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EUGENE RANDOLPH

v.

DOCKET NO. 17-88-001-2

HARRISON COUNTY BOARD OF EDUCATION

DECISION

Grievant, Eugene Randolph, is employed by the Harrison County Board of Education as a teacher assigned to Bridgeport High School. Mr. Randolph filed a level one grievance on October 14, 1987 in which he alleged violations of W.Va. Code, 18A-4-8b(a), 18A-4-16, 18-29-2(a) and 18-29-2(o), West Virginia Board of Education Policy 5300(6) and Harrison County Board of Education Policies GBE and GBI when he failed to receive coaching positions at Liberty High School. No response was issued at level one and the matter was denied at level two. Appealed by the grievant to level four both parties agreed that a decision could be made upon the record developed at level two supplemented with proposed findings of fact and conclusions of law.

Sometime prior to the 1987-88 school term a resignation created vacancies for the positions of head basketball coach and assistant football coach at Liberty High School. The positions were duly posted and applications accepted. Following interviews by a committee the positions were awarded to another applicant, Donald Kopp.

The grievant argues that receiving the positions would be a promotion and therefore they must be filled based upon qualifications. He asserts that he had numerous years of experience coaching both basketball and football therefore he is better qualified than the successful candidate who received the positions as a result of favoritism. This charge is based upon a comment made to the grievant by Wilson Curry, principal at Liberty High School, sometime prior to or during the interview process indicating that he had already chosen a candidate for the position. (T. p. 16) Additionally, the vacating coach, a friend of Mr. Kopp, recommended him for the positions and the assistant football position was not filled until 1988 as an accommodation to the successful candidate.

The board argues that interviews conducted by a team of three individuals consisted of standard questions asked of each candidate who had the same opportunity to respond, comment or question. The team unanimously determined Mr. Kopp to be the best qualified applicant and therefore the positions were filled in compliance with W.Va. Code, 18A-4-8b(a) even though the board disagrees that that Code section is applicable to extracurricular positions.

This board has previously held that extracurricular positions are to be filled on the basis of qualifications, just as curricular positions. Shoemaker v. Hampshire County Board of Education, Docket No. 14-87-329-2 and Corder v. Barbour County Board of Education, Docket No. 01-87-329-2. This board has also consistently and frequently noted that in matters regarding qualifications the burden is on the grievant to show by a preponderance of the evidence that he was the most qualified candidate. The grievant has presented his qualifications and recommendations but has failed to address those of the successful applicant. As it is impossible to compare the two individuals the grievant has failed to show that he was the most qualified applicant.

In addition to the foregoing narration 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 and coach by the Harrison County Board of Education.

2. Sometime prior to the 1987-88 school year the board of education posted position vacancies for the head basketball coach and assistant football coach at Liberty High School.

3. The grievant and several other individuals applied for the positions. Following interviews by a committee of three, the positions were awarded to Donald Kopp by unanimous decision.

4. The grievant has coached both basketball and football at various schools in Harrison County.

5. The grievant failed to produce either directly or indirectly the qualifications of the successful candidate.

Conclusions of Law

1. Extracurricular activity contracts 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) and Williams v. Roane County Board of Education, Docket No. 44-86-160-1.

2. W.Va. Code, 18A-4-8b requires that decisions affecting the promotion and filling of any classroom teacher's position be made on the basis of qualifications. Shoemaker v. Hampshire County Board of Education, Docket No. 14-87-256-2 and Corder v. Barbour County Board of Education, Docket No. 01-87-329-2.

3. It is incumbent upon a grievant seeking relief pursuant to the W.Va. Code, 18-29-1 et seq. to prove all of the allegations constituting the grievance by a preponderance of the evidence. Kirk v. McDowell County Board of Education, Docket No. 03-87-178; Bulford v. Preston County Board of Education, Docket No. 39-87-203 and Andrews v. Putnam County Board of Education, Docket No. 40-87-330-1.

4. The grievant has failed to prove by a preponderance of the evidence that he was the most qualified applicant for the positions.

Accordingly, the grievance is **DENIED**.

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

June 30, 1988

Sue Keller

SUE KELLER

HEARING EXAMINER