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STATE EMPLOYEES GRIEVANCE BOARD**
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RONALD SMITH

v.

DOCKET NO. 19-88-082

JEFFERSON COUNTY BOARD OF EDUCATION

DECISION

Grievant, Ronald Smith, is employed by the Jefferson County Board of Education (Board) and is presently assigned as a health instructor at Jefferson County High School. Mr. Smith filed a level one grievance on March 17, 1988 in which he alleged violations of W.Va. Code §§18A-4-16 and 18A-4-8b when a less qualified individual was employed for the unposted position of junior varsity (J.V.) baseball coach. The grievance was denied at level one on March 30, at level two on May 3 and level three on May 16. The matter was appealed to level four on May 23. An evidentiary hearing was conducted on September 20 and proposed findings and conclusions were submitted by the Board on October 11.¹

¹Hearings had been previously scheduled for July 11 and August 9 but were continued upon Motions by the grievant.

Jefferson High School maintains three baseball coaches on the staff: the head varsity coach and two assistants who serve as assistant varsity coach and the junior varsity (J.V.) coach. A posting dated August 13, 1987 included the position of assistant baseball coach. The position was filled by the Board on or about March 14, 1988.

The grievant asserts that he was interested in the position of J.V. coach but could not ascertain whether that position or the position of assistant varsity coach was vacant. He testified that neither Principal Jimmy Carpenter nor Athletic Director Don Hetzel could tell him which position would be filled. The grievant was not interested in the assistant varsity position and did not submit an application. As the position subsequently filled was that of J.V. coach the grievant argues that the posting was improper.²

The Board responds that both the assistant varsity coach and the J.V. coach are classified as "assistant coach" and that the head coach is permitted to assign his staff as he desires.

²Much ado is made by both parties as to whether the position was ever posted or for how long. The grievant's testimony on whether he saw the posting is conflicting but it is clear that he knew of a vacancy and that it may have been for the position which he wanted. Therefore, this examiner will accept that the position was posted and will address only the issue of whether the position in question was properly listed.

The Board argues that the position was properly posted and that the grievant was not considered as he had not applied.

Documentation submitted by the grievant supports his position that the posting was improper. The 1988 baseball schedule for the J.V. Cougars is published on letterhead stationery which includes the names of the head coach and the J.V. coach. The assistant varsity coach is not named. This indicates that the duties of the J.V. and assistant varsity coaches are distinctly different although both are supervised by the head coach. Postings dated August 13, 1987 and June 14, 1988 include listings for assistant boys' basketball coach and boys' J.V. basketball coach at Jefferson High School. These postings establish a lack of consistency within the athletic department and support the finding that the positions of assistant and J.V. coaches essentially differ to the extent that they should be specifically identified when posted.

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 by the Jefferson County Board of Education as a teacher. He has also coached football and track teams.

2. In August 1987 the position of assistant baseball coach at Jefferson High School was posted.

3. The grievant inquired of the principal and athletic director as to whether the position would be the assistant varsity or junior varsity position but neither were able to identify which would be filled.

4. The grievant did not submit an application for the position which was filled by the Board in March 1988.

5. That individual hired in March served as the J.V. coach.

6. Postings for similar positions for a basketball team were designated as assistant and J.V. coaches.

7. Duties of the assistant varsity and J.V. coaches are dissimilar to the extent that they must be identified as separate and different positions.

8. It is impossible to determine whether the grievant is the most qualified candidate until the position is properly posted and all of the applicants are considered.

Conclusions of Law

1. A board of education is required to post notices of all openings, with job descriptions, in conspicuous working places for at least five working days. W.Va. Code §18A-4-8b(a).

2. Extracurricular positions are not exempt from procedural rights and requirements afforded by statute. Williams v. Roane County Board of Education, Docket No. 44-86-160-1; 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).

3. The present position was improperly posted as it did not specifically identify which of two different assistant coaching positions was to be filled.

Accordingly, the grievance is GRANTED to the extent that the Board is hereby Ordered to post the position of assistant baseball coach, J.V. team. Should the grievant be identified as the most qualified applicant he shall be awarded backpay which he would have earned from the assignment beginning in March 1988.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Jefferson County and such appeal must be filed within thirty (30) days of receipt of this decision. (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.

DATED: November 29, 1988

Sue Keller

SUE KELLER
HEARING EXAMINER