**THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

**STEPHEN E. STOFFEL, JR.**
**Grievant,**

**v.** **Docket No. 2010-0769-CONS**

**KANAWHA COUNTY**
**BOARD OF EDUCATION**
**Respondent.**

## DECISION

Grievant Stephen E. Stoffel, Jr. filed two separate grievances. On August 7, 2009, Grievant filed the first grievance stating, "Claimant/Grievant was not allowed to interview for the head coaching position at Herbert Hoover H.S. although he was clearly the most qualified person." His requested relief was, "Declaratory ruling and placement as head coach of the Herbert Hoover H.S. football team and attorneys [sic] fees and costs." This grievance was denied at level one. On November 9, 2009, Grievant then filed his second grievance stating, "Denied an interview for a vacant position. I applied timely but refused an interview." His relief sought was, "To gain the ability to interview & if selected obtain employment in the position. Back pay if successful for lost salary." The position referenced in this grievance is that of Head Wrestling Coach at Herbert Hoover High School.

At the level one hearing on the second grievance, the parties determined the issues were the same, and requested these two cases be consolidated. After these cases were mediated at level two, the two grievances were consolidated on December 18, 2009. A level three hearing was held at the Grievance Board's Charleston office on January 7, 2010. Grievant was represented by Michael T. Clifford, Esq. and Rosemary Jenkins, AFT-WV/AFL-CIO. Respondent was represented by James W. Withrow, Esq. This case

became mature on February 5, 2010, upon the parties' submissions of their proposed findings of fact and conclusions of law.

## Synopsis

Grievant applied for the positions of head football coach and head wrestling coach at Herbert Hoover High School. However, Respondent denied him interviews for the positions because Grievant's father is the Athletic Director for the school, and as such, Grievant's father is charged with general oversight of the school's athletic programs. Grievant's father is also charged with evaluating the coaches. Respondent asserts permitting Grievant to interview for the coaching positions violates its anti-nepotism policy. Grievant argues Respondent's decision to not allow him to interview is arbitrary and capricious. Grievant also avers he has been a victim of discrimination.

Grievant has not met his burden of proof in this matter. Therefore, this grievance is DENIED.

## Findings of Fact

1. Grievant is employed at Herbert Hoover High School as a classroom teacher and has been so employed since 2002.

2. Eric Stoffel, Sr., Grievant's father, is also employed at Herbert Hoover High School as both a teacher and Athletic Director. He has been Athletic Director since 1995.

3. In May 2009, Respondent posted a position for head football coach. Grievant and five others applied for the position.

4. In May 2009, all applicants, except Grievant, were interviewed by a selection committee. Included on that committee was Grievant's father.

5. Grievant was denied consideration for employment in the position based on the county anti-nepotism policy.

6. In November 2009, Grievant applied for the position of head wrestling coach at Herbert Hoover High School.

7. Only one other person besides Grievant applied. The other person was offered the position, but declined it.

8. The position of head wrestling coach was then advertised again. This time Grievant was the only person who applied.

9. Grievant was denied consideration for employment in the position based on the county anti-nepotism policy.

10. Respondent placed Grievant's father, Mr. Stoffel, Sr., as interim wrestling coach.

11. On or around June 1, 2009, Respondent changed the job description for Athletic Director, and increased the salary for the position. In conjunction with the increased salary, the duties and responsibilities of the Athletic Director have increased. Among the duties outlined in the job description are the organization and administration of the overall athletic programs of the school, preparation and administration of the athletic budget of the school, supervision of fund raising activities of the athletic programs, assisting in the supervision and evaluation of all coaching staff, and supervision to ensure all state, county, and school policies and rules are followed.

10. During the 2008-2009 school year, the Athletic Director conducted evaluations of the coaches at Herbert Hoover High School.

## Discussion

This grievance does not challenge a disciplinary action, so Grievant bears the burden of proof. Grievant's allegations must be proven by a preponderance of the evidence. *See* W. VA. CODE § 18-29-6; 156 C.S.R. 1 § 3. "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.*

Kanawha County Board of Education Policy Series G60 § 60.03, states:

> No person, either by new hire, transfer, reassignment, or assignment as a substitute, shall be placed in any position in which he or she may directly or indirectly supervise or be directly or indirectly supervised by a member of the immediate family of the employee.

The policy at § 60.02.1 defines immediate family to include parent. The question then becomes whether the Athletic Director supervises, either directly or indirectly, the two positions for which Grievant applied.

Kanawha County Board of Education Policy Series G60 § 60.02.2 defines Direct Supervision as:

> Means the authority to direct, recommend scheduling or formally evaluate daily work activities. For the purpose of this definition, principals, assistant principals, lead teachers and department heads shall be regarded as supervisors of all subordinate employees assigned to the school. Also for purposes of this policy, classroom teachers and bus operators shall be regarded as supervisors of aides who are assigned to attend to students within such teacher's classroom or who ride such bus operator's bus.

Pursuant to § 60.02.3 Indirect Supervision:

> Means an employee is in the direct chain of command between the immediate supervisor of a member of the immediate family and the Superintendent. The prohibition of indirect supervision shall not apply to positions requiring instructional certificates. Also the prohibition of indirect supervision shall not apply to the Superintendent of Schools or to members of the Board of Education.

With the change in the Athletic Director's duties, it is clear to the undersigned that Mr. Stoffel, Sr. directly supervises head coaches. The Athletic Director is responsible for conducting all the evaluations of the head coaches. Grievant argues that the Athletic Director's job description says he is to "Assist in supervision and evaluation of all coaching staff in cooperation with school principal." He asserts that based on this language, the Principal could actually conduct Grievant's evaluation, should he be head coach. However, the job description states that the Athletic Director is to supervise all the athletic program staff in cooperation with the school principal. It also states that his job goal is to coordinate the athletic extracurricular programs. It would not be proper to carve out an exception for Grievant.

Clearly, for Grievant to be head coach of a sport would violate the county's nepotism policy, so long as Grievant's father remains Athletic Director. Grievant also asserts that back in 2007, this Grievance Board granted in part a grievance thereby allowing Grievant to fill the position of assistant baseball coach while Mr. Stoffel, Sr. was Athletic Director. *Stoffel, Jr. v. Kanawha County Board of Education*, Docket No. 07-20-057 (Sept. 5, 2007). There are two distinctions that Grievant appears to have overlooked. The first is that Grievant was put in the position of assistant coach, not head coach. The second, and most important, is that at the time of this decision, the job duties for Athletic Director were very different. The Administrative Law Judge denied placing Grievant as assistant football

coach because his father was head coach and as such, would be Grievant's supervisor. With the change in duties for Athletic Director, Grievant finds himself in the same position. Therefore, the decision rendered in 2007 does not support Grievant's contentions.

Grievant also asserts he has been a victim of discrimination. "Discrimination" is defined by statute as "any differences in the treatment of similarly situated employees, unless the differences are related to the actual job responsibilities of the employees or are agreed to in writing by the employees." W.VA. CODE § 6C-2-2(d). In order to establish either a discrimination or favoritism claim asserted under the grievance statutes, an employee must prove:

> (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.

*Frymier v. Higher Education Policy Comm.*, 655 S.E.2d 52 (2007); *See Bd. of Educ. v. White*, 216 W.Va. 242, 605 S.E.2d 814 (2004); *Chadock v. Div. of Corr.,* Docket No. 04-CORR-278 (2005).

Grievant did not present any evidence concerning an employee in a similar situation. Therefore, he has not met his burden on the issue of discrimination.

This grievance must be DENIED.

**Conclusions of Law**

1. This grievance does not challenge a disciplinary action, so Grievant bears the burden of proof. Grievant's allegations must be proven by a preponderance of the

evidence. *See* W. VA. CODE § 18-29-6; 156 C.S.R. 1 § 3. "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.*

2. Respondent's nepotism policy prohibits direct or indirect supervision by an immediate family member. *Kanawha County Board of Education Policy Series G60.*

3. Grievant was not permitted to interview for the positions of head football coach and head wrestling coach because to hire Grievant for either position would violate Respondent's nepotism policy. *Kanawha County Board of Education Policy Series G60.*

4. In order to establish either a discrimination or favoritism claim asserted under the grievance statutes, an employee must prove:

> (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.

*Frymier v. Higher Education Policy Comm*., 655 S.E.2d 52 (2007); *See Bd. of Educ. v. White*, 216 W.Va. 242, 605 S.E.2d 814 (2004); *Chadock v. Div. of Corr.,* Docket No. 04-CORR-278 (2005).

5. Grievant did not prove discrimination.

6. Grievant did not meet his burden of proving the nepotism policy did not apply to him.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. *See* W. VA. CODE § 6C-2-5. Neither the West Virginia Public 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 Civil Action number should be included so that the certified record can be properly filed with the circuit court. *See also* 156 C.S.R. 1 § 6.20 (2008).

**DATE: April 29, 2010**

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**Wendy A. Elswick**
**Administrative Law Judge**