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FLOYD FRIEND

v.

Docket No. 34-88-053-4

NICHOLAS COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Floyd Friend, is employed by the Nicholas County Board of Education and assigned to Mt. Lookout Elementary School. He filed a grievance in February 1988 alleging two coaching positions had been filled at Summersville Junior High without regard for qualification of the applicants in violation of W.Va. Code, 18A-4-8b(a) and certain Board policies. A Level II decision issued March 14, 1988 was adverse to grievant and a Level IV hearing was held on April 18, 1988.

At issue is the Board's decision to only consider applicants for the positions posted on December 21, 1987 who were on the teaching staff at Summersville Junior High School. Mr. Friend applied for the positions but was not granted an interview but was given a letter

explaining this Board policy. It is grievant's contention that the exclusion of all other qualified applicants from the interview/selection process violates W.Va. Code, 18A-4-8b(a) and Nicholas County Board of Education Policies GCCA and GCD, all of which require hiring decisions to be made primarily on the basis of qualifications. At Level II Mr. Friend was informed the Board would repost the positions of Head Football Coach and Assistant Football Coach at Summersville Junior High School and grant him an interview but the exclusionary policy would still apply. He declined to accept this resolution and filed his Level IV appeal.

At the Level IV hearing Mr. Friend testified he had more seniority than Mr. Gene Morris, the person who had been awarded the Head Football Coach position, and but for the Board's policy he would have been given the job. Grievant also indicated he and Mr. Morris had the same coaching philosophy and a common concern for making the sport of football a learning experience for students. Mr. Friend further stated he was not asking for an interview or instatement to Mr. Morris' position as relief and was only seeking a ruling that the Board's policy of only considering applicants on staff at a particular school for coaching positions at that school was a violation of the West Virginia Code and other Board policy.¹ Grievant and

¹Grievant apparently felt he was not the more senior or qualified applicant for the Assistant Football Coach position which was awarded to Mr. Edward J. Cole as his statements throughout the Level IV hearing were focused upon the Head Football Coach position.

his representative were then informed that the nature of this request for relief would reduce the decision in this matter to an advisory opinion and a motion to change the relief requested would be considered. Grievant chose not to make such a motion and instead asked for leave to withdraw his grievance.

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

FINDINGS OF FACT

1. Grievant, Floyd Friend, is employed as a teacher by the Nicholas County Board of Education and assigned to Mt. Lookout Elementary School.

2. On December 21, 1987 the Board posted the positions of Head Football Coach and Assistant Football Coach at Summersville Junior High School and although grievant applied for the positions he was not granted an interview and they were awarded to Mr. Gene Morris and Mr. Edward Cole.

3. Grievant subsequently received a letter from the principal at Summersville Junior High School, Mr. George Bailey, informing him of the policy to give first consideration to experienced personnel on the staff at his school for coaching positions.

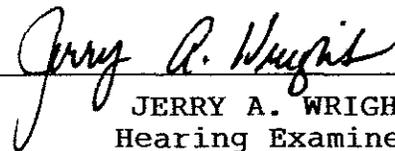
4. Upon appeal of his grievance to Level IV, Mr. Friend testified the only relief he was seeking was a ruling that the particular Board policy of granting such preference to the staff at a specific school was invalid and contrary to W.Va. Code, 18A-4-8b(a) and Nicholas County Board of Education Policies GCCA and GCD.

CONCLUSIONS OF LAW

1. The West Virginia Education Employees Grievance Board will not issue advisory opinions and abstract propositions are not properly cognizable in the grievance procedure. Richmond v. Raleigh County Board of Education, Docket No. 41-86-127; Harper v. Wayne County Board of Education, Docket No. 50-86-221; Dunleavy v. Kanawha County Board of Education, Docket No. 20-87-102-1.

Accordingly, the grievance is DENIED.

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 said 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: April 28, 1988