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KAREN CORDER

v.

DOCKET NO. 01-87-329-2

BARBOUR COUNTY BOARD OF EDUCATION

DECISION

Grievant, Karen Corder, is employed as a teacher by the Barbour County Board of Education and is presently assigned to Philip Barbour High School. Ms. Corder filed a level one grievance on November 6, 1987 in which she alleged that she was improperly denied the position of Athletic Coordinator at Philip Barbour High School as she was the most qualified candidate. The grievance was waived at level two and at level three the board confirmed its decision to not approve the appointment of the grievant and waived further participation. An evidentiary hearing was conducted at level four on February 5, 1988 and proposed findings of fact and conclusions of law were submitted by March 15.

In August 1987 the position vacancy of Athletic Coordinator at Philip Barbour High School was posted.¹ The five applicants were interviewed by Principal Garry Tenney who recommended the grievant and Joseph Oliverio for a final interview to be conducted by Superintendent William Phillips and the three area administrators. Following the second interview Superintendent Phillips recommended the grievant for the position on September 15. On September 22 Ms. Linda Sandusky filed a grievance in which she alleged that she was the most qualified and the most senior applicant. The Superintendent again recommended the grievant for the position on October 6. After the grievant personally presented her resume and qualifications to the board it rejected the recommendation that she be awarded the position and directed the superintendent to make a second recommendation.

Principal Tenney was again requested to submit the names of two applicants for consideration. Mr. Oliverio and Linda Sandusky were selected and Ms. Sandusky was approved for the position by the board of education on October 20.

¹The memorandum setting forth the procedure for interviewing (G.E.6) indicates the position to be an extra duty assignment to be primarily performed before or after school hours and not to interfere with instructional time.

The grievant argues that she was the most qualified applicant and that the board's action to deny her the position was violative of W.Va. Code, 18A-4-8b(a) and Barbour County Board of Education Policy G6 and constituted reprisal for her activities in professional organizations and involvement in past and present grievances.

The board denies any wrongdoing and asserts that it was properly acting within its discretion when it rejected the recommendation of an individual who was not clearly the most qualified applicant. It also denies the action was taken in reprisal and argues that the grievant has offered no evidence in support of this charge other than her failure to receive this position.

A review of the qualifications of Ms. Sandusky and the grievant indicates the following: Ms. Sandusky holds a Masters degree in Safety and has earned an additional fifteen hours of graduate credit. She is certified to teach English, health, physical education and safety; has been employed in Barbour County since 1970 and has been active in coaching during that time.²

²There was no direct evidence of Ms. Sandusky's qualifications other than the grievant's testimony of her knowledge and a statement included in the board's proposed findings of fact and conclusions of law. This decision is based upon that information made available to the examiner.

The grievant has a Masters degree plus fifteen hours in education administration and is certified to teach English, health and physical education. She has been employed by the Barbour County Board of Education since 1973 and has been active in coaching, has served as cheerleading sponsor and been active in the athletic boosters club.

The job description for the position of school athletic coordinator (Barbour County File: G-48) lists the qualifications for the position as a Bachelor's degree and three years of coaching experience. The statement of responsibilities includes "...the coordination and administration of the school athletic program within the framework of the philosophy and objectives of the educational program established by Board Policy...". Specific duties include:

Coordinates the organization of the athletic program of the school;

Works with the Principal, Assistant Principal and Coaches in the preparation and administration of the budget for the total athletic program based on identified needs and priorities of the district and school;

Maintains a complete financial record of receipts and expenses of the athletic department. Each game's receipts shall be carefully checked so that the number of tickets should balance with the money received. A record of all paid bills and pay orders used to pay those bills shall be readily available;

Assumes responsibility for the purchase of all athletic equipment;

Recommends to the Principals the best qualified teacher available for coaching positions;

Assists in planning and implementing staff development programs and activities to strengthen identified areas needing improvement;

Holds professional meetings on a regular basis with the members of the athletic staff;

Stimulates cooperation between the coaches of various sports, and between coaches, teachers and administrators concerning general athletic policy;

Assists the Principal and assistant Principal in supervision and evaluation of coaches;

Administers the athletic and student accident insurance program;

Coordinates non-instructional activities and services as a support to the athletic program;

Provides for proper administration and supervision of all athletic contests by:

- a. selling and taking tickets
- b. arranging for sufficient police protection
- c. arranging for medical and ambulance coverage
- d. providing necessary facilities for visiting team
- e. having necessary game equipment ready;

Helps to plan and arrange for pep rallies and awards program;

Approves all recommendations for athletic awards;

Arranges schedules for all athletic contests and file contracts in the Coordinator's office with copy in Principal's office;

Contracts for all home game officials and have checks prepared for them;

Arranges transportation for all athletic teams;

Maintains athletic record for all sports;

Checks the eligibility of all athletes such as eligibility, birth certificates and physical exams;

Assumes responsibility for publicity and press releases concerning athletics;

Assumes responsibility for the maintenance, storage and inventory of athletic equipment;

Has a thorough knowledge of the West Virginia Secondary School Activities Commission's current rules and regulations;

Represents his school at athletic meetings when assigned. This would include all conferences, State, and other meetings in which his school is involved. If his Principal does not attend with him, it shall be his responsibility to see that his Principal is informed as to what transpired;

Promotes positive community relations through effective communication and involvement of community members;

Analyzes personal characteristics and strengthens areas of behavior as necessary for the fulfillment of his assignment;

These duties establish that athletic coordinator is an administrative position and is responsible for all phases of the school's athletic program. While both the grievant and Ms. Sandusky meet the minimum requirements listed on the job description the grievant's training as an administrator would enhance her qualifications for an administrative position.

Both W.Va. Code, 18A-4-8b(a) and Barbour County Board of Education Policy G-6 provide that decisions affecting the pro-

motion and filling of any classroom teacher's position shall be made on the basis of qualifications. If the most senior applicant is not selected that individual is entitled to a written statement of reasons with suggestions for improvement. The W.Va. Supreme Court of Appeals in Dillon v. Board of Education of the County of Wyoming, 351 S.E. 2d 58 (W.Va. 1986) interpreted this language to mean that promotions must be made on the basis of qualifications with seniority playing a role only when the applicants have equivalent qualifications or where the deficiencies in qualifications are insufficient to form the basis for an informed and rational decision. Milam v. Kanawha County Board of Education, Docket No. 20-87-270-1.

In addition to the foregoing it is appropriate to make the following specific findings of fact and conclusions of law.

Findings of Fact

1. The grievant is employed as a teacher by the Barbour County Board of Education.

2. The grievant and nine other individuals applied for the position of athletic coordinator at Philip Barbour High School in August 1987.

3. Pursuant to a memorandum of September 8, 1987 titled "Procedures for Interviewing Athletic Coordinator", Principal Garry Tenney interviewed the five qualified applicants and recommended two, the grievant and Mr. Joseph Oliverio for the final interview.

4. At a board of education meeting held on September 15, 1987 Superintendent William Phillips recommended the grievant for the position, however, the board took no action on the recommendation.

5. On September 22 Linda Sandusky filed a grievance alleging that she was the most qualified and the most senior applicant.

6. On October 6 Superintendent Phillips again recommended the grievant for the position of athletic coordinator at Philip Barbour High School. The board rejected the recommendation and directed that a second recommendation be made.

7. Principal Tenney then recommended Mr. Oliverio and Ms. Sandusky, the superintendent recommended Ms. Sandusky to the board which approved her employment.

8. Both the grievant and Ms. Sandusky are certified to teach English, health and physical education and both have served as coaches. Ms. Sandusky has a Masters degree in Safety while

the grievant has a Masters degree in administration. Ms. Sandusky has more seniority than the grievant.

9. The job description for the position of athletic coordinator indicates the duties to be administrative in nature.

10. There is no indication that Ms. Sandusky has any education or experience in the area of administration.

Conclusions of Law

1. A county board of education shall make decisions affecting promotion and filling of any classroom teacher's position occurring on the basis of qualifications. If the applicant with the most seniority is not selected, he shall be given a written statement of reasons with suggestions for improving his qualifications. W.Va. Code, 18A-4-8b(a).

2. Extracurricular positions are not exempt from procedural requirements and rights afforded by statute. Smith v. Board of Education of the County of Logan, 341 S.E. 2d 685 (W.Va. 1985); Hosaflook v. Nestor, 346 S.E. 2d 798 (W.Va. 1986); Williams v. Roane County Board of Education, Docket No. 44-86-160-1 and Shoemaker v. Hampshire County Board of Education, Docket No. 14-87-256-2.

3. Based upon that information made part of the record the grievant is more qualified to hold an administrative position than the successful candidate.

Accordingly, the grievance is **GRANTED** and the board of education is hereby **ORDERED** to instate the grievant as athletic coordinator of Philip Barbour High School.

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

May 13, 1988

Sue Keller

SUE KELLER
HEARING EXAMINER