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FLOYD FRIEND

v.

DOCKET NO. 34-87-286-4

NICHOLAS COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Floyd Friend, has been employed by the Nicholas County Board of Education for approximately eleven (11) years. He is currently an elementary teacher assigned to Mt. Lookout Elementary School. He filed the present grievance in September 1987 alleging the Athletic Director at Summersville Junior High School resigned in August 1987 and there had been no posting of the vacancy in accordance with the requirements of W.Va. Code, 18A-4-8b.

A Level II hearing was held on October 7, 1987, a decision adverse to the grievant was rendered and the Board waived the grievance at Level III. A Level IV evidentiary hearing was held on December 11, 1987.

It is not disputed that Mr. Chris Perkins resigned from his position as Athletic Director at Summersville Junior High School effective August 10, 1987 and there was no posting of the vacancy.

The Board admits there was a "realignment" of all coaching duties at the school and the remaining coaches were assigned to different positions.¹ These changes ultimately resulted in a vacancy in an Assistant Football Coach position at the school and that job was posted on September 4, 1987 and filled on September 15, 1987. At the Level IV hearing grievant testified he managed to submit a written notice to the Board office that he would like to have the Athletic Director position or several other coaching positions at the school despite the fact that the vacancy in the Athletic Director position was never posted. He apparently made application for the coaching position that was posted but was never granted an interview. (T. __)

The parties' concurrence on the essential facts of the case effectively renders this grievance an argument over applicable law as it relates to a school employee's procedural rights concerning coaching positions. In Smith v. Logan County Board of Education,

¹ The Board's representative, Wilbert D. Mick, in his opening remarks at the Level IV hearing, made statements to the effect that while he believed the Nicholas County Board of Education had acted lawfully in this matter, the grievance presented two basic questions, namely, whether or not a board of education could realign the coaching duties in such a fashion and only post the resulting vacancy and the extent of the authority of a principal to manage the sports activities at his or her particular school. This last question appears to relate to the Board's assertion that a principal does have the right to recommend that preference be given to their own teaching staff when coaching positions at his or her school are filled.

(footnote cont.)

342 S.E.2d 685 (W.Va. 1985) a coach had not been afforded such rights when the Board had decided not to renew his coaching contract for the upcoming school term and the West Virginia Supreme Court of Appeals held in the employee's favor stating that:

No part of West Virginia Code 18A-4-16 (1984 Replacement Vol.), indicates that the legislature intended to exempt those persons assuming duty for extracurricular activities from the protections generally attached to all other school personnel positions... Nothing in the 'separate contract' statute operates to deprive teacher-coaches of their procedural employment rights. The statute's intended purpose was to grant them additional protection by mandating that school boards could not assign teachers to coaching duties without their express consent, and more importantly, could not condition their teaching employment upon acceptance or continuation of coaching duties. (Emphasis in original) (Neeley, J., Brotherton, J., dissenting)

The Court concluded the procedural requirements of W.Va. Code, 18A-2-7 and W.Va. Code, 18A-2-8 clearly applied to all school personnel positions and school board actions relating to extracurricular activities were not exempt from such requirements. See generally Cook v. Logan County Board of Education, Docket No. 23-86-076. School personnel laws are to be strictly construed in favor of

(footnote cont.)

filled. At the Level IV hearing the Board focused its attention, as it did at Level II, on this issue and made no legal argument in regard to its reshuffling of coaching duties at Summersville Junior High School.

the employee, Morgan v. Pizzino, 256 S.E.2d 592 (W.Va. 1979); Hedrick v. Board of Education, 332 S.E.2d 109 (W.Va. 1985), and it follows that the procedural requirement of posting of vacancies contained in W.Va. Code, 18A-4-8b should apply to coaching positions. The resignation of Mr. Chris Perkins in August 1987 created such a vacancy and the position should have been posted.

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

FINDINGS OF FACT

1. Grievant is an elementary teacher employed by the Nicholas County Board of Education presently assigned to Mt. Lookout Elementary School.
2. Mr. Chris Perkins resigned his position as Athletic Director at Summersville Junior High School effective August 10, 1987 and said resignation created a vacancy in that position.
3. The Nicholas County Board of Education did not post or otherwise cause any notice to be made of the vacancy but instead made reassignments of the remaining coaches at Summersville Junior High School; Mr. Jack Cole was given the position of Athletic Director.

4. Said reassignments of coaching personnel by the Nicholas County Board of Education eventually resulted in a vacancy in the position of Assistant Football Coach and that opening was posted on September 4, 1987 and filled on September 15, 1987.

CONCLUSIONS OF LAW

1. W.Va. Code, 18A-4-16 allows school boards and school employees to enter into contracts for the performance of extracurricular activities and there is nothing in the language of that section of the W.Va. Code which operates to deprive teacher-coaches of their procedural employment rights. Smith v. Logan County Board of Education, supra; Cook v. Logan County Board of Education, supra.

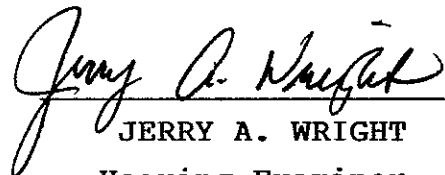
2. The requirement of W.Va. Code, 18A-4-8b that all openings in established, existing or newly created positions be posted is a procedural employment right of school employees and must be followed when a vacancy occurs in coaching positions.

3. The Nicholas County Board of Education did not follow the requirement of posting contained in W.Va. Code, 18A-4-8b when the position of Athletic Director became vacant pursuant to the resignation of Mr. Chris Perkins.

Accordingly, the grievance is **GRANTED** and the Nicholas County Board of Education is hereby **ORDERED** to post and fill the

vacancy in the position of Athletic Director created by the resignation of Mr. Chris Perkins in accordance with W.Va. Code, 18A-4-8b(a).

Either party may appeal this decision to the Circuit Court of Nicholas County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. (W.Va. Code, 18-29-7) Please inform this office of your intent to do so in order that the record can be prepared and transmitted to the Court.


JERRY A. WRIGHT
Hearing Examiner

DATED:

Jan 19, 1988