R. "SKIP" BALL & DALE LEE,

Grievants,

v. **Docket No. 05-27-431**

MERCER COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

R. "Skip" Ball and Dale Lee ("Grievants"), employed by the Mercer County Board of Education ("MCBE") as teachers, filed a level one grievance on July 26, 2005, in which they alleged that a teacher from Fayette County had been employed as a coach in Mercer County in violation of W. Va. C.S.R. 127-3-6.2. For relief, they requested instatement as the Head Boys' Basketball Coach at Princeton Senior High School, with back pay and benefits, or that the position be offered to the next highest ranking candidate. Grievant's immediate supervisor lacked authority to grant the requested relief. The grievance was denied following hearings at levels two and three. Upon appeal to level four, Grievants' WVEA Consultant Ben Barkey and MCBE counsel John H. Shott, agreed to submit the grievance for decision based on the lower-level record. The matter became mature for decision upon receipt of proposed findings of fact and conclusions of law on or before November 15, 2005.

The following facts have been derived from a preponderance of the credible evidence made part of the record at level two.

Findings of Fact

1. Grievants have been employed by MCBE as teachers at all times pertinent to this grievance.

2. In late Spring 2005, MCBE posted a vacancy for the position of Boys' VarsityHead Basketball Coach at Princeton Senior High School.

3. Grievants applied for the position; however, John Flournoy was the successful applicant.

4. At the time of his employment by MCBE, Mr. Flournoy was a professional employee of the Fayette County Board of Education ("FCBE").

5. Prior to Mr. Flournoy signing a contract with MCBE, approval for his employment as a coach was obtained from the Fayette County Board of Education.

Discussion

As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2004); 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. "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).

Grievants argue that MCBE employed Mr. Flournoy without the consent of either board of education, in violation of Secondary Schools Activity Commission ("SSAC")Regulations, Section 6.2, which states:

A member of a faculty shall be considered one who is a full-time teacher as defined by the West Virginia Department of Education. A member of a faculty in one school may coach in another school provided that it meets with the approval of the said county board of education or two different countyboards of education. (See footnote 1)

MCBE asserts that while the regulation requires approval of both boards of education before an employee may accept employment as a coach in another county, there is no required procedure for obtaining approval, or mandate that the approval be secured in advance of the applicant being approved for the position. MCBE argues that it acted consistent with the regulation by obtaining the approval of FCBE prior to Mr. Flournoy signing an employment contract.

Grievants offer no reason for why they believe the approval should have been obtained before MCBE voted to approve Mr. Flournoy's employment, nor do they provide any authority which would support their claim. MCBE met the requirement of obtaining approval from FCBE before Mr. Flournoy signed his coaching contract, in compliance with the regulation. Grievants have failed to prove that MCBE acted in violation of the regulation.

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

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. &

State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2004); 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. Grievants have failed to prove that MCBE acted in violation of the SSAC Regulations when it employed a teacher from another county to fill the post of Boys' Varsity Basketball Coach.

Accordingly, the grievance is **DENIED.**

Any party may appeal this decision to the Circuit Court of Kanawha County or Mercer 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 W. Va. Code § 29A-5-4(b) to serve acopy 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: JANUARY 20, 2006

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SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1 *The question of whether the Grievance Board has jurisdiction in matters relating to SSAC regulations was not raised, and need not be addressed, due to the outcome in this case.*