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**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**

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OLLIE HUNTING

v.

Docket No. 22-88-152

LINCOLN COUNTY BOARD OF EDUCATION

DECISION

Grievant, Ollie D. Hunting, is employed by Respondent Lincoln County Board of Education as a teacher and as head football coach at Hamlin High School (HHS). In late 1984, he applied, and was interviewed, to fill the vacancy of Assistant Principal, HHS. Mr. Charles S. McCann, then Superintendent of Schools for Lincoln County, declined to recommend Grievant to Respondent for the job, and on June 18, 1985, Mr. Francie McComas was placed in the position. On June 6, 1988, Hunting initiated this grievance at Level I, seeking instatement as HHS Assistant Principal and back pay.¹ Because the Level I evaluator was without authority to grant the requested relief, the matter was advanced to

¹ It is unclear from the record to what past point in time grievant is asking for back pay. However, because of the outcome herein, the point is moot.

Level II. After hearings at each of Levels II and III,² the grievance was denied, and a hearing was conducted at Level IV on October 27, 1988. At that time, the parties expressed their intention to not file proposed findings of fact and conclusions of law.

Grievant contends he was not recommended for the job solely because he was a head football coach and was unwilling to relinquish that assignment. He testified at Level IV that, during his interview, McCann advised that it was his "policy" that administrative personnel employed by Respondent not be allowed to maintain simultaneous coaching duties.³ Grievant responded by asking McCann why two Lincoln County principals, namely, Larry Prichard and James Nelson, then had coaching responsibilities; McCann explained that Prichard's and Nelson's coaching duties were distinctly less demanding since they were on the elementary level.⁴ Grievant accepted McCann's decision⁵ from 1984 until

² The Level III transcript is a part of the record in this case.

³ It is undisputed that such has never been a formal policy of Respondent, but was McCann's own rule.

⁴ At the Level IV hearing, McCann corroborated Grievant's testimony in toto. McCann further testified that were it not for grievant's coaching, he would have recommended him for the HHS Assistant Principalship over Mr. McComas.

⁵ It is somewhat confusing why Grievant did not contest McCann's explanation concerning Nelson and Prichard, since he, Grievant, apparently knew those administrators
(Footnote Continued)

sometime in 1988, when "Skip" Winters, Assistant Principal at Guyan Valley High School (GVHS), was granted a cross-assignment as GVHS head boys' basketball coach.⁶ Sometime shortly after Winters' cross-assignment, Grievant contacted counsel, Mr. Jack Stevens, and thereafter initiated this grievance action.⁷

Respondent at Level IV, as it did at Level III and its Superintendent did at Level II, asserts that this grievance is not timely filed and should be denied on that basis.

W.Va. Code §18-29-4 is cited and, in pertinent part, provides as follows:

Level one...

Before a grievance is filed and within

(Footnote Continued)

were junior high, and thus secondary, coaches. It appears that the McCann policy, more correctly stated, was that senior high administrator/coaches were not allowed. However, even if Grievant had raised the issue of Nelson and Prichard being secondary school employees, it has been previously recognized that a wide disparity exists between the responsibilities of junior high and senior high school coaching. Miller v. Mason Co. Bd. of Educ., Docket No. 26-86-183-1 (Oct. 7, 1986).

⁶ At some later point, Winters was also hired as GVHS' head baseball coach.

⁷ At the Level IV hearing, grievant admitted that he knew about the grievance procedure at the time McCann decided not to recommend him for the job, and that he could file a grievance if he had a valid claim; he further admitted he knew nothing of a timeliness requirement until after he contacted Attorney Stevens. Grievant also stated he had hesitated to file a grievance because, in effect, he was not the type of individual who liked to "ruffle feathers."

fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date on which the event became known to the grievant or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance, the grievant ... shall schedule a conference with the immediate supervisor to discuss the nature of the grievance and the action, redress or other remedy sought.

Respondent further argues that McComas, the individual hired for the job, was more qualified than Grievant⁸ and thus that McComas' hiring was required by Code §18A-4-8b(a). By way of rebuttal, Grievant contends that BOE has engaged in a "continuing practice giving rise to a grievance"⁹ and that this matter should accordingly be held timely filed. He also contends that McCann's decision to not recommend him

⁸ Grievant has over 15 years' experience with Respondent, including administrative background limited to less than one year as principal at Midway Elementary School, during the 1972-73 school term. McComas has been employed by Respondent for over 24 years; at the time he was selected to be Assistant Principal of HHS, he had 10 years of administrative work history, with eight years as Assistant Principal, GVHS, and two years as Special Education Director for Respondent. Grievant's tenure as Principal at Midway was prior to his certification in school administration, and a portion of McComas' time as GVHS Assistant Principal was before his like certification.

At the Level IV hearing, Grievant, via his counsel, admitted that McComas' qualifications appeared to be superior to those of grievant. That assessment seems to be accurate and suggests that Grievant would likely not prevail upon this complaint were its merits reached. See Code §18A-4-8b(a).

⁹ Grievant's argument is that McCann's policy has not been uniformly followed and that he is a victim of some sort of continuing discrimination as a result thereof.

for the job was made prior to McComas' application, and therefore, that the two applications and the applicants' relative qualifications were never compared during the selection process.¹⁰

In addition, it is appropriate to make the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Grievant, a teacher/coach at Hamlin High School (HHS), applied for the position of Assistant Principal, HHS, in response to a November, 1984 posting.
2. Grievant was interviewed for the job by Charles S. McCann, then Superintendent of Schools for Lincoln County, in December, 1984.
3. During that interview, McCann advised Grievant that he would not recommend him to Respondent for the job because he, McCann, had a policy that secondary administrators should not simultaneously hold coaching responsibilities in

¹⁰ Respondent cites Code §18A-4-8b(a) and contends that it was not required, by law, to fill the position within any certain time frame, so, in effect, it was not required to actually compare Grievant's qualifications with those of Mr. McComas. Because of the decision in this matter, this issue is not reached.

their schools. This policy was based on McCann's belief that each responsibility , i.e., secondary administrator and secondary coach, was too time-consuming to allow both to be performed well by the same individual.

4. Grievant, at that time, was aware that two principals employed by Respondent were also assigned as coaches; however, he accepted McCann's explanation that their coaching duties were on the elementary level and therefore far less demanding than secondary-level coaching.

5. The HHS Assistant Principal vacancy was posted several times between November, 1984 and June, 1985.

6. In June, 1985, Francie McComas was hired as Assistant Principal, HHS.

7. It has never been Respondent's official policy that secondary, or other, school administrators not be allowed to also act as coaches.

8. In 1986, McCann became an Assistant Superintendent of Schools for Respondent, and Mr. Harold Smith became Superintendent.

9. Sometime in 1988, while Smith was Superintendent, Assistant Principal "Skip" Winters of Guyan Valley High School

was cross-assigned to be that school's head basketball coach.

10. Sometime shortly after Winters' cross-assignment, Grievant contacted an attorney, Mr. Jack Stevens, regarding whether or not he had a valid cause of action related to McCann's decision not to recommend him, Grievant, for the HHS Assistant Principalship in late 1984.

11. Grievant was unaware that there were time restrictions on filing an employment-related grievance or action until after he contacted Attorney Stevens.

12. Grievant contends that there has been a continuing practice of not uniformly following the "policy" of disallowing secondary administrator/coach assignments, and that he has been discriminated against as a result thereof.

13. Grievant accepted McCann's decision to not recommend him to Respondent for employment as HHS' Assistant Principal until June 7, 1988, when he filed the instant grievance.

CONCLUSIONS OF LAW

1. A school employee or his/her representative, prior to filing a grievance, must, within fifteen days of either the occurrence giving rise to the potential grievance, the potential grievant's awareness of that occurrence, or the most recent occurrence of a continuing practice giving rise to the potential grievance, schedule a conference with his/her immediate supervisor to discuss the matter, in an effort to resolve it. See W.Va. Code §18-29-4(a)(1).

2. It is incumbent upon a school employee to timely pursue his/her rights through the grievance process. Code §18-29-3.

3. When timeliness is raised as an affirmative defense before the West Virginia Education and State Employees Grievance Board, it is Grievant's burden to demonstrate the reason for any delay and/or the applicability of Code §18-29-4(a)(1) to his/her situation. Badgeley v. PCC, Docket No. 54-86-064 (Oct. 7, 1986).

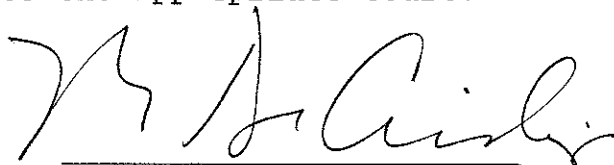
4. When an individual initially accepts official action taken on a job application filed by him, but later decides not to accept the same, timeliness may be a valid defense to any grievance related thereto. See Ryan et al. v. Berkeley Co. Bd. of Educ., Docket No. 02-88-060 (Sept. 29, 1988);

Scarberry v. Mason Co. Bd. of Educ., Docket No. 26-86-291-1
(Mar. 26, 1987).

5. Grievant has not established any sort of "continuing practice giving rise to a grievance"; therefore, his grievance was not pursued in a timely manner. Code §18-29-4 (a)(1).

ACCORDINGLY, this grievance is **DENIED**.

This decision may be appealed to either the Circuit Court of Kanawha or Lincoln County, but only within thirty (30) days of its receipt. See W.Va. Code §18-29-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Hearing Examiners is a party to such appeal and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate Court.



M. DREW CRISLIP
HEARING EXAMINER

Dated: Nov. 22, 1988