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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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PHILIP SOOHY

v.

Docket No. 32-86-138-2

WETZEL COUNTY BOARD OF EDUCATION

DECISION

Phillip Soohy, grievant, is employed as a teacher by Wetzel County Board of Education. This grievance was filed at level one on January 17, 1986 and due to successive adverse decisions now properly comes before the examiner at level four. By agreement of the parties the matter has been submitted for decision upon the record with supplemental briefs and documents.¹

For five years, until his resignation by letter dated April 16, 1985, grievant served as a seventh and eighth

¹ It is noted that following an evidentiary hearing February 3, 1986, the level two decision therefrom did not include findings of fact and conclusions of law as required by Code, 18-29-6. Grievance evaluators are urged to include these findings and conclusions in their decisions to avoid remand for compliance therewith. Cf. Burks v. McNeel, 264 S.E.2d 665 (W.Va. 1980); Golden v. Harrison County Board of Education, 285, S.E.2d 665 (W.Va. 1981).

grade basketball coach at New Martinsville School. Grievant alleges violation of W.Va. Code, 18A-4-8b and Wetzel County employment policies pertaining to the filling of job vacancies in that an extracurricular position of assistant basketball coach became available at Magnolia High School in December 1985, and the board did not post the job. He claims to be the most qualified for the job had it been posted. Grievant suggests that he has been denied the employment protections afforded by W.Va. Code, 18A-2-7 and 18A-2-8 and "seniority" laws governing the filling of vacancies. For relief he asks that the position of assistant basketball coach be posted and the most qualified applicant selected; then if he is selected for the position, he asks for back wages to the date the grievance was filed.

Grievant is a certified teacher and was employed by the Wetzel County Board of Education in that capacity during the 1985-86 school term. At the start of basketball season that school year, Jeffery Bowers held an extracurricular position as volunteer coach/statistician at Magnolia High School and David Tallman held a paid position as assistant coach. After the start of the basketball practice season the head basketball coach at Magnolia resigned. Consequently, the school board immediately approved the assignment of assistant coach David Tallman as Interim head coach.

The head coach position was posted for one day. The board contends that out of concern for the players and the basketball program, school authorities decided to utilize Tallman and Bowers, already part of the coaching staff and, with whom the students were already familiar. Tallman agreed to remain as Interim head coach for the remainder of the season, and Bowers agreed to serve as paid Interim assistant coach/statistician. The board approved both appointments on December 19, 1985, and argues therefore, no position was open.

Code, 18A-4-16 specifies that coaching is among those duties considered to be an extracurricular assignment of educational personnel and as such "shall be made only by mutual agreement of the employee and superintendent...subject to board approval" and shall be contracted separately from the employee's contract of employment. The West Virginia Supreme Court has determined that such extracurricular positions are afforded the procedural notice and hearing protections of Code, 18A-2-7 in matters pertaining to the dismissal or transfer of such persons from their extracurricular positions. Smith v. Logan County Board of Education, 341, S.E. 2d 685 (W.Va. 1985). Grievant's circumstance, however, is not a situation by which he had a vested interest in a position already held, thus, those statutes are not applicable to him in this grievance.

Code, 18A-4-8b requires that a board of education shall post and date position openings for a five day period and no selection shall be made before that time. Grievant further relies on a state superintendent of schools letter opinion dated September 24, 1984 which specifically addresses the question of whether extracurricular coaching positions should also be posted. The opinion summarizes: "...coaching positions ordinarily should be posted...(emphasis added). The crux of this matter is "ordinarily." Thus the issue in this grievance is whether an assistant coach vacancy existed.

Two funded positions, head coach and assistant coach, existed and were filled for Magnolia High School prior to the start of the basketball season. A troublesome and extraordinary event occurred in which the head coach resigned after the season began.² Assistant coach Bowers already held a board approved extracurricular position for which he agreed to perform without compensation. Grievant contests the right of Bowers to receive compensation for a job he

² The examiner found in the level two transcript a reference to a similar situation that had occurred in the county. A wrestling coach quit mid-season and the job was posted. However, it was not sworn testimony, no details were given regarding the circumstances and no documentation verified the event. Accordingly, the statements cannot be regarded as evidence to consider.

is already performing without pay alleging that he (Bowers) had filled a vacant position created when the paid assistant coach Tallman agreed to assume duties of head coach on an interim basis.³

Since Tallman agreed to assume the head coach position on an interim basis and without resigning from the assistant coach position, his assistant coach position was, in effect, being reserved for his school officials' consideration for the following season. Barring notice otherwise to Tallman on or before the first Monday in April of 1986 as is required by Code, 18A-2-7, the assistant coach position remains with Tallman for the 1986-87 basketball season, thus there was no opening for the position of assistant coach.⁴ Since the head coach position was filled on an interim basis and became vacant at season's end, the board is required to properly post and fill that position for the 1986-87 season.

³ Inexplicably, grievant says nothing about the propriety of the head coach position being filled without a posting of that job vacancy.

⁴ It is noted that in regard to assistant coach Tallman's extracurricular assignment, it is he who has the benefit of the procedural protections of Code, 18A-2-7.

FINDINGS OF FACT

1. Grievant is a certified teacher and was employed by the Wetzel County Board of Education in that capacity during the 1985-86 school term. He has had several years experience coaching seventh and eighth grade basketball at a county school and received positive yearly evaluations for his performance in that capacity.

2. On November 12, 1985 Jeffery Bowers was duly assigned to the unpaid position as volunteer coach/statistician at Magnolia High School for the 1985-86 school year and David Tallman held a paid position as assistant coach.

3. December 10, 1985, after the start of the basketball practice season at Magnolia, the head basketball coach resigned. On that date the board approved the assignment of assistant coach David Tallman as Interim head coach.

4. The head coach position was posted for one day but, in the interests of the student athletes and to insure continuity of the program, school officials determined that the two remaining coaches with whom the students were already familiar, Tallman and Bowers, would be the most appropriate staff to finish the season.

5. Tallman agreed to remain as Interim head coach for the remainder of the season and the board approved the appointment on December 19, 1985.

6. Bowers agreed to serve as Interim assistant coach/statistician and to receive compensation for the performance of his duties, and the board approved that assignment the same date.

7. There was no assistant basketball coach vacancy in the coaching staff at Magnolia High School for the 1985-86 school year.

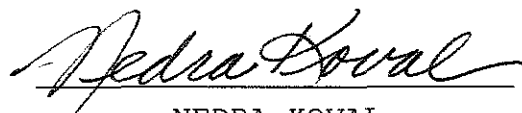
CONCLUSIONS OF LAW

1. A board of education is required to post announcements of job openings, including extracurricular coaching positions, if such vacancy occurs. Code, 18A-4-8b

2. The assignment of coaches is a matter of educational policies and, as such, within the discretion of county boards of education.

In consideration of the foregoing determinations, the grievance is denied.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Wetzel County and such appeal must be filed within thirty (30) 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.



NEDRA KOVAL
Hearing Examiner

Dated: Sept. 4, 1986