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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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JERRY FOX

v.

Docket No. 07-86-245-1

CALHOUN COUNTY BOARD OF EDUCATION

DECISION

Grievant, Jerry Fox, has been employed by the Calhoun County Board of Education for nine years as an EMI special education teacher at Arnoldsburg Elementary. On June 11, 1986 he filed a grievance alleging that the posting and filling of a social studies teacher/varsity football coach position violated Code, 18A-4-16 and 18A-4-8b. A level two hearing was conducted on June 24 and a level three hearing on August 5, 1986; the request for a level four appeal was received on August 15, 1986.¹

¹ An evidentiary hearing was waived by the parties at level four and the matter submitted on the transcripts of evidence and the brief of the grievant. Counsel for the board of education waived the filing of a brief by letter dated October 7, 1986. References to these transcripts herein will be designated as (Level II, T. __) and (Level III, T. __).

Grievant has been certified in social studies and special education for nine years and in February, 1986 submitted an employee preference request form by which he sought a transfer to Calhoun County High School as a social studies teacher. He noted on the form that if no openings were available he wished to retain his current position. (Level II, T. 5; Grievant's Exhibit No. 1). Apparently, no action was taken on this request.

In the spring of 1986 grievant observed a posting on the bulletin board for a social studies teacher/varsity football coach at Calhoun County High School which set forth the responsibilities and qualifications therefor.² He telephoned Mr. Bonar, principal of Calhoun High School, and requested that he be considered for the social studies teacher position and advised that he was not interested in the coaching assignment. Mr. Bonar advised grievant that he would be placed on the list of applicants. (Level II, T. 6). Grievant later learned from the minutes of the board of education that Joe Gainer had been hired to fill the position and that there had been

² The qualifications were as follows:

"Meet the requirements for certification as a teacher as established by the West Virginia Department of Education."

The deadline was April 30, 1986 and applications were to be made to Robert Bonar, principal of Calhoun High School. (Grievant's Exhibit No. 2).

only two applicants, grievant and Joe Gainer. (Level II, T. 8). At that time Mr. Gainer was not an employee of the Calhoun County Board of Education and was employed in Virginia.

Grievant requested a list of reasons for his non-selection and by letter dated May 16, 1986 from Principal Bonar was informed that he was:

"...not recommended for the Social Studies opening at Calhoun County High School for the 1986-87 school year. The reason for this decision is your lack of experience teaching social studies at the secondary level."
(Grievant's Exhibit No. 3).

Mr. Bonar testified that the football coach and athletic director at Calhoun County High School resigned the first semester and he posted a notice of vacancy for a football coach on February 14, 1986 (Level II, T. 11; Bonar Exhibit No. 1). He interviewed a number of applicants during the spring and after the list of candidates had been narrowed he received a copy of an opinion of the State Superintendent of Schools requiring the teaching vacancy to be posted with the coaching position (Level II, T. 12).³ Mr. Bonar had talked

³ He stated that the reason he selected a social studies teacher position was based upon the applications he received which revealed that many coaches had social studies as a major or minor. He stated that he was posting a curricular area on the basis of his needs. (Level II, T. 12).

with Mr. Gainer on the February posting and knew that Mr. Gainer had been a high school social studies teacher for nine years at Clark County High School in Virginia and was willing to accept the coaching position. (Level II, T. 13).

A level three hearing was conducted before the Calhoun County Board of Education on August 5, 1986 at which hearing the transcript of evidence of the level two hearing was admitted into evidence.⁴ Mr. Ronald Blankenship, county superintendent of schools, testified that the February 14 vacancy for a football coach was posted locally and also advertised in all of the major newspapers throughout the State. There were nineteen candidates, including Mr. Gainer, and he interviewed Mr. Gainer on the same day that Mr. Bonar interviewed him. (Level III, T.8). He did not interview grievant. (Level III, T.18). The April posting for the social studies teacher/varsity football coach position was advertised probably in the Parkersburg and Charleston areas. (Level III, T.9). There were only two applicants responding to the April posting, i.e., grievant and Mr. Gainer. (Level III, T. 11).⁵

⁴ On motion of the WVEA representative the board of education recessed the hearing and read the transcript of evidence of the level two hearing. (Level III, T.5).

⁵ Mr. Bonar contended there were two postings - one posting for the football coach and a subsequent posting because of the State Superintendent's opinion. (Level II, T. 19, 20). Superintendent Blankenship contended the April posting was the same posting he originally made on February 14, 1986. (Level III, T. 13).

Grievant contends that it is improper to post a teaching position and an extra-curricular position together and that the school officials selected the coach they preferred and then tailored the teaching/coach position to fit Mr. Gainer's credentials.⁶ Grievant further contends that Code, 18A-4-8b requires that his seniority in social studies and special education be taken into account and that the reasons given by principal Bonar for his non-selection are inaccurate; that he was not selected because he was not interested in coaching football.

School officials relied upon an opinion of Tom McNeel, State Superintendent of Schools, dated March 6, 1986 for the posting and advertising of the April social studies teacher/varsity football coach position and contended that Mr. Gainer had been selected for his qualifications as a teacher first and on the extracurricular assignment as a secondary measure. (Level III, T. 21).

⁶ Grievant was relying upon a September 6, 1983 opinion of the Attorney General on the propriety of advertising a teaching position jointly with an extra-curricular position. The opinion concluded that it would be improper under Code, 18A-4-16(4), but that the willingness to perform extracurricular duties might be considered as a factor in hiring a person for a teaching position. (Grievant's Exhibit No. 4).

Code, 18A-4-16(4) (1984 Replacement Volume) provides that:

"An employee's contract of employment shall be separate from the extracurricular assignment agreement ... and shall not be conditioned upon the employee's acceptance or continuance of any extracurricular assignment proposed by the superintendent, a designated representative, or the board."

In addition to the foregoing the following specific findings of fact and conclusions of law are appropriate.

FINDINGS OF FACT

1. Grievant has been employed by the Calhoun County Board of Education for nine years and is certified in social studies and special education.
2. In February, 1986 he submitted an employee preference request form seeking a transfer to Calhoun County High School as a social studies teacher.
3. On February 14, 1986 the position of football coach was posted locally and widely advertised in major newspapers throughout the State. As a result thereof nineteen applicants responded and interviews were conducted by the Superintendent of Schools and principal of Calhoun High School. Mr. Joe Gainer was one of the applicants and was interviewed by the superintendent and principal.

⁷ This provision was enacted in response to the decision of State ex rel. Hawkins v. Tyler County Board of Education, 275 S.E.2d 908 (W.Va. 1980) which held, inter alia, that county boards could negotiate with teachers and place conditions, such as assumption of extracurricular duties, upon the employment of the teacher. Cf. Smith v. Logan County Board of Education, 341 S.E.2d 685, 688 (W.Va. 1985).

4. On March 6, 1986 the county superintendent and principal received an opinion of the State Superintendent of Schools which they interpreted as a requirement that the coaching position and a teaching position should be posted and advertised jointly. Accordingly, on April 23, 1986 a posting was made on the bulletin boards of the local schools and advertised in the Parkersburg and Charleston newspapers for a social studies teacher/varsity football coach at Calhoun High School. The qualifications were stated to be to meet the requirements for certification as a teacher as established by the West Virginia Department of Education.

5. Grievant requested that he be considered for the social studies teaching position but advised principal Bonar that he was not interested in the coaching assignment. Grievant was not interviewed for the position.

6. Principal Bonar and Superintendent Blankenship recommended Joe Gainer, an employee of Clark County High School in Virginia, for the position. Mr. Gainer was a varsity football coach and social studies teacher and was the only applicant other than grievant responding to the April notice.

7. Grievant was the most senior applicant and requested and received a list of reasons for his non-selection. Principal Bonar advised grievant that the reason was grievant's lack of experience teaching social studies at the secondary level.

8. From the evidence in this grievance it is apparent that the decision to employ Joe Gainer was made prior to the posting on April 23, 1986 and that the position styled "social studies teacher/varsity football coach" was created to conform to Mr. Gainer's credentials. The grievant was effectively deprived of a meaningful opportunity to bid upon and receive consideration for the position because of his refusal to consider the coaching assignment.

CONCLUSIONS OF LAW

1. Code, 18A-4-16(4) prohibits the posting and advertisement of a teaching position jointly with an extracurricular position.

2. School personnel regulations and laws are to be strictly construed in favor of the employee. Smith v. Board of Education of Logan County, 341 S.E. 2d 685 (W.Va. 1985).

For the foregoing reasons the grievance is granted and the posting is declared null and void. The employment of Joe Gainer is accordingly void as contrary to law and the position is deemed vacant.

Either party may appeal this decision to the Circuit Court of Kanawha County or Calhoun 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", is written over a horizontal line.

LEO CATSONIS

Chief Hearing Examiner

Dated: November 19, 1986