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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

ARCH A. MOORE, JR.
Governor

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ALLISON P. LAYMAN

v.

Docket No. 06-86-078

CABELL COUNTY BOARD OF EDUCATION

DECISION

Grievant, Allison Layman, is employed by the Cabell County Board of Education as a teacher/coach at Huntington East High School. On December 10, 1985, he filed a grievance alleging discrimination in the selection of the head basketball coach at Huntington East High School. A level two hearing was conducted on December 16, 1985, and the decision was appealed to the Education Employees Grievance Board on January 13, 1986; a level four hearing was conducted on March 17, 1987.¹

¹ The transcript of evidence of the level two hearing was filed in the Education Employees Grievance Board office on January 27, 1986; references thereto will be cited as (T. __).

In September, 1985, the head basketball coaching position was posted and three applicants responded: grievant, Keith Litton and Jim Clayton. In accordance with Cabell County Board Policy, File GBRA, Superintendent of Schools Frum appointed a screening committee to review the applications and to make a recommendation to him.² The committee was unable to agree between grievant and Jim Clayton and the committee agreed to submit the two names to the superintendent for decision.

Superintendent Frum interviewed the two applicants and with the help of a "teacher perceiver" evaluation technique and an independent investigation Superintendent Frum recommended Mr. Clayton to the board of education.³

² The screening committee was composed of James Wyatt, Huntington East High School principal, Jerry Brewster, assistant superintendent of schools, and Dallas Blankenship, administrative assistant to the superintendent.

³ Superintendent Frum took his post on July 1, 1985, and testified that he did not know either of the applicants prior to the date of the interview.

He stated that he attempted to remain as objective as possible and that was the reason for administering the "teacher perceiver" interview technique. The technique purportedly assesses qualities such as people who are good role models, who are good motivators, etc. (T. 45).

The level two grievance evaluator made comprehensive findings of fact and concluded that notwithstanding that grievant indicated that he had evidence of favoritism, he declined to present this evidence when requested to do so by the grievance evaluator. More specifically, it was found that:

Absent any evidence other than that presented at this hearing, I was unable to ascertain that there had been any irregularities or violations in the hiring procedure. I specifically could find no evidence of favoritism, defamation of character or violation of any statute or policy. (Decision of hearing examiner, level two, p.2).

Beginning in March, 1986, this grievance was scheduled for hearing on several occasions and continued by mutual agreement from time to time until March 17, 1987, at 10:00 a.m.⁴ On March 17, 1987, counsel for the board of education appeared with two witnesses and at approximately 10:20 a.m. moved that the grievance be dismissed

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By letter dated January 27, 1986, counsel for the board of education had been agreeable to submitting the grievance on the level two transcript and waiving an evidentiary hearing. No response was received from grievant and by letter dated August 26, 1986, counsel for the board had moved to dismiss the appeal if grievant did not take some action within thirty days to reset the grievance for hearing. The matter was re-scheduled for November 3, 1986, and again continued until November 14, 1986.

with prejudice for failure of the grievant to appear and/or to prosecute the grievance.⁵

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

FINDINGS OF FACT

1. Grievant is employed by the Cabell County Board of Education as a teacher/coach at Huntington East High School.

2. In December, 1985, grievant filed a grievance alleging discrimination in the selection of the boy's head basketball coach position at Huntington East High School; a level two hearing was conducted on December 16, 1985, and a decision was rendered on December 20, 1985. The decision was appealed to the Education Employees Grievance Board.

3. Evidentiary hearings were scheduled on several occasions and continued from time to time by the parties; on August 26, 1986, counsel for the board of education moved to dismiss the appeal

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Counsel for the board did not seek to recover costs incident to the failure of grievant to appear and otherwise pursue the grievance.

if grievant did not reschedule the grievance for hearing within thirty days from the date of the motion. A copy of the motion was served on grievant at his last known address, i.e., 2043 7th Avenue, Huntington, West Virginia, 25703.

4. On February 27, 1987, another notice of hearing was sent to grievant rescheduling the hearing for March 17, 1987; this notice was sent to grievant at 4 Niday Drive, Barboursville, West Virginia 25504. This notice was returned to the Education Employees Grievance Board office by the post office and a notice was again mailed to grievant on March 3, 1987, informing him of the scheduled hearing on March 17, 1987. This notice was mailed to grievant at 2048 7th Avenue, Huntington, West Virginia 25703.

5. On March 17, 1987, the date scheduled for hearing, counsel for the board of education and two witnesses appeared for the hearing but there was no appearance by grievant. Counsel for the board moved to dismiss the grievance with prejudice for the nonappearance of grievant and the failure to prosecute the appeal.

CONCLUSIONS OF LAW

1. In accordance with W.Va. Code, 18-29-5(b) and 6 the hearing examiner may continue scheduled evidentiary hearings upon motion of either party and for good cause shown.

2. When continuances are granted it is incumbent upon the appellant to promptly reschedule the hearing or otherwise dispose of the grievance as rapidly as possible. W.Va. Code, 18-29-3(a); Carol Snyder v. Kanawha County Board of Education, Docket No. 20-86-162-1; Helen Harper v. Wayne County Board of Education, Docket No. 50-86-221-1.

3. A grievance will be dismissed for failure to prosecute on motion of the opposing party for failure to attend a properly scheduled evidentiary hearing.

For the foregoing reasons the grievance is DENIED and dismissed from the docket with prejudice.

Either party may appeal this decision to the Circuit Court of Kanawha County or Cabell 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, appearing to read "Leo Catsonis", is written over a horizontal line.

LEO CATSONIS

Chief Hearing Examiner

Dated: March 30, 1987