Boardman and PPHS' Principal and Assistant Principal drafted five interview questions to be asked of both candidates, reviewed the applications and the applicants' personnel files, and interviewed each. The committee unanimously recommended Ms. Price, finding her most qualified according to the requirements of Policy 807.

14. According to the interviewers, Ms. Price outperformed Grievant in the interview portion of the process, appearing more motivated to get the position, answering questions in more detail, and providing answers that indicated a more student-centered approach to coaching.

Discussion

At first blush, this would seem a simple case – Respondent hired a substitute teacher with 1 year of assistant coaching experience instead of a teacher with over 20 years of very successful coaching experience. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion

of school personnel.[1] This Grievance Board has previously determined that the provisions of W. VA. CODE § 18A-4-7a are not applicable in the selection of professional personnel for extracurricular assignments.[2] The standard of review for filling coaching positions is to assess whether the Board abused its broad discretion in the selection or acted in an arbitrary or capricious manner.[3]

A grievant must therefore prove by a preponderance of the evidence that he would have been hired but for an arbitrary and capricious decision or an abuse of discretion by the board of education.[4] "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not."[5]

MCBOE has a valid policy in place that dictates how, in the absence of statutory guidance, coaching positions should be filled, and this policy also dictates what information an applicant must submit to be considered. "An administrative body must abide by the remedies and procedures it properly establishes to conduct its affairs."[6] Although Grievant argues he never went through this process before when he was hired as a coach, the evidence clearly shows the policy had recently been revised, and was so new that even the

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[1]*Dillon v. Bd. of Educ. of County of Wyoming*, 177 W. Va. 145, 351 S.E.2d 58 (1986).

[2]*Hall v. Mingo County Bd. of Educ.*, Docket No. 95-29-529 (Mar. 28, 1996).

[3]*Dillon, supra.*; *Chaffin v. Wayne County Bd. of Educ.*, Docket No. 92-50-398 (July 27, 1993).

[4]*See*, W. VA. CODE § 18-29-6, 156 W. Va. C. S. R. 1 § 4.21.

[5]*Leichliter v. W. Va. Dep't of Health and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

[6]*Morris v. Kanawha County Bd. of Educ.*, Docket No. 99-20-200 (July 27, 1999).

Personnel Director was unaware of the changes. MCBOE was obligated to follow the procedure it established instead of using the old way of doing things.

Under the old policy, there is no question Grievant would have been placed in the position. However, the new policy looks beyond those base requirements, and expressly states "longevity and winning are not the only important considerations in selecting a coach." It requires the applicant to invest in the application process by providing details and explanations to support his or her job bid. It requires the selection committee to evaluate the whole applicant. The new process takes into account objective factors such as résumé, training, and experience, but also allows for subjective judgment based on interview performance and attitude.

Whether or not Grievant knew of the policy change at the time he made his application is of little import. Ms. Boardman informed him verbally and in writing of the application letter expectation, and advised him he could find Policy 807 on line. He was unambiguously told of the requirement six days prior to his interview. The information contained in the letter of application becomes part of the basis for the hiring decision. In this case, given Grievant's coaching experience, no doubt the interviewers already knew most of the information sought. However, the policy requires the applicant to submit the information in writing, and grievant indisputably did not do this. While Ms. Price's application lacked documentation of the type of substantial experience Grievant has gained, Grievant's application was lacking in an important fundamental application requirement. It was not unreasonable for the interview committee to take this into consideration.

Unanimously, the interviewers felt Ms. Price far outperformed Grievant in the interview portion of the application process. Her answers to the questions were considered

more precise and "student friendly." Grievant, on the other hand, surprised the committee by failing to provide the needed application letter, and his answers to the interview questions were less to the point and sometime repetitive. When he was asked about the letter, he at first acted like he did not know about it, and when he was given an opportunity to prepare one, it was uninformative and incomplete.

MCBOE made a coach selection based on the subjective and objective criteria contained in its coach selection policy. All the factors required to be considered by the policy were considered. The evidence does not support Grievant's case that the choice, while counterintuitive, was arbitrary and capricious or an abuse of discretion.

Grievant also claimed he was discriminated against. "W. VA. CODE § 18-29-2(m) defines 'discrimination' as 'any differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing by the employees.'"[7] In order to establish a claim of discrimination, an employee must establish by a preponderance of the evidence:[8]

> (a) that he or she has been treated differently from one or more similarly-situated employee(s);
>
> (b) that the different treatment is not related to the actual job responsibilities of the employees; and,
>
> (c) that the difference in treatment was not agreed to in writing by the employee.

Grievant has not met his burden of proving this issue, because has shown no difference in treatment. Both he and Ms. Price were given the same information about the policy, were subjected to the same policy requirements, and interviewed and evaluated in

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[7] *Hogsett, et al., v. Wayne County Bd. of Educ.*, Docket No. 01-50-056 (Apr. 5, 2001).

[8] *The Board of Education of the County of Tyler v. White*, 605 S.E.2d 814 (W. Va. 2004).

the same way. His argument that he could not be required to have played softball in school because there was no such opportunity, as compared to Ms. Price's experience, seeks to divert attention away from the actual treatment of the candidates in the application process. Using the same logic, only one year of his coaching experience would be counted, because Ms. Price had not had the opportunity to gain that much experience due to her age. In any event the argument speciously restates the policy – Grievant is not required to participate in girls softball, only "organized sports." There is no requirement that particular or extra weight be given to experience playing the sport coached.

The following Conclusions of Law support this decision:

Conclusions of Law

1. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. *Dillon v. Bd. of Educ. of County of Wyoming*, 177 W. Va. 145, 351 S.E.2d 58 (1986). This Grievance Board has previously determined that the provisions of W. VA. CODE § 18A-4-7a are not applicable in the selection of professional personnel for extracurricular assignments. *Hall v. Mingo County Bd. of Educ.*, Docket No. 95-29-529 (Mar. 28, 1996); *Foley v. Mineral County Bd. of Educ*. Docket No. 93-28-255 (Oct. 29, 1993); *Smith v. Logan County Bd. of Educ.*, Docket No. 91-23-040 (July 31, 1991).

2. The standard of review for filling coaching positions is to assess whether the Board abused its broad discretion in the selection or acted in an arbitrary or capricious manner. *Dillon, supra*; *Chaffin v. Wayne County Bd. of Educ.*, Docket No. 92-50-398 (July 27, 1993).

3. A grievant must therefore prove by a preponderance of the evidence that he would have been hired but for an arbitrary and capricious decision or an abuse of

discretion by the board of education. *See*, W. VA. CODE § 18-29-6, 156 W. Va. C. S. R. 1 § 4.21. "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 and Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the party bearing the burden has not met its burden. *Id.*

4. "An 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)." *Morris v. Kanawha County Bd. of Educ.*, Docket No. 99-20-200 (July 27, 1999).

5. Grievant has not met his burden of proving MCBOE's selection of Ms. Price for the coaching job in question was arbitrary and capricious or an abuse of discretion.

6. "W. VA. CODE § 18-29-2(m) defines 'discrimination' as 'any differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing by the employees.'" *Hogsett, et al., v. Wayne County Bd. of Educ.*, Docket No. 01-50-056 (Apr. 5, 2001).

7. In order to establish a claim of discrimination, an employee must establish a prima facie case of discrimination by a preponderance of the evidence. In order to meet this burden, the Grievant must show:

> (a) that he or she has been treated differently from one or more similarly-situated employee(s);
>
> (b) that the different treatment is not related to the actual job responsibilities of the employees; and,
>
> (c) that the difference in treatment was not agreed to in writing by the employee.

The Board of Education of the County of Tyler v. White, 605 S.E.2d 814 (W. Va. 2004); *Frymier v. Glenville State College*, Docket No. 03-HE-217R (Nov. 16, 2004).

8. Grievant has not proven he was discriminated against.

For the foregoing reasons, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mason County. Any such appeal must be filed within thirty 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.

January 9, 2006

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M. Paul Marteney
Administrative Law Judge