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DAVID TALLMAN

v.

Docket No. 52-86-270-3

WETZEL COUNTY BOARD OF EDUCATION

DECISION

The grievant, David Tallman, is employed as a teacher by the Wetzel County Board of Education and is presently assigned to New Martinsville School. For several years he has also served as a basketball coach at Magnolia High School. The position of head basketball coach at Magnolia for the 1986-87 season was posted in the spring of 1986; grievant applied but was not selected. He alleges that Wetzel County Policy GCD and other relevant personnel policy and procedure were violated in the hiring process.

Grievant initiated his grievance at level one on June 25, 1986, and it was waived to level two on that date. A level two evidentiary hearing was conducted July 9, 1986, and grievant was represented by a WVEA uniserv consultant who left the employ of the WVEA shortly thereafter. The school board waived consideration of the grievance at level three on September 9th and grievant filed his level four appeal by letter dated September 16, 1986, at which

time he requested that a hearing be scheduled as soon as possible.<sup>1</sup>

At the outset of the level four hearing, conducted January 8, 1987, grievant's new WVEA representative requested that grievant be permitted to amend the relief he had originally sought, i.e., that the position be reposted. Grievant now sought instatement in the position but due to the passage of time, the onset of the present basketball season and the possible hardship upon the students due to a change in the coaching staff, he would waive instatement until the 1987-88 season. Grievant further contended that a reposting of the position for the 1987-88 season would only allow the board to procedurally correct the wrongdoing it originally perpetrated.

Counsel for the school board voiced strong objections to the requested modification. Her main objection at the hearing was that she had no prior notice of grievant's request and had not researched the subject and, therefore, was at a disadvantage.<sup>2</sup>

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<sup>1</sup> A level four evidentiary hearing was scheduled for November 14th at Elkins, West Virginia, but was continued at the request of respondent's counsel. Unavoidable difficulties prevented rescheduling the hearing until January, 1987, in Wheeling, West Virginia.

<sup>2</sup> Grievant, through his new representative, was in error not to notice respondent of his request to amend the relief he sought prior to the scheduled hearing, but the neglect/oversight did not prejudice respondent's position in the grievance.

The parties agreed to return for another hearing should counsel feel it necessary to cross-examine grievant's witnesses at a later time or present witnesses on behalf of the respondent. Instead, she filed a memorandum of law on or about January 25, 1987, in opposition to grievant's request.

Counsel acknowledged that the grievance procedure laws permit modification of relief, but argued that no compelling reasons were presented to justify the modification.<sup>3</sup>

Counsel also pointed out that grievant did not ask for "priority" in scheduling a level four hearing, but this Board's priority policy pertains only to dismissal and suspension cases and grievant did in fact ask that a hearing be scheduled as soon as possible. She stated that the grievance could have been expedited had grievant agreed to her suggestion that the matter be submitted for decision on the record.<sup>4</sup>

Finally, counsel argued that grievant improperly presumes bad faith on the part of school administrators if the position

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<sup>3</sup> The grievance statute does not per se require a "compelling reason", but allows the hearing examiner at level four discretion on the matter if all parties do not consent to modification.

<sup>4</sup> It is noted that grievant has a statutory right to a level four hearing and the grievant must determine how to best prosecute his grievance. Also noted is the fact that grievant, in effect, had a "change of counsel" and his new WVEA representative had developed a different strategy and theory of the grievance issues.

be reposted and noted that the county has a new superintendent and two new board members since the event which gave rise to this grievance.<sup>5</sup>

The basic facts in this grievance are uncontroverted. During the 1985-86 basketball season the head coach resigned and grievant accepted a position as interim head coach for the remainder of the season. That position was posted in May, 1986, for the 86-87 season and five persons applied, including grievant. Four applicants were already employed as teachers in the county and were thus eligible; the fifth person was interviewed by the director of personnel to establish his teaching credentials and eligibility.

At some point the director of personnel prepared a blind list totaling each candidate's coaching experience and forwarded it to the school superintendent without any recommendation as who to hire.

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<sup>5</sup> Grievant's lack of faith that the new school officials would act properly in a reposting process/procedure is no doubt due to the fact that the new superintendent denied this grievance at level two and, likewise, the school board waived participation at level three.

The list was as follows:

#1

(Grievant, David Tallman)

1 year 9th grade football coach  
5 years assistant football coach  
5 years assistant basketball coach  
1 year head basketball coach

#2

(Successful candidate, Mark Blair)

3 years assistant track coach  
2 years Middle School basketball coach  
1 year 9th grade basketball coach  
1 year girls basketball coach  
2 years assistant basketball coach  
2 years head basketball coach

#3

11 years girls basketball coach  
1 year 7th-8th grade basketball coach  
4 years head baseball coach  
1 year assistant baseball coach  
2 years volleyball coach  
1 year assistant volleyball coach

#4

3 years assistant boys basketball coach - Middle School  
1 year Head boys basketball coach - MS  
2 years head girls basketball coach - MS

#5

4 years Assistant coach, Football, HS  
Head Baseball coach - High School  
2 years assistant high school Basketball coach  
4 years head basketball coach - high school  
3 years head basketball coach - Community college

As can be readily seen, this list provides no information regarding the school years the coaching occurred, the recency of the coaching experience nor any qualitative data.<sup>6</sup> The director of personnel testified at the level two hearing that, "This information was presented to the Superintendent for his use in determining his recommendation to the Board." (T. 9).

After interviewing all five candidates, Magnolia's principal recommended to the principal that grievant be named as head coach. The Superintendent, however, recommended to the school board that it hire Mark Blair, not grievant, and the board approved the nomination.

Grievant contends that the Superintendent did not follow any rational selection process to determine, as law requires, the most qualified candidate for head coach. He contends that the county has established a selection procedure whereby the superintendent delegates the determination of best qualified applicant to the supervising principal. He argues that the administration is bound by the procedures it properly establishes to conduct its affairs.

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<sup>6</sup> There was difference of opinion as to whether grievant had one year ninth grade basketball coaching to his credit; the director of personnel said it was incorporated in the years of assistant basketball coach. If so, the same treatment does not appear on Mr. Blair's list, and grievant's list is thus visually smaller as he contends.

Thus, grievant concludes that he was entitled to the coaching position as a result of the supervising principal's determination and recommendation that he was the best qualified.

Respondent relies on statutory provisions that only the superintendent, subject to the approval of the school board, has the power or authority to recommend, nominate or assign school personnel and maintains that no county policy was violated in the selection and hiring of the successful coaching candidate.

Magnolia's principal, Edward Glover, testified on grievant's behalf at the level four hearing. He stated that to the best of his knowledge the superintendent had always in the past accepted his numerous recommendations concerning the hiring, assignment or reassignment of staff. He then described his interview procedure for the subject coaching position. He reviewed the prepared tally of each candidate's coaching experience and prepared a set of questions to ask each regarding their coaching philosophy, knowledge of the sport and how they would react in certain game circumstances. Both he and his assistant principal were present at each interview and conferred about the candidate later. After further discussion it was determined that grievant and Mark Blair had nearly equal qualifications in regard to overall coaching experience. Other factors were then considered that related to the information gleaned during the interview. Both decided that grievant was the best qualified applicant for the position.

Principal Glover stated that prior to submitting a written recommendation to that effect, he discussed his selection with the superintendent. He felt the superintendent did not concur with his decision as the superintendent had stated that one of the applicants, Mark Blair, had prepared all of his life for the position. He said the superintendent commented that football coaches were not going to tell him who to hire.<sup>7</sup> Finally, Mr. Glover testified that the superintendent did not ask him on what basis he had made his selection nor ask for any of the information or impressions compiled as a result of the interviewing process.

Although the Director of Personnel, Ira Satterfield, appeared on behalf of the respondent, he was called up by the grievant to testify. He concurred that the normal selection procedure was that the superintendent would pass the principal's hiring recommendation to the board, but he noted there were occasional exceptions. When asked for an example Mr. Satterfield stated that the superintendent would not approve a principal's recommendation for the transfer of a troublesome teacher and that the superintendent indicated it was up to the principal to have the guts to attempt to have the teacher terminated.

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<sup>7</sup> It is noted that respondent had the opportunity to rebut this hearsay testimony by reconvening the hearing and cross-examining grievant's witnesses or calling witnesses on its own behalf. The testimony strongly supports grievant's charge of predetermination on the superintendent's part.



Mr. Satterfield's further testimony was somewhat contradictory. Grievant had charged that county policies were not followed in the selection process outlined in GCD Policy, "Hiring of Personnel/ Standard Procedure for Employments." That policy requires that the staff person and/or principal and the personnel director shall agree on the best qualified person for the position and submit their consolidated forms to the superintendent for his consideration. First, Mr. Satterfield testified that the procedure was only followed for new county school employees because regularly employed staff normally bid on a position and would automatically get the job if they were the most senior or best qualified. When later questioned by respondent's counsel, he said that he was not in agreement with the principal in regard to the recommendation of the grievant and therefore made no formal recommendation or "consolidated" recommendation and only submitted the coaching experience tally to the superintendent after he deleted the candidate's names.

Mr. Satterfield testified that state and county requirements were heeded and met to employ the best or most qualified personnel for a position but that in West Virginia there were no qualifications or coaching certification requirements for employment as a coach; personnel are eligible for the position by virtue of their employment in the county as a certified teacher. Mr. Satterfield then admitted that, yes, there were coaching attributes and other factors that must be considered in the selection of a coach and that, yes, given

two candidates with similar experience, that an interviewing procedure would be utilized to ascertain further qualifications. He stated that qualifications have to be determined in the eyes of the person doing the employing or by the person who has responsibility for making recommendations. He admitted that in this case the principal did conduct the required interviews and make qualification determinations but only "up to a point" and that the superintendent must make the final determination as he did in this case.

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

#### FINDINGS OF FACT

1. Grievant, David Tallman, is a teacher-coach employed by the Wetzel County Board of Education; he acted as interim head basketball coach at Magnolia High School, 1985-86.

2. On May 14, 1986, the position for head basketball coach at Magnolia High for the 1986-87 year was posted.

3. "Wetzel County Policy GCAP-R", dated May 26, 1986, lists goals and performance responsibilities of an Athletic Coach among

which are: development of individual skills and team concepts in athletics, provide leadership in the sport, foster school-community relations, enforce sportsmanlike conduct and provide a positive role model for students and the community. (Administrative Exhibit 1, July 9, 1986).

4. Five candidates, including grievant, applied for the coaching position at Magnolia High; the director of personnel interviewed only the sole candidate not presently teaching in Wetzel County to verify teaching credentials.

5. Wetzel County Policy GCD, "Hiring of Personnel: Standard Procedure for Employments," requires that the personnel director shall initially interview applicants to ascertain certification; legally qualified persons shall then be interviewed by the supervising principal. The policy states that in accord with state law, the best qualified person should be selected. (Grievant Exhibit 1, July 9, 1986).

6. The principal of Magnolia High School interviewed each candidate to determine their coaching philosophy and knowledge of sports. He also reviewed their coaching experience. By letter dated June 10, 1986, and directed to the superintendent, he recommended that grievant be employed as head basketball coach.

7. At a previous time, a special board meeting held June 15, 1983, the school superintendent defended his nomination of several coaches and advised the board that his coaching recommendations were given to him by the respective principals at each school, that coaches were evaluated and that he acted on those recommendations and evaluations and in turn recommended such to the board. (Grievant Exhibit 2, January 8, 1987).

8. The superintendent of Wetzel County by policy and action delegated the responsibility of determining qualifications of prospective employees to others, generally the supervising principal.

9. At some point and without any personal recommendation regarding the hiring for the coaching position in question, the personnel director submitted an undated "blind" list to the school superintendent, tallying each candidate's various coaching experiences. The list did not state the school years the coaching occurred, include evaluations of those services or supply qualitative data upon which a meaningful selection for a coach could be made.

10. The superintendent did not interview any candidate nor did a screening committee. Neither he nor the director of personnel reviewed the candidate's past coaching evaluations or any other supporting documentation which might attest to the suitability of the person to be selected for the position at issue.

11. Relative to the coaching position at issue, and ostensibly based on the list submitted by the personnel director, the superintendent recommended to the school board that a candidate be hired other than grievant who had been recommended by the supervising principal.

12. The ultimate selection and hiring of the 1986-87 head basketball coach at Magnolia high was not in accord with state law or county policy, procedures and practices and was patently arbitrary.

13. Grievant timely filed and pursued this grievance when he was not hired. A new school superintendent heard and denied the grievance at level two, and the school board, consisting of two new members, waived participation at level three upon the new superintendent's recommendation.

14. Grievant's efforts to expedite his grievance were thwarted by circumstances beyond his control; as basketball season was currently in force at the time of the level four hearing, he and his new representative amended the relief originally requested. Grievant does not now seek that the position be reposted for the 1986-87 year; he seeks instatement, but out of consideration for the athlete-players asks for instatement, 1987-88.

15. Grievant has proven that if established practices and policies had been heeded by the superintendent and board of education, he would have been hired as head basketball coach for the 1986-87 season.

### CONCLUSIONS OF LAW

1. A superintendent of schools must nominate and recommend all persons to be employed as professional personnel in the county; the county board of education votes whether to approve the nominations. W. Va. Code, 18A-2-1; West Virginia Education Association v. Preston County Board of Education, 297 S.E.2d 444 (W.Va. 1982).

2. County boards of education have substantial discretion in matters relating to hiring, assignment, transfer and promotion of school personnel but such discretion must be reasonably exercised, in the best interests of the schools, and not in an arbitrary and capricious manner. Dillon v. Wyoming County Board of Education, 351 S.E.2d 58 (W.Va. 1986).

3. A school superintendent vested with the sole legal authority to recommend and nominate a coach for employment and a school board empowered to approve the nomination must conform to those policies and procedures established by the school board to select the most

and best qualified candidate to fulfill the goals and responsibilities of the position. Wetzel County Policies GCAP-R and GCD; See generally, Robert Phares v. Randolph County Board of Education, Docket No. 42-86-232-2.

4. County boards of education are bound by procedures they properly establish to conduct their affairs. State ex rel. Hawkins v. Tyler County Board of Education, 275 S.E.2d 908, 912 (W.Va. 1980); Robert Phares v. Randolph County Board of Education, *supra*.

5. A county board of education is bound by State Board of Education Policy and its own policies in the conduct of its affairs and failure to follow these policies may invalidate an action of the board of education. Dillon v. Wyoming County Board of Education, *supra*; Don Williams v. Roane County Board of Education, Docket No. 44-86-160-1 (March 12, 1987).

6. The presumption of good faith which is ordinarily accorded an official act cannot prevail and will not apply when a review of the facts warrant otherwise. Beverlin v. Board of Education of the County of Lewis, 216 S.E.2d 554 (W.Va. 1975); State ex rel. Linger v. Board of Education, 163 S.E.2d 790 (W.Va. 1968).

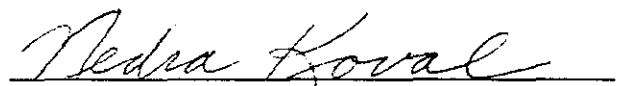
7. A level four hearing examiner has discretionary power to grant a grievant a modified request for relief. W.Va. Code, 18-29-3(k).

8. Pursuant to W.Va. Code, 18-29-5(b) the West Virginia Education Employees Grievance Board is vested with the authority to provide relief not inconsistent with regulation or law and may instate grievants to a position to which he or she may be entitled. Robert Phares v. Randolph County Board of Education, supra; Bernadine Brumfield v. Kanawha County Board of Education, Docket No. 20-86-126-1.

Grievant has proven by a preponderance of the evidence that he was entitled to the position of head basketball coach at Magnolia High, 1986-87. Further he has justified his request for modification of the relief he originally requested and shown professional responsibility in the matter.

Accordingly, this grievance, as modified, is GRANTED in its entirety and the school board is Ordered that grievant be instated as head basketball coach at Magnolia High for the 1987-88 academic year.

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



NEDRA KOVAL  
Hearing Examiner

Dated: March 20, 1987