



REPLY TO:
407 Neville Street, Suite 120
Beckley, WV 25801
Telephone: 256-6855
ON NET: 557-6855

Members
James Paul Geary
Orton A. Jones
David L. White

**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**
GASTON CAPERTON
Governor

Offices
240 Capitol Street
Suite 515
Charleston, WV 25301
Telephone 348-3361

TERRY EPLING

v.

Docket No. 89-29-333

MINGO COUNTY BOARD OF EDUCATION

DECISION

Grievant, Terry Epling, is employed by the Mingo County Board of Education (Board) as a teacher at Gilbert Junior High School (GJHS) and assistant basketball coach at Matewan High School (MHS). He filed a grievance at Level I June 1, 1989, protesting his non-selection for the head basketball coaching position at MHS. Grievant's supervisor was without authority to grant relief and, upon appeal to Level II, the grievance was denied following hearing held June 23, 1989. The Board waived Level III proceedings and appeal was made to Level IV July 10, 1989, where hearing was held September 20, 1989.¹ Proposed findings of fact and conclusions of law were submitted by the parties by October 31, 1989.

¹Previously scheduled hearings were continued on joint motions of the parties.

The position in question was posted and four persons, including grievant, made application. Mr. John Fullen, the Board's Personnel Director, reviewed personnel files and talked with each candidate.² Information concerning their coaching and teaching backgrounds was passed on to then-Superintendent of Schools Harry Cline whose subsequent recommendation, that Mr. Richard Montgomery be awarded the position, was accepted by the Board.

Grievant contends he was the most qualified candidate³ for the position and the Board's decision was therefore in error. He asserts Mr. Cline harbored ill-feelings toward him and exhibited favoritism toward Mr. Montgomery. The Board maintains it properly determined Mr. Montgomery was the more qualified candidate. The evidence supports the Board's position.

Initially, it must be noted that the primary inquiry in a case in which one applicant asserts that he or she was more qualified than other applicants for a position is the propriety of the process used to make the selection. Stover v. Kanawha County Board of Education, Docket No. 89-20-75 (June 26, 1989);

²No formal interviews were conducted and it is not clear whether Mr. Fullen or the applicants initiated these talks.

³Coaching positions, like other professional positions, must be filled on the basis of qualifications. Williams v. Roane County Board of Education, Docket No. 44-86-160-1 (August 8, 1986); Friend v. Nicholas County Board of Education, Docket No. 34-87-286-4 (January 19, 1988); Corder v. Barbour County Board of Education, Docket No. 01-87-329-2 (May 13, 1988).

Harrison v. Wyoming County Board of Education, Docket No. 89-45-500 (December 29, 1989). A review of the relevant credentials is necessary only to ascertain wide disparities in the qualifications of candidates which might reveal improper considerations in the selection process. In the present case, the differences in the coaching backgrounds of the applicants are not such that an inference of that nature could be made.

Grievant has an impressive athletic background, which includes awards for his performance as a basketball player in both high school and college competition. He has been inducted into the Pikeville College Athletic Hall of Fame and, during his attendance at the college, participated in a number of regional tournaments. Other honors included the Dr. Hambley Award for high free-throw average and the Kentucky Intercollegiate Athletic Conference's Player of the Year. His coaching experience includes one year as head coach of boys basketball at Gilbert High School, one year as head coach of girls basketball at the same school and four years as head coach of boys basketball at Gilbert Junior High. Grievant has served as assistant coach at MHS for the past two years.

Mr. Montgomery served as assistant coach for football and basketball and head coach for baseball at MHS from 1968 to 1973. He was assistant coach for basketball and head coach for baseball at Birch River School from 1973 to 1976. During the 1976-77 school term, he served as assistant coach of football and basketball and head coach of baseball at Birch River Junior High School. From 1978 to 1981, he served as head coach of football

and assistant coach of basketball at Lenore High School (LHS). From 1981 to 1987, he served as head basketball coach at Lenore High School (LHS). During the 1987-88 school term, he served as "co-coach" at Tug Valley High School (TVHS).⁴ Mr. Montgomery has a total of nineteen years of coaching experience, during which he coached approximately thirty-six teams.

As to the selection process, grievant alleges Mr. Cline was improperly motivated to recommend Mr. Montgomery because he, grievant, was successful in his bid for a coaching job at Gilbert High School in 1969, a position for which Mr. Cline made application.⁵ There was, however, no substantive evidence presented to support this assertion. Mr. Cline testified that he applied for the position only because he was encouraged to do so by members of the community and, instead of being disappointed over his rejection, he was relieved due to his lack of coaching experience. Mr. Cline stated that he felt, as he did at the time of the application, that he was unqualified for the position.

⁴Lenore High School and Kermit High School were consolidated into TVHS in 1987. It appears that quite a controversy arose in the communities over who should be awarded the head coach position and, as a resolution, Mr. Montgomery and Mr. Ken Hope shared the position. The incongruity of this arrangement apparently led to Mr. Montgomery's resignation at the end of the 1987-88 school term and his application for the MHS position.

⁵It is assumed that this allegation, although not phrased as such, is one of reprisal as defined in W.Va. Code §18-29-2(p).

Significantly, grievant testified only briefly⁶ and did not address the question of Mr. Cline's motives. This failure to produce reliable evidence in support of this claim was indicative of grievant's overall inability to cite any significant defects in the manner in which Mr. Montgomery was appointed.

Grievant's assertion that Mr. Cline engaged in favoritism toward Mr. Montgomery is similarly without support. The only evidence offered in this regard is a statement Mr. Cline made to the Board at the time of his recommendation. It is not disputed that he made a remark to the effect that if Mr. Montgomery weren't awarded the position there would be a grievance filed. Grievant maintains the statement was made in order to intimidate the Board into accepting the recommendation. Mr. Fullen testified that he overheard the remark but offered no opinion as to its effect. The statement itself does not appear intimidating and could easily be construed as simply Mr. Cline's conclusion that, since he felt Mr. Montgomery was the most qualified applicant, a grievance would be filed if his recommendation was not accepted. Considering Mr. Montgomery's extensive coaching experience, it is entirely conceivable that he would have protested his non-selection. Absent any evidence that the Board accepted the recommendation because of its desire to avoid litigation rather than its determination that the most qualified

⁶This testimony was the result of the suggestion of the undersigned that certain statements made by grievant's representative during the course of her questioning of witnesses needed confirmation by a sworn witness.

applicant had been recommended, it cannot be said that Mr. Cline's remark constituted preferential treatment for Mr. Montgomery.

Finally, grievant, in his proposals, asserts the position was posted twice and Mr. Montgomery only made application after the second. No such evidence was presented at the Level IV hearing. Mr. Fullen testified that only one posting had occurred. Grievant attached to his proposals two newspaper clippings which show that on two occasions the Board was seeking applicants for the position. The articles, which are only three days apart, do not substantiate the claim but more importantly, this evidence was not offered at hearing and cannot be afforded any weight.

In summary, grievant has failed to show any significant flaw in the process by which the position was filled. While the evidence, particularly the testimony of Mr. Cline, suggests that a more extensive review of qualifications could have been conducted, it is clear that any deficiencies in this regard would not have resulted in a different outcome. See Stover, supra. Mr. Montgomery has considerably more coaching experience than grievant and his selection for the position was, therefore, quite reasonable.

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

FINDINGS OF FACT

1. Grievant was one of five applicants for the position of head basketball coach at Matewan High School.

2. Mr. John Fullen, Personnel Director, reviewed the backgrounds of the applicants and passed the information on to Mr. Harry Cline, then-Superintendent of Schools, whose recommendation that Mr. Richard Montgomery be awarded the position, was accepted by the Board.

CONCLUSIONS OF LAW

1. A county board of education is obligated to fill a vacant professional position with the most qualified applicant therefor. W.Va. Code §18A-4-8b(a); Surber v. Greenbrier County Board of Education, Docket No. 89-13-233 (November 20, 1989); Stover v. Kanawha County Board of Education, Docket No. 89-20-75 (June 26, 1989).

2. The grievance procedure, Code §§18-29-1, et seq., is not intended to be a "super-interview" for unsuccessful job applicants; rather, in this context, it allows analysis of the legal sufficiency of the selection process at the time it occurred. If the decision was properly based on the information then available to the board of education, and the process was not flawed to the point that the outcome might reasonably have been different otherwise, the hiring will be upheld. Harrison v. Wyoming County

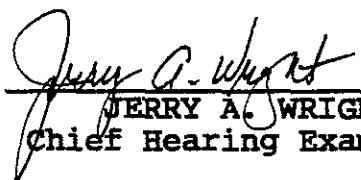
Board of Education, Docket No. 89-45-500 (December 29, 1989);
Stover, supra.

3. Grievant has not proven, by a preponderance of the evidence, See Lockhart v. McDowell County Board of Education, Docket No. 89-33-362 (December 14, 1989), that the Board erred in its determination that Mr. Richard Montgomery was the more qualified applicant for the position in question. Nor has he established any significant other flaw in the selection process. The recommendation of Mr. Cline was a well-reasoned decision based on an extensive review of the qualifications of all applicants.

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Mingo 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. 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: December 29, 1989


JERRY A. WRIGHT
Chief Hearing Examiner