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**WEST VIRGINIA EDUCATION  
EMPLOYEES GRIEVANCE BOARD**

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**JAMES R. THOMAS**

**v.**

**Docket No. 35-86-236-3**

**OHIO COUNTY BOARD OF EDUCATION**

**DECISION**

Grievant, James R. Thomas, is employed by the Ohio County Board of Education as a teacher at Wheeling Park High School. He has also held a separately contracted extracurricular position as head football coach at Wheeling Park from 1981 to the present 1986-87 academic year.

The incident giving rise to this grievance occurred on May 20, 1986 when school officials presented grievant a four page "Plan of Assistance" in relation to his coaching duties. Grievant alleges the plan is violative of state and county policies which govern employee evaluations.

On June 2, 1986, grievant filed his complaint at level one and upon successive adverse findings and decisions has pursued his administrative remedy through an appeal to this Board. The parties agreed to waive a level four evidentiary hearing and to submit the issues for a decision based upon the existing record with supplementary written proposed findings and argument submitted on or about September 16, 1986.

At the level two evidentiary hearing conducted June 19, 1986, grievant testified that the plan came as a complete surprise to him as he had had no formal written evaluations, listing deficiencies or otherwise, of his coaching performance since he had assumed the position even though he had regular evaluations of his teaching abilities. He further contends that he had met with the school principal and student activity director on a regular basis for two years to review the football program and his coaching performance and both persons had verbally commended him and the program. Grievant claimed he had only received one written communication from his administrators admonishing him for not attending an athletic banquet at a local college and directing that he or a representative attend all functions concerning football players in the future. The formality of the letter surprised him, he testified, because he attended many banquets and programs regularly. He stated that he believed he was doing a good job as a coach and the presentation of the plan had caused him tremendous emotional and professional trauma. (T. 13, 14).

Grievant asserts that the content or internal components of the plan is not at issue in this grievance, but instead he questions the propriety of a remedial plan being issued prior to a formal written evaluation. He expressed concern that a portion of the plan included notice that unsatisfactory performance of the plan could result in the termination of his coaching contract. Grievant feels that his livelihood as a coach is being threatened; for relief he asks that the plan be rescinded and removed from his files.

Generally, the plan consists of an initial page which lists eight deficiencies.<sup>1</sup> The next several pages contained "Program To Be Followed" with numerous activities listed, "To correct the deficiencies that this coach does not...." in each of the eight listed areas. The final page offered the assistance of the school principal, Phyllis Beneke, and activities director, Eric Carder, for "consultation" to develop and implement the required plans, outlined a monitoring system and determined a March, 1987 final evaluation date.

Eric Carder, director of student activities, was called by grievant to give testimony and both Carder and Phyllis Beneke, principal of Wheeling Park, testified on behalf of the board of education. Ms. Beneke stated that she felt she had complied with both state and county policies which provide that an employee may be given a plan of assistance to improve job performance.

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<sup>1</sup> Following the listing was a general statement for the plan:

The purpose of this plan is to outline a program and bring together available resources to assist you in correcting the above stated deficiencies.

My role as principal will be to coordinate the effort of the resources and monitor progress. I will keep you informed of the progress being achieved.

In light of the above stated deficiencies you are directed to follow this plan of assistance which has been developed to assist you in correcting performance of deficiencies.

Failure or unwillingness to improve and correct the previous stated deficiencies will result in my recommending that charges be prepared for your dismissal.

She stated that the plan was not a part of grievant's personnel records or files and, "It was given to him with the intention of starting now and trying to improve the football program. And the Plan of Assistance was what we received when we talked to parents, football players, coaches, faculty members, booster members, and principals..." She added, "So, we feel that if what was stated in the Plan of Assistance is incorporated, that our football program will improve." (T. 16).

Mr. Carder testified that as Student Activities Director he was in charge of all athletics and activities at the high school, that being the reason his name appeared on the plan. He said he was not responsible for the evaluation of athletic coaches.

Ms. Beneke stated that only she had evaluation responsibility and authority over football coaches and that she had not evaluated grievant as a coach, and in fact, "there have been no coaches evaluated." She then stated that written communications were issued when someone had not followed procedures and that there had also been verbal communication in regard to the coaches and their programs. (T. 20,21). Neither Carder nor Beneke rebutted grievant's testimony that they had verbally commended the football program and his performance as a coach.

Mr. Frank Dumas, the assistant superintendent acting as hearing officer, then addressed Ms. Beneke and queried whether the plan was the first written communication to the grievant, "in order to prepare him prior to the start of the football season as to what you feel you would like him to do. At the

end of that period of time, an evaluation is completed, and he will be assisted all along the way. Is that what you are saying?" She responded, "That is correct." (T. 23).

Over grievant's objection, Ms. Beneke began to recite the reasons why each of the eight deficiencies appeared on the plan. To the extent that Ms. Beneke's testimony provides information as to prior communication to grievant citing a deficiency in his football program or coaching performance, it is hereby included for consideration:

- Deficiency 1: Oral discussion November 20 and December 1, 1983 and May 20, 1986. (The latter date is the day the plan was presented to grievant.)
- Deficiency 2: Written notification February 20, 1983, February 8, 1984, February 13, 1986. (No documentation introduced into evidence. This appears to be related to attendance at athletic banquets. Grievant testified he had received only one letter, Mr. Carder said there were two and Ms. Beneke stated there were three).
- Deficiency 3: No previous communication on any of these.
  - 4: (The items all referred to new programs
  - 5: and such.)
- Deficiency 6: Grievant was "notified" about this. (No documentation or specification of what constituted notification, verbal, written, etc.)
- Deficiency 7: Narration of several "incidents" with various persons at various functions and sites. (No documentation presented and no evidence that the "incidents" were discussed with grievant.)
- Deficiency 8: Discussed November 30 and December 1, 1983 and also "November 20, 1986 (sic)".

Concluding the hearing grievant's representative argued, "you cannot tell an employee that their performance is so

bad that they need a Plan of Assistance and if they don't comply with that their contract may not be renewed, if you have never evaluated the employee." (T. 38)

The hearing examiner then appeared to be arguing on behalf of the administrator's position saying that the plan as it now existed was not a part of grievant's records and would not be until "whenever the season is over, then he (grievant) may have a grievance based upon what he receives officially in writing." He further stated, "There is no record other than them saying, 'This is what we want you to do in the coming football season.'" (T. 39-40)

Both State Policy 5300-5310 and Ohio County Policy 4117 require that regular, open and honest evaluations be conducted of employees to assure quality and improvement of job performance and to provide basic information for sound personnel decisions. Policy 5310(B) states that employees improve skills when guided by performance standards established for their positions. Moreover County Policy 4117 mandates that, "The evaluation process shall enable administrators to identify employees who exceed, meet or do not meet standards." Lastly, Policy 5300 empowers county school boards to develop improvement plans for areas in which employees do not meet performance standards. Therefore, the respondent board is correct when it maintains its responsibility and authority to develop an improvement component to be part of its evaluation process. However, additional policy and regulations govern the evaluative process.

An examination of the school system's evaluation handbook reveals the initial steps to be taken in the evaluative process. It states that trained evaluator(s) shall meet with the evaluatee(s) to explain the evaluation procedures and criteria and to develop a mutually acceptable set of expectations. A reasonable conclusion would be that expectations cannot be determined unless and until performance standards for the position have been established and been made known to the employee.

Both 5310 and 4117 define performance standards as, "observable indicators of job responsibilities used to rate the performance of an employee," and both define observation as, "a formal or informal sampling of the employee's performance on the established performance standards for his/her position." If the evaluator determines the evaluatee has not met performance standards and expectations, he may then recommend that a plan of assistance be formulated.

The county has also established criteria regulating the implementation of a plan of assistance for employees/evaluatees not meeting standards. Compelling is the provision that a statement of deficiency identified in a plan should include, "direct reference to evaluation instrument specifying area(s) of performance as unsatisfactory". The remediation program must also "(tie to each area of performance rated unsatisfactory on evaluation instrument).". (Emphasis added)

Thus, according to its own written policy, the school board directs its administrators to establish performance standards for a position as a prerequisite to an evaluation process.

The process begins when evaluator and evaluatee have developed performance expectations based on the predetermined performance standards for the position. Formal and informal observations may then be conducted by the evaluator to rate the evaluatee's expected performance via an evaluation instrument. If performance deficiencies are thereby identified, remediation plans and programs may be issued to assist the evaluatee improve his job performance.

The respondents aver compliance with state and county policies 5300-5310 and 4117, when grievant was issued a plan of assistance regarding his coaching performance. The evidence in this case does not support that contention.

School officials admit that no athletic coaches, including grievant, had ever been formally evaluated, and the county evaluation handbook lists no evaluation category or performance standards for football coaches. That being the case, the evidence revealed that a survey was conducted of relevant parties -- players and their parents; coaches, faculty members and principals; and even the public at large, booster members. From the collected data, it appeared that an "improved" football program was desired and it might be construed that coaching performance standards could thereby be identified. Instead, according to the principal in her testimony, "...the Plan of Assistance was what we received." What then transpired, the record reveals, was that grievant/evaluatee was presented an assistance plan, replete with stated deficiencies and remedial activities, which initiated his evaluative process-period.



The county policy has stated the sequential steps to be followed in an evaluation process which intent, among other things, is to improve employee performance. First, establishment of standards and expectancies; then, observations and performance ratings via an evaluation instrument; next, identification of deficient performance areas not meeting expectations; and finally, formulation of an assistance plan to provide remediation. County boards of education are bound by procedures they properly establish to conduct their affairs, Powell v. Brown, 238 S.E.2d 220 (1977), and clearly, Ohio County school evaluation requirements prohibit the issuance of a plan of assistance at the onset of evaluation, as school officials have done in this case.

The events leading to this dispute may still not have fatally flawed the evaluative process had conclusive evidence established that, through some means, school officials had made known to grievant both expected performance standards and deficiencies found in his coaching performance of such degree that a plan of assistance was needed. School administrators stated that they had conducted communications with grievant but produced no documentation of what appears to be, at most, a few isolated letters and conferences over a five-year period.<sup>2</sup> In his decision

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<sup>2</sup> That evidence, when measured by grievant's unrebutted testimony that he was simultaneously being praised for his coaching abilities and football program, leaves this examiner little choice but to give it only slight credence.

dated July 2, 1986, the hearing officer found, "The administration ...had numerous meetings with the grievant and therefore it should not have been a surprise and the "Plan" is not in violation of ...Policy..." However, not one iota of testimony at the level two hearing ever alluded to "numerous meetings", between grievant and administrators to criticize grievant's coaching or football program. Moreover, the principal testified, "the Plan...that was given to Mr. Thomas was written not previously, but what we feel needs to be done now, starting today, or when the plan was given, starting then, as to what needed to be done in order to improve the football program." (T. 45).

Finally, respondents have argued against the rescission of the plan since it "does not exist" and will not become a part of grievant's record until the final evaluation is executed. The argument is totally without merit since a wrongfully issued and implemented plan of assistance imposes upon grievant a stigma of incompetence, numerous and detailed activities to perform and threats of termination of his extracurricular position.

In addition to the foregoing discussion, the following findings of fact and conclusions of law are incorporated herein.

#### FINDINGS OF FACT

1. James R. Thomas, grievant, is employed by the Ohio County Board of Education as a teacher/head football coach at Wheeling Park High School.

2. In regard to his teaching performance, grievant has been regularly evaluated in accordance with state and county policy but he has had no formal evaluation of his coaching performance during his five years tenure at Wheeling Park.

3. On May 20, 1986 grievant was presented a four-page Plan of Assistance citing eight coaching performance deficiencies. The document included a general statement, a program of activities, monitoring system and final evaluation date. It did not relate the deficiencies to an evaluation instrument used to rate expected performances, but it did include a notice that unsuccessful performance of the plan could result in termination of grievant's coaching contract.

4. Grievant has proven that state and county evaluation policy was violated when school administrators presented him a plan of assistance at the onset of an evaluation process period.

5. Grievant has proven that the plan was issued without benefit of recommendation of a trained evaluator having formally or informally observed and rated his performance on an evaluation instrument. Data compiled as a result of a survey among the populace does not fill the requirement and did not allow grievant to face accusers who may have criticized him, further violation of policy and regulations and basic due process rights.

6. Evidence as to grievant's prior notice by administrators of expected performance standards and coaching program deficiencies was inconclusive, as no documentation was introduced to verify the letters, communications or "notices". Testimony was also conflicting and vague.

7. Grievant's testimony that his coaching and football program had been verbally commended by school administrators was not rebutted and therefore stands as proven.

8. A plan of assistance purported to be a component of an evaluation process, but which was wrongfully issued, placed a personal and professional burden upon grievant even though the written document was not technically a part of his record.

#### CONCLUSIONS OF LAW

1. State Board of Education Policy 5300 and county evaluation policy requires open and honest evaluation of an employee's job performance.

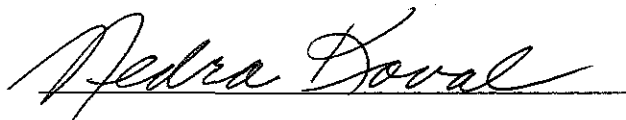
2. County boards of education are bound by procedures they properly establish to conduct their affairs. Powell v. Brown, 238 S.E.2d 220 (W.Va. 1977).

3. School officials are permitted some latitude in the evaluation of a teacher (or other employee) subject to the require-

ment be open and honest and not arbitrary. State ex rel. McLendon v. Morton, 249 S.E.2d 919 (W.Va. 1978).

For all of the foregoing reasons including the record in its entirety, the grievance is GRANTED and the Ohio County Board of Education is ORDERED to rescind the subject Plan of Assistance and remove all reference thereto from any file in the County.

Either party may appeal this decision to the Circuit Court of Kanawha County or Ohio 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.

A handwritten signature in cursive script, reading "Nedra Koval", written over a horizontal line.

NEDRA KOVAL  
Hearing Examiner

Dated: 12-29-86