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VICTOR GIAMMERINO

v.

Docket No. 41-86-165-1

RALEIGH COUNTY BOARD OF EDUCATION

DECISION

On April 9, 1984 Victor Giammerino, Kenneth Ward and Charles Mancuso filed a grievance alleging that the principal of Liberty High School, Racine Thompson, Jr., had engaged in acts of harassment toward them and in acts of favoritism on behalf of Gary Copenhaver, another member of the coaching staff at Liberty High School. On December 14, 1984 an evidentiary hearing was commenced by the Raleigh County Board of Education but grievants left the hearing early because of what they perceived as unfair procedure. The board of education proceeded with the hearing and denied the grievance. On appeal the State Superintendent of Schools remanded the grievance to Raleigh County and an appeal was made to the Education Employees Grievance Board on April 11, 1986. Level four evidentiary hearings were conducted on June 2

and September 10, 1986.¹

At the outset of the hearing at level four, the representative of the board of education moved to dismiss the grievance on several grounds and also moved to sever the grievances. The motion to dismiss the grievance was taken under advisement and the motion to sever was granted. Accordingly, the grievances of Victor Giammerino and Charles Mancuso were heard separately.²

Mr. Giammerino has been employed by the Raleigh County Board of Education for approximately twenty years as a teacher/coach and has been at Liberty High School for several years. He has served as football and track coach and his track team

¹ The level four hearing was adjourned on June 2 on the motion of the parties to enable them to pursue settlement negotiations. Failing this the hearing was rescheduled and resumed on September 10. Findings of fact and conclusions of law were submitted by the board of education on October 20, 1986; none were filed by the grievant.

A transcript of the evidence adduced at the board of education hearing was admitted into evidence and will be referred to herein as (T. __).

² The motion to dismiss the grievances of Giammerino and Mancuso on the basis of timeliness is denied on the same grounds that it was denied by the board of education at the level three hearing (T. 127, 128). As to Mr. Ward, he had resigned two weeks prior to the level three hearing and presented no evidence at level three; he did not appear at level four although he had been requested by his representative, Mr. Brown, to appear. Mr. Ward's grievance is therefore dismissed.

Because of the ruling on the motion to sever and the lengthy testimony involved, separate decisions will be rendered in the Giammerino and Mancuso grievances.

won the state championship three years ago; he also had finalists in the state tournament every year he coached track. In September, 1983 he resigned as track coach because he wanted to spend more time with his family and on his farm, raising cattle. He felt that he had established a good track team at Liberty High School and that it would continue.

In March, 1984 the position for track coach at Liberty High School was posted and grievant applied; the principal of Liberty High School, Racine Thompson, Jr., recommended Gary Copenhaver, the football coach, for the position and he was ultimately selected by the board of education.³ Grievant contends that he was more qualified than Mr. Copenhaver and that the principal recommended Copenhaver, who had never coached track, because of friendship and so that the football program could be built during track season at the expense of the track program.⁴ Grievant also alleges that because of their personal relationship Mr. Copenhaver was given preferential treatment by Mr. Thompson and was excused from such things as attendance at teachers meetings, for which grievant was reprimanded.

³ At the level three hearing Joel Myers, a teacher/coach at Liberty High School, had testified that Mr. Thompson had asked him to take Mr. Copenhaver as an assistant basketball coach and he refused. He was of the opinion that Mr. Thompson engaged in favoritism as concerned Copenhaver (T. 36, 41).

⁴ Grievant had refused to permit football practice during track season and to allow blocking dummies to be used during track practice. He had informed the principal that this was a violation of SSAC regulations, a violation for which Coach Copenhaver had been cited by SSAC (T. 75, 76).
(footnote continued)

Principal Thompson has been at Liberty High School for six years and contends that he recommended Mr. Copenhaver because he was more qualified; that grievant's resignation told him that grievant no longer wanted the job and that factor went to grievant's qualifications. He was also of the opinion that grievant had not devoted sufficient time to the track program and had been unable to attract the number of students out for track he should have as a result of having had been football coach. He admitted that Mr. Copenhaver had never coached track previously and had not been as successful with the track program as grievant but contended that the posting of the position for head track coach had not specified any qualifications.⁵ Mr. Thompson was also aware of the animosity between grievant and coach Mancuso and this was a factor in the recommendation of Coach Copenhaver. Mr. Thompson did not feel that the grievance was between he and the three grievants but was a result of the jealousy the three coaches felt for Mr. Copenhaver, which jealousy had united them in this grievance.⁶ Finally, Principal Thompson

(footnote continued)

Grievant further testified that Copenhaver wanted the athletes to specialize in football and that this also was a violation of SSAC rules. Grievant finally argues that Thompson arbitrarily refused to hire him as assistant track coach, stating that there had to be fifteen kids out for track but later hiring another assistant when fifteen kids were not out.

⁵ The parties were to obtain a copy of the March, 1984 posting for the head track coach position and submit it as an exhibit but it was not received by the hearing examiner.

⁶ He denied that there was any favoritism shown to Copenhaver and alleged that he had also reprimanded him for absences and tardiness. He stated that after the grievance was filed in April, 1984 he became more sensitive about making written reprimands than before.

contends that W. Va. Code, 18A-4-8b(a) does not apply to coaching positions and that he merely makes recommendations to the superintendent who, in turn, recommends to the board of education.⁷

County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer and promotion of school personnel but this discretion must be exercised reasonably, in the best interests of the schools and in a manner which is not arbitrary and capricious. Dillon v. Board of Education of Wyoming County, ___S.E.2d___, No. 16830, decided by the West Virginia Supreme Court of Appeals on November 20, 1986.⁸ Similarly, assignment of teachers to extracurricular duties is a matter of education policy within the discretion of the county boards of education and the assignments must be non-discriminatory and related to a teacher's interest. State ex

⁷ Grievants counter that Raleigh County Board of Education Policy provides for the selection of the "best personnel possible" without the influence of friendship or any form of bias or prejudice. (Joint Exhibit 3). This policy statement is consistent with the concept that athletics is an important vehicle for communication with and instruction of children. Hosaflook v. Nestor, 346 S.E. 2d 798, 801 (W.Va. 1986). It appears that this should be borne in mind in the selection of coaches notwithstanding the nonapplicability of W.Va. Code, 18A-4-8b(a).

⁸ In the Dillon case the superintendent posted a notice of a vacancy in the position of language arts teacher at Mullens Middle School. The only qualification noted was a valid West Virginia teaching certificate in the language arts area, which Dillon held. She had also taught in the Wyoming County School system since 1969 but the superintendent recommended his sister-in-law. The Court held that the superintendent and board of education had acted arbitrarily in hiring the superintendent's sister-in-law without first evaluating and comparing the qualifications of all of the applicants.

rel. Hawkins v. Tyler County Board of Education, 275 S.E.2d 908 (W.Va. 1981). By virtue of the board of education policy involved herein the selection should be based on the "best personnel possible" without the influence of friendship or other form of bias or prejudice.

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 Raleigh County Board of Education for twenty years and is presently assigned to Liberty High School as an Industrial Arts teacher.

2. Grievant coached track for six years at Sophia High School and six years at Liberty High School. His teams held state and county records in various events and the 1982 Liberty High School track team set several state records and won the state championship.

3. In September, 1983 grievant resigned as track coach at Liberty High School to spend more time with his family and devote more time to his farm. The vacancy was posted in March, 1984 and grievant applied after he became concerned that the quality of the track program was being jeopardized in favor of the football program. It was grievant's understanding that

track team practice sessions would be used to prepare the athletes for football, a policy grievant had refused to permit during his tenure as track coach.

4. Principal Racine Thompson recommended Gary Copenhaver, the football coach, for the position and Mr. Copenhaver was subsequently hired as track coach. Mr. Copenhaver had no experience in coaching track and allegedly favored specialization in football at Liberty High School. He was subsequently charged and found in violation of Secondary Schools Activity Commission rules and regulations involving the use of blocking dummies during track season.

5. There were no qualifications listed on the posting for the position of head track coach but the reasons given by principal Thompson for grievant's nonselection was that Thompson did not believe that grievant had spent sufficient time on the track program and that grievant's resignation meant that he did not want the job, which went to grievant's qualifications. Mr. Thompson did not know the number of times per week grievant practiced his track team; grievant's evidence was that he practiced four days a week and went to Charleston every Saturday for meets.

6. Mr. Copenhaver and grievant were the only two applicants for the position and there is no evidence of Mr. Copenhaver's qualifications other than that he coached football. There is evidence of a personal relationship existing between Mr. Copenhaver

and principal Thompson arising from college, when they were roommates for a short period. Administrative notice is taken that Mr. Copenhaver was suspended from his position at Liberty High School as a result of an arrest in 1985 and subsequent conviction of driving under the influence, which suspension was upheld in a decision rendered by this hearing examiner on August 15, 1986. To what extent, if any, this factor affects the instant grievance has not been explored by the parties to this grievance.

7. Grievant requested that he be hired as assistant track coach and was advised by Mr. Thompson that an assistant would not be hired unless at least fifteen students went out for track. However, an assistant track coach was hired notwithstanding that fifteen students were not out for track.

8. In 1971 the Raleigh County Board of Education adopted a policy which provides that the board:

"[b]elieves that the selection of the best personnel possible and the presence of the proper atmosphere of welfare and security, is the first and most important step in school improvement. The influence of partisan politics, religious affiliation, friendship or any form of bias or prejudice has no place in the administration of any school system dedicated to improved educational opportunities for all children."

9. The preponderance of the direct and circumstantial evidence in this case is that the decision to hire Mr. Copenhaver as head track coach was substantially influenced by Mr. Thompson's personal relationship with Mr. Copenhaver and to some extent to favor the football program at Liberty High School at the expense of other athletic programs. This was a violation of board of education policy and was an arbitrary exercise of authority. It is further found that Mr. Copenhaver received preferential treatment from Mr. Thompson during his tenure at Liberty High School.

10. While there is evidence that Mr. Thompson issued a written reprimand to grievant in May, 1984, subsequent to the filing of the instant grievance, there has been no showing of repeated or continual conduct which would amount to "harassment" as contemplated by law.

CONCLUSIONS OF LAW

1. County boards of education have substantial discretion in assigning school personnel but the discretion may not be exercised in an arbitrary manner; boards are bound by the policies they establish to conduct their affairs. Dillon v. Wyoming County Board of Education, __W.Va.__, __S.E.2d__ (decided by the West Virginia Supreme Court, November 20, 1986).

2. Coaching assignments must be nondiscriminatory, related to the teacher's interest and expertise and made with the best interests of the students in mind. State ex rel. Hawkins v. Tyler County Board of Education, 275 S.E.2d 908 (W.Va. 1981).

3. W.Va. Code, 18-29-2(n) defines "harassment" as repeated or continual disturbance, irritation or annoyances of an employee which would be contrary to the demeanor expected by law, policy and profession.

4. W.Va. Code, 18-29-2(o) defines "favoritism" as unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of another or other employees.

5. In a grievance proceeding pursuant to W.Va. Code, 18-29-1, et seq., it is incumbent upon the grievant alleging "favoritism" or "harassment" to prove such allegations by a preponderance of the evidence. In the instant case, grievant failed to prove the allegations of "harassment" as a matter of law.

6. In the instant grievance the evidence preponderates in favor of the allegations that Racine Thompson, Jr., engaged in "favoritism" as defined by W.Va. Code, 18-29-2(o).

7. W.Va. Code, 18-29-5(b) authorizes a hearing examiner to provide whatever relief that will provide for the effective resolution of a grievance not inconsistent with the grievance

procedure. This provision empowers a hearing examiner to fashion a remedy suitable to the particular circumstances of a grievance which will correct the identified error.

Accordingly, the relief sought in the grievance, i.e., award of the track coach position with back pay, is denied. However, it is Ordered that the position of track coach be reposted and the applicants evaluated in accordance with Raleigh County Board of Education personnel policy and the legal requirements set forth herein.

Either party may appeal this decision to the Circuit Court of Kanawha County or Raleigh County and such appeal must be filed within thirty days of receipt of this decision. (W.Va. 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.



LEO CATSONIS

Chief Hearing Examiner

Dated: December 11, 1986