



Members
James Paul Geary
Orton A. Jones
David L. White

**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

ARCH A. MOORE, JR.
Governor

Offices
240 Capitol Street
Suite 508
Charleston, WV 25301
Telephone 348-3361

MELINDA COOK

v.

LOGAN COUNTY BOARD OF EDUCATION

DOCKET NO. 23-86-076

DECISION

Grievant, Melinda Cook, is employed as a guidance counselor at Logan Junior High School and holds a professional teaching certificate. She has been employed by the Logan County Board of Education for over eight years both as a physical education teacher and guidance counselor and has also served as a cheerleader coach-sponsor at Logan Junior High School for three years. She had previously been a physical education teacher at Winfield High School in Putnam County for four years where she also served as cheerleader coach-sponsor of the Junior High cheerleading team.

On June 7, 1985, an opening for cheerleader coach-sponsor at Logan High School was posted, noting that the applicant must hold a professional certificate and that the job provided a supplement of \$600.00 per year. On June 13, grievant made

written application for the position as did three other applicants. On June 23, Superintendent Sentelle recommended that Debbie Parks, a secretary at Logan High School who had held the position for three years, continue in that position and on June 27, the Board of Education concurred.

On June 28, grievant filed a grievance questioning the appointment of Mrs. Parks and submitted the grievance to the principal, Mr. Esposito, who waived it to level two, the Superintendent. There was no evidentiary hearing and Mr. Akers, Assistant Superintendent, responded by referring to a letter Dr. Sentelle had written grievant on July 2 that seniority applied to "classroom teachers" only and not to coaching positions.¹ Grievant requested but did not receive a hearing before the Board of Education. Sometime during this period, the Secondary Schools Activities Commission (SSAC) advised the school board that the reappointment of Mrs. Parks would be contrary to SSAC rules and regulations because she did not hold a professional certificate. Accordingly, Mrs. Parks was relieved of her duties and the position was

¹ In the letter Dr. Sentelle also advised grievant that Mrs. Parks was qualified and had demonstrated her abilities; that there had been other applicants and at least one had seniority over the grievant (Grievant's exhibit No. 2). SSAC considers a cheerleader coach-sponsor position as a "coaching position."

reposted on July 9.²

Grievant thereupon filed another grievance contesting the reposting of the position and alleging that she was being harassed because of the "situation concerning my husband, (Rick Cook, suspended Head Basketball Coach at L.H.S.)" On July 18, Mr. Akers responded that the State Department of Education had informed the Board that the position could be reposted and concluded that the grievance was without merit; he did not address the allegations of favoritism, harassment and violation of seniority rights and no evidentiary hearing was conducted.

By letter dated July 31, the principal at Logan High School, Ms. Cosma Crites, designated Mrs. Brenda Skibo as cheerleader advisor at Logan High and advised her that she would be assisted by Mrs. Deborah Parks. Mrs. Crites testified that she had discussed the designation with Dr. Sentelle prior to informing Mrs. Skibo and had acted on her own because she was without a coach-sponsor and wanted to get the cheerleader program underway at Logan High. She had known Mrs. Skibo for fifteen (15) years and knew that she did good work.

² Mr. Akers stated that Mr. Sam Williams of the SSAC had given a written waiver previously and the school officials were not aware that it was not a continuing waiver until Mr. Williams advised them that it was only for the 1983-84 school year. Mr. Akers also testified that the position was reposted because the Board split 2-2 on the selection and also to solicit applicants from Logan High because there had been problems with teachers at one school coaching at another school.

Mrs. Skibo, head of the business department at Logan High School, had been a cheerleader for four years but had never served as a sponsor-coach. She worked with Mrs. Sigmond when Sigmond had been sponsor-coach and has served as a judge in cheerleading competition.³ As far as she knows, the board has not formally acted upon her appointment but she believes she has an extra-curricular contract with the board for the sponsor-coach position; she is paid by the board for her services.

At the hearing before the hearing examiner on February 4, 1986, the grievant contended that the entire selection process by which Mrs. Parks was initially selected for the position, the subsequent reposting and the designation of Mrs. Skibo was violative of her rights, of the duties placed upon Board officials in selection of applicants for such positions and predicated upon harassment and/or reprisal because of the circumstances of her husband, Rick Cook.⁴

³ Mrs. Skibo had not applied for the position the first time it had been posted in June because Mrs. Sigmond had applied; she applied when it was reposted in July and Mrs. Sigmond did not apply.

⁴ The original selection process, the reposting and the situation of her husband with the Logan County officials was the basis of her allegations of harassment; she testified to no threats or other specific instances of harassment. Grievant relies, in part, on a January 25, 1984 interpretation of the State Superintendent of Schools that a Board is not obligated to fill a teaching vacancy it has posted but that if it decides not to fill it then it should be abolished.

The employer, on the other hand, contends that while the situation of her husband was a slight factor considered, the major controversy over the cheerleader sponsor position did not arise on that basis; that the board did not feel that it had done anything wrong in selecting Mrs. Parks because of the waiver from SSAC; that seniority in coaching positions has always been a problem and is not considered in selection of applicants unless two applicants have the same qualifications; that Tom McNeel, State Superintendent of Schools, had advised the board that the job could be reposted as often as necessary; that sponsors had always been hired by principals in Logan County and that because Mrs. Skibo's salary was approved by the Board it had approved her appointment.⁵ Mr. Akers further testified that it is difficult to fill these coach-sponsor positions for the amount of money involved and that although it was extracurricular it was important that these sponsors be available during the day to work with the cheeleaders at the school.

⁵ Grievant contends that Code, 18A-2-7 gives the Superintendent the authority to assign school personnel subject to the approval of the board and that the appointment of Mrs. Skibo has never been formally approved by the Board. At the hearing, Mr. Akers advised the hearing examiner that a copy of Mrs. Skibo's contract would be provided but thereafter telephoned to advise that he could not locate it. Dr. Sentelle did not testify at the hearing and various aspects of this entire transaction are therefore obscured. However, it is assumed that no written contract was ever executed and the "presumption of regularity" cannot be used to fill the void as urged by counsel for the Board.

Code, 18A-4-16 requires that all extracurricular assignments shall be made only by mutual agreement of the employee and the superintendent, subject to board approval. This agreement is required to be in writing between the employee and the board of education and signed by both parties.⁶

In Smith v. Logan County Board of Education, No. 16761, decided by the West Virginia Supreme Court of Appeals on December 17, 1985, the Board had voted not to review the appellant's coaching contract for the 1985-86 school year and no prior notice had been given to appellant concerning that action. The first he learned of the action after it happened was in the local newspaper.⁷ Thereafter, the superintendent notified Smith by letter that the Board had voted to dismiss him as head football coach. No explanation for the action was given and on appeal the appellant contended, inter alia, that the circuit court erred in concluding that procedural protections were not applicable to the extracurricular contract.

⁶ Extracurricular duties are defined as any activities that occur at times other than regularly scheduled working hours, including coaching, chaperoning, escorting, etc., which occur on a regularly scheduled basis.

⁷ Grievant testified in the instant case that she first learned of the appointments of Debbie Parks and Brenda Skibo from the newspaper and that Dr. Sentelle had given conflicting statements either to the newspaper or in the correspondence to grievant. However, this newspaper article was not introduced into evidence and the weight to be afforded this testimony is limited.

The Court reversed the decision of the Circuit Court stating that:

"No part of West Virginia Code 18A-4-16 (1984 Replacement Vol.), indicates that the legislature intended to exempt those persons assuming duty for extracurricular activities from the protections generally attached to all other school personnel positions... Nothing in the 'separate contract' statute operates to deprive teacher-coaches of their procedural employment rights. The statute's intended purpose was to grant them additional protection by mandating that school boards could not assign teachers to coaching duties without their express consent, and more importantly, could not condition their teaching employment upon acceptance or continuation of coaching duties." (Emphasis in Original). (Neeley, J., Brotherton, J., dissenting).

The Court concluded that the procedural requirements of Code, 18A-2-7 and Code, 18A-2-8 clearly applied to all school personnel positions and that school board actions relating to contracts entered into pursuant to Code, 18A-4-16 were not exempt from such requirements.⁸

Applied to the instant case there is no valid reason that all of the procedural provisions applicable to other school personnel positions should not be applied to "coaching" positions since school personnel laws are to be strictly construed in favor of the employee. Hedrick v. Board of Education, 332 S.E.2d 109 (W.Va. 1985); Morgan v. Pizzino, 163 W.Va. 454, 256 S.E.2d 592, (1979). Other than the posting

⁸ Code, 18A-2-7 requires the superintendent to obtain the approval of the board in assigning personnel; Code, 18A-2-8 requires a board to notify an employee of the charges for which the employee is dismissed or suspended and afford opportunity for a hearing.

of the position herein it does not appear that any of the other applicable statutory provisions were followed in the filling of this position.⁹

Accordingly, the failure to comply with these provisions renders the process by which Brenda Skibo was selected as cheerleader sponsor-coach at Logan High School void and of no force and effect.

⁹ In Sharp v. Kanawha County Board of Education, Grievance No. 20-85-001, decided on December 27, 1985, by this hearing examiner, it was held that Code, 18A-4-8b was not limited to situations where the most senior applicants for a classroom teacher position was not selected but also applied to the selection of applicants for the position of principal where that selection would have amounted to a promotion. The Sharp decision was thereafter applied in Slade v. McDowell County Board of Education, Grievance No. 33-86-050, decided on January 31, 1986, which held that the applicant for a transfer to an assistant principalship was entitled to the position if that applicant was the most qualified and if the transfer would amount to a promotion. These decisions overruled the previous interpretation of the State Superintendent of Schools that Code, 18A-4-8b only applied to classroom teachers positions, relied upon by Superintendent Sentelle herein. The Sharp and Slade decisions have been appealed to the Circuit Courts of Kanawha and McDowell counties.

FINDINGS OF FACT

1. Grievant, Melinda Cook, has been employed for over eight years as a professional employee with the Logan County Board of Education.
2. Grievant has served as a cheerleader coach-sponsor at Logan Junior High School for three years and in a similar capacity at Winfield High School where she was a cheerleader coach-sponsor of the Junior High cheerleading team for four years.
3. Grievant applied for the position of cheerleader coach-sponsor at Logan High School along with three other applicants in June, 1985.
4. Grievant did not receive the appointment and the applicant that received the appointment, Debbie Parks, was ostensibly unqualified.
5. Grievant filed a grievance on June 28, 1985 concerning the appointment and requested but did not receive a hearing thereon.
6. The Secondary Schools Activities Commission advised the Logan County School Board of the illegality of the Parks appointment; the Board relieved Parks of her duties and reposted the position.
7. Grievant filed another grievance alleging harassment and/or the reposting of the position and requested but did not receive a hearing.

8. On July 31, 1985 the principal at Logan High School, after discussion with the Superintendent of Schools, designated Brenda Skibo as cheerleader advisor at Logan High School.

9. Mrs. Skibo has never served as a cheerleader sponsor-coach but has worked with a cheerleader sponsor-coach at Logan High School and has been a judge in cheerleading competition.

10. Mrs. Skibo does not have a written contract with the Logan County Board of Education but receives payment for this extracurricular activity; to her knowledge the Board has never formally acted upon her application. Similarly, there is no evidence that Mrs. Skibo's application has ever been submitted to the Board for approval.

11. There are no known specifications or qualifications for the position of cheerleader coach-sponsor other than that the employee must have a professional certificate.

12. There is insufficient evidence of harassment, etc., of grievant by the school officials as a result of the legal difficulties in which her husband is involved.

CONCLUSIONS OF LAW

1. Grievant was entitled to an evidentiary hearing on her grievance(s) within the school system of Logan County.

2. The reposting of the position subsequent to the disqualification of Debbie Parks was unnecessary and, under the circumstances, suspect since qualified applicants remained in contention.

3. The "designation" of Brenda Skibo by the principal of Logan High School was not authorized by law and in direct violation of Code, 18A-2-7.

4. The "designation" of Brenda Skibo was in direct violation of Code, 18A-4-16.

5. The "designation" of Brenda Skibo appears to be in violation of Code, 18A-4-8b.

6. There is insufficient probative evidence that the non-selection of grievant was motivated by "harassment" or "reprisal" or otherwise as a result of the controversy between grievant's husband and the Logan County Board of Education.

Upon remand, it is ordered that the Board of Education consider this situation as it existed on July 9, 1985, the date Debbie Parks was relieved of her duties. At that time, Wilma Zigmond and Melinda Cook were the only eligible applicants for the position and if grievant is the most qualified and most senior applicant and the selection will amount to a promotion, grievant is entitled to the position. If she is the most senior applicant and is not selected, she is entitled to a statement of reasons for her non-selection in accordance with Code, 18A-4-8b. In any selection process employed by the Board, the statutory provisions set out herein must be observed.

Either party may appeal this decision to the Circuit Court of Kanawha County or Logan County and such appeal must be filed within thirty days of receipt of this decision. (Code, 18-29-7) Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the Court.

A handwritten signature in cursive script, reading "Leo Catsonis", written over a horizontal line.

LEO CATSONIS
Hearing Examiner