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**WEST VIRGINIA EDUCATION  
EMPLOYEES GRIEVANCE BOARD**

**ARCH A. MOORE, JR.**  
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DON WILLIAMS

v.

Docket No. 44-86-160-1

ROANE COUNTY BOARD OF EDUCATION

**DECISION**

Grievant, Don Williams, is employed as a teacher at Walton High School and for the past four years has also held the extracurricular position of coach of varsity football and basketball. On March 14, 1986 the board of education accepted the recommendation of the superintendent that grievant "...be dismissed (contract will not be renewed)..." from his coaching duties at Walton High School on the grounds of insubordination, willful neglect of duty and incompetency. By letter dated March 17, 1986 Superintendent Jones advised grievant of the action of the board and on March 20, 1986 grievant's representative requested a level four hearing; evidentiary hearings commenced on April 25, 1986.<sup>1</sup>

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<sup>1</sup> A hearing was initially scheduled for April 10 and continued by the parties until April 25. Because of the inordinate number of witnesses subpoenaed by the parties, the hearing was reconvened in Roane County on May 21 by agreement of the parties.

At the hearing on May 21, 1986 after the board of education had rested its case and grievant had partially testified, grievant's representative made a motion to summarily reinstate grievant to his position on the grounds that the board of education failed to proceed in accordance with law in terminating grievant's extracurricular contract. (May 21, T.107, 108). The motion was overruled at that time and renewed by grievant at the close of all the evidence. (May 21, T.115; 251).<sup>2</sup>

Although grievant's performance as a coach at Walton High School had been the subject of much concern to the principal since 1984, grievant testified that he first learned of the intent to terminate his coaching contract at Walton High School on March 7, 1986, when he had an evaluation meeting with the principal and was advised that he would not recommend

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The gist of this motion is that the board of education proceeded pursuant to Code, 18A-2-8 instead of Code, 18A-2-7 and the procedure is therefore void. Mr. Furtado, the WVEA representative, offered two State Superintendent decisions and several West Virginia Supreme Court decisions in support of his motion. The grounds of the motion were renewed in the findings of fact and conclusions of law submitted by Mr. Furtado in June, 1986.

that grievant be rehired as coach.<sup>3</sup> Grievant was further informed that he had three options: (1) he could resign, (2) permit the superintendent to act, or (3) permit the board of education to act and appeal; that his reply would be expected on Tuesday of the following week. (May 21, T. 105).

The following Tuesday grievant and his WVEA representative met with the principal and on Thursday he met with Superintendent Jones, who informed grievant that he was going to follow the recommendation of the principal and recommend to the board of education that grievant's coaching contract not be renewed. (May 21, T.106) The following evening, Friday, March 14,

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<sup>3</sup> Grievant testified that he had been informed on March 6 to meet with the principal during grievant's planning period on March 7 for the purpose of evaluation; that at that time he thought it was an evaluation for teaching but learned at the meeting it was a coaching evaluation. Grievant was given a copy of the evaluation, which indicated that the principal did not recommend that grievant be rehired. Grievant had been given a plan of improvement by the principal on January 31, 1985 and provided until March 1, 1986 to demonstrate improvement in his performance. Because of the dispositive ruling on the motion it is not necessary to review the evidence of "insubordination, willful neglect of duty and incompetency."

Superintendent Jones recommended to the board of education that grievant:

"...be dismissed (contract will not be renewed) from his coaching duties at Walton High School, on the grounds of insubordination, willful neglect of duty, and incompetency."<sup>4</sup>

On Monday, March 17, Superintendent Jones personally delivered a letter to grievant advising him of the board action on March 14, noting that:

"If you do not concur with this action, it appears that in 18A-2-8, as amended, you have the right to request a Level IV hearing before the hearing examiner approved by the Education Employees Grievance Board..."<sup>5</sup>  
(Board Exhibit No. 11).

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<sup>4</sup> The minutes reflect that the motion to accept the recommendation of the superintendent to "...dismiss (not to renew)" grievant's extra-duty contract for coaching duties at Walton High School on the above grounds was carried. (Joint Exhibit 1). Grievant did not attend the board meeting because Superintendent Jones allegedly advised him he was not entitled to a hearing, (May 21, T.241), and that the board meeting would be "closed". (May 21, T.236).

<sup>5</sup> Superintendent Jones acknowledged that there was no compliance with Code, 18A-2-7 as to notice of hearing, etc., and the evidence is uncontroverted on this point. (See e.g., May 21, T.106; 246). This was also true as to the meetings grievant had with the principal prior to termination of his coaching contract. (See, e.g., May 21, T.106, 107).

In Smith v. Board of Education of County of Logan, 341 S.E.2d 685 (W.Va. 1985), appellant was dismissed from his position as head football coach at Logan High School without notice or hearing. The Court, in reinstating appellant, ruled that the State Superintendent had consistently held that a school board's refusal to renew a teacher's coaching position must be considered a transfer subject to the procedural protections of Code, 18A-2-7; that failure to follow these procedures when choosing not to renew a coaching contract would result in automatic reassignment to the same position for the following year under the same terms and conditions of the current contract.<sup>6</sup>

In addition to the foregoing factual recitation the following specific findings of fact are appropriate.

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<sup>6</sup> The Court referred to Hosaflook v. Nestor (State Superintendent of Schools Decision, May 14, 1985) and Smith v. Frazier (State Superintendent of Schools Decision, June 1, 1984) and found no reason to disagree therewith. (Id at 689). In the Smith case the Superintendent stated that a coaching assignment could not be terminated without following Code, 18A-2-7 except in cases of emergency, citing Code, 18-4-10(3). The Hosaflook decision is squarely on point and involved the transfer from head coach to teacher for many of the reasons given grievant herein.

## FINDINGS OF FACT

1. Grievant was employed as a school teacher by the Board of Education of Roane County and assigned to teach and to coach football and basketball at Walton High School.

2. On March 7, 1986 grievant was advised by his principal, Stephen G. Simonton, that he would be recommending that grievant not be rehired as a coach at Walton High School.

3. On March 13, 1986 grievant met with Superintendent of Schools Jones and was advised that the recommendation to the board of education would be that grievant not be rehired.

4. On March 14, 1986 the Roane County Board of Education adopted the recommendation of Superintendent Jones and voted to "...dismiss (contract will not be renewed)..." grievant on the grounds of insubordination, willful neglect of duty and incompetency.

5. Grievant was not notified either in writing or orally of any right to appear before the board of education prior to its action upon the recommendation of the superintendent.

6. On March 17, 1986 grievant received a letter from Superintendent Jones advising grievant of the action of the board of education and informing grievant that he could request a level IV hearing pursuant to Code, 18A-2-8.

#### CONCLUSIONS OF LAW

1. Code 18A-4-16 provides that the assignment of a teacher to an extracurricular assignment constitutes an agreement between the employee and the board of education and is separate from the employee's contract of employment.

2. The refusal of a board of education to renew a teacher's coaching assignment is considered a transfer subject to Code, 18A-2-7.

3. Code, 18A-2-7 requires that an employee be notified in writing by the superintendent if the employee is being considered for transfer and, if requested, given a statement of reasons for the proposed transfer. Thereafter, the employee is entitled to a hearing before the county board of education on the proposed transfer.<sup>7</sup>

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<sup>7</sup> In the findings of fact and conclusions of law submitted by the board of education on August 8, 1986 it is conceded that the decision to not renew grievant's contract is considered a "transfer" under the law.

4. School personnel regulations and laws are to be strictly construed in favor of the employee.

5. The superintendent and board of education failed to follow Code, 18A-2-7 which results in automatic reassignment to the same position for the ensuing year under the same terms and conditions of the current year.

Accordingly, it is Ordered that the grievant be reinstated to his coaching position under the same terms and conditions existing at the time of the dismissal with back pay.

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



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LEO CATSONIS

Chief Hearing Examiner

Dated: August 8, 1986