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VINCE BUTTA

v.

Docket No. 43-86-315-3

RITCHIE COUNTY BOARD OF EDUCATION

DECISION

Grievant, Vince Butta, is employed by the Ritchie County Board of Education as a high school teacher. On September 22, 1986 he filed a level one grievance protesting his non-selection for a high school coaching vacancy. After much procedural difficulty the matter was appealed to level four (second submission) and acknowledged on February 11, 1987. The parties agreed that the grievance issues could be decided upon the existing record and grievant's WVEA representative filed proposed findings of fact and legal argument in May, 1987.¹

¹ The level one grievance was, in essence, waived to level two. By letter dated October 24, 1986 the superintendent of schools advised grievant that his grievance was not appropriately filed at level one; an appeal to the school board received no response and the original level four appeal was filed in late October, 1986. Grievant's representative then requested a remand to level three for an evidentiary hearing before the board of education; the board of education denied the grievance following the January 16, 1987 hearing.

The facts giving rise to grievant's dispute with the respondent board are not in contention. Ritchie County Schools reorganized after the 1985-86 school year and eliminated one of its two high schools. Pennsboro High School became a junior high school and the former Harrisonville High School consolidated to Ritchie County High School. Grievant had taught at the high school in Harrisonville for the past three years and had an assistant football coaching position during the 1985-86 term. Previous to that he had served as "head" football coach at Cairo School.

Prior to the reorganization of the two high schools, Pennsboro employed one head football coach and three assistants and Harrisonville had one head football coach and two assistants. The consolidated school, Ritchie County High, obviously could not utilize seven football coaches, thus, some coaches had to be released from their coaching contracts. The record is silent as to how this was actually accomplished but is not a grievance issue. What seems clear is that all of the football coaches were terminated without protest and position vacancies for the football coaching staff at the consolidated school were posted.

Grievant herein applied for a football coaching position; on June 19, 1986 the board hired a head football coach and three assistants and grievant was not selected for any of the positions.

In July one of the previously hired coaches resigned and grievant again applied. A former coach other than greivant was hired July 29, 1987. Grievant made some inquiries about his non-selection in July but no formal protest about either the June or July hirings. Grievant claims he learned he had been aggrieved in early September and after he acquired sufficient proof, he filed his grievance protesting the second hiring only on September 22, 1986.²

The heart of this controversy is grievant's contention that the board violated its own policy when it did not hire him. He attacks a document prepared by school officials entitled, "Coaching Selection Considerations." First, he says that the policy was never formally adopted by the board of education and should not have been applied. Second, he attacks the substance of the document. The policy states that coaches will be selected according to their "secondary" coaching experience.

According to grievant the rules of the W.Va. Secondary Schools Activities Commission (WVSSAC) establish that Cairo School was

² It is noted that grievant is a member of a teachers advocacy organization thus he should be well informed of the benefits of membership including assistance and counsel in matters thought to be grievable.

a secondary school, since there were departmentalized seventh and eighth grade enrollees, and thus, he had eight years secondary coaching experience.³ Grievant alternatively contends that school officials were bound by a proper board approved policy which states that all employees holding extra-curricular contracts had preferred status to be rehired to the extra-curricular position.⁴ Grievant seeks reinstatement in the Ritchie County High School coaching position, alternatively, if not football, then any other coaching position at the high school would suffice.

The respondent did not address the merits of grievant's dispute but instead issued a level three decision denying the grievance as being untimely.

³This argument is unconvincing. A drafter of the coaching considerations policy related that he viewed "secondary" as high school or varsity and never even considered junior high school coaching as secondary coaching. Despite grievant's belief and proof that secondary denotes grade levels of seven through twelve, there can be little doubt but that the coaching experiences are significantly different. Additionally, the record reflects that at some periods, grievant was coaching elementary students.

⁴The record indicates that the coaches hired in June and the one in July had each held a coaching contract prior to the across-the-board termination of all coaches due to the school reorganization and consolidation, thus this argument is also unconvincing. Also, the mass terminations under the existing circumstances would seemingly negate the policy terms.

Grievant vigorously argues that the timeliness for a grievance begins when an employee becomes aware that he may have a grievance and he did not know the July hiring was improper until September. On one hand he argues that he met the experience criteria of the selection consideration policy but it was misapplied and he did not know of the misapplication until a time long past his non-selection, and on the other hand he argues that the policy was not board approved in the first place and should not even have been used as a selection determinative.⁵

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

⁵ See footnote three regarding the policy. It is difficult to follow where this circuitous argument leads especially in light of grievant's contention that it is only the July 29 hiring to which he objects. Grievant voices no objection to the June hirings, presumably effected on the same basis as the July appointment. Also, the matter of his non-selection the second time did not lie to rest with him from July until September when he concluded that he had been aggrieved.

The record reflects that grievant was advised in early September to file a grievance if he was displeased over the July hiring (T. 47,48). It would appear that an employee who suspects he has been wronged would file a grievance first to preserve his rights and gather proof later.

FINDINGS OF FACT

1. The grievant is employed as a high school teacher by the Ritchie County Board of Education. For several years prior to the 1986-87 school year he taught at Harrisonville High School and served as an assistant football coach there during the 1985-86 school year.

2. At an earlier time grievant served as the football coach for six years at Cairo School, which included grades 7-9, and was "head" coach to the extent that only the principal acted as his supervisor. Grievant was designated as "coach" and had no paid subordinates.

3. During the 1985-86 school year there were seven high school football coaches in the county serving two high schools, Harrisonville High and Pennsboro High. All were terminated from their extra-curricular coaching positions when the two high schools became Ritchie County High.

4. Grievant herein and no other coach protested the mass terminations. Vacancies were posted for one head football coach and three assistants at Ritchie County High.

5. Four coaches were hired June 19, 1986; one coach subsequently resigned and the vacancy was posted. A coach other than grievant was hired July 29, 1986. Grievant did not protest these personnel actions, but he did make inquiries after the July 29 selections as to why he had not been hired.

6. School officials drafted a criteria to be applied for hiring coaches for Ritchie County High; the policy was never formally board approved. Administrators sought coaches with varsity or high school experience but the document stated "secondary." The administrators had not taken into consideration that a secondary school might include junior high school or a school which enrolled students in grade level seven or eight and met other criteria.

7. Grievant stated that the policy said secondary coaches would be given high priority and he was a secondary head coach but school officials mistakenly did not recognize this fact. Conversely, grievant stated the unauthorized policy should not have been used to select coaches.

8. The duties, responsibilities and experiences of a head high school coach, assistant coach, junior high school and elementary coach are not equal and each are paid differently for their services.

9. The respondent had a policy in place since 1983 stating that persons holding extra-curricular contracts would have priority for rehiring to their position. The policy had no effect on the coaching vacancies of 1986-87 since all of the former coaches were terminated due to a major reorganization of the existing two high schools into one. No former coach protested or grieved the mass terminations.

10. Grievant herein made no allegation that the four football coaches hired in June, 1986 for Ritchie County High were not qualified or inappropriate for the jobs. He made no allegation that the coach hired in July, 1986 was an inappropriate selection.

11. Grievant herein did not timely file a grievance in protest of his non-selection as a football coach in June or July, 1986 and has presented no facts or evidence which would entitle him to instatement as a coach as a matter of law.

CONCLUSIONS OF LAW

1. W.Va. Code, 18-29-4 requires that grievance proceedings be initiated ~~within~~ fifteen (15) days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date on which the event became known to the grievant or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance. Tammy Scroggs v. West Virginia University, Docket No. BOR1-87-054-2.

2. It is incumbent upon an employee to timely pursue his rights through the grievance process or to demonstrate a valid reason for the delay. Ruth Murphy v. Mingo County Board of Education, Docket No. 29-86-341-4; Scarberry v. Mason County Board of Education, Docket No. 26-86-291-1.

3. The grievant has failed to timely file a grievance or demonstrate a sufficient reason for the delay.

4. 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); Victor Giammerino v. Raleigh County Board of Education, Docket No. 41-86-165-1.

5. In the grievance proceeding it is incumbent upon the grievant to prove the elements of the grievance by a preponderance of the evidence. Edith Harrison v. Kanawha County Board of Education, Docket No. 20-86-219.

6. Grievant failed to prove that the board of education employed inappropriate football coaches or that he was entitled to reinstatement as a coach as a matter of law.

Accordingly, this grievance is **DENIED**.

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

DATED:

September 11, 1987

Nedra Koval

NEDRA KOVAL
Hearing Examiner