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STATE EMPLOYEES GRIEVANCE BOARD**
W. GASTON CAPERTON, III
Governor

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FRANK HARRISON

v.

Docket No. 55-88-211

WYOMING COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Frank Harrison, is employed by the Wyoming County Board of Education (Board) as a teacher at Mullens Middle School. He filed a grievance at Level I on September 16, 1988 alleging the Board did not fill the vacancy of head basketball coach at Mullens High School on the basis of qualifications in violation of W.Va. Code §18A-4-8b(a). A decision following a Level II hearing held September 30, 1988 was adverse to the grievant and a Level III hearing was held October 27, 1988. A decision at that level, rendered November 3, 1988, was also adverse to the grievant and an appeal to Level IV was made November 4, 1988. The parties subsequently agreed to submit the case for decision on the record developed at lower levels and proposed

findings of fact and conclusions of law were received by January 10, 1989.¹

On August 2, 1988 the position in question was posted and the minimum qualifications listed were "meet the requirements of a West Virginia teacher. Must be a professional employee" (Board's Exhibit No. 1.). Eight (8) persons, including grievant, made applications and an interview team consisting of Mr. John Wilcox, Associate Superintendent, Mr. Arnold Harless, Assistant Superintendent, and Mr. William Bailey, Assistant Superintendent, conducted interviews of all applicants. Each applicant was asked a set of open-ended questions and the committee members gave each a ranking (T2.6).² The committee then recommended to the Superintendent of Schools that Mr. Jerry Thomas be awarded the position. The Board subsequently accepted that recommendation from the superintendent.

¹Transcripts of the Level II and Level III hearings are hereinafter referred to as (T2) and (T3) respectively.

²The record is unclear as to just how the ranking was established but it appears the committee members did not give them numerical scores on the questions and simply developed opinions about the qualifications of the applicants during the interview process.

Grievant contends the extracurricular position should have been filled on the basis of qualifications and, as he was more qualified than Mr. Thomas, the Board's decision was a violation of W.Va. Code §18A-4-8b(a), which in pertinent part provides:

A county board of education shall make decisions affecting promotion and filling of any classroom teacher's position occurring on the basis of qualifications. If the applicant with the most seniority is not selected for the position a written statement of reasons shall be given to the applicant with the most seniority with suggestions for improving the applicant's qualifications.

The Board asserts W.Va. Code §18A-4-8b(a) is inapplicable in the filling of such positions and W.Va. Code §18A-4-16 provides the only procedures to be followed for extracurricular assignments. The pertinent part of that section of the West Virginia Code provides:

(1) The assignment of teachers and service personnel to extracurricular assignments shall be made only by mutual agreement of the employee and the superintendent, or designated representative, subject to board approval. Extracurricular duties shall mean, but not be limited to, any activities that occur at times other than regularly scheduled working hours, which include the instructing, coaching, chaperoning, escorting, providing support services or caring for the needs of students, and which occur on a regularly scheduled basis.

Although it is difficult to discern, the Board appears to take the position that the only requirement necessary for the

assignment of a teacher to an extracurricular position is the teacher's agreement thereto. W.Va. Code §18A-4-16 clearly requires the teacher's assent but much more is required when a county board of education is in the process of deciding which teacher will be awarded the position. The West Virginia Education and State Employees Grievance Board has consistently held, pursuant to the decision in Smith v. The Board of Education of the County of Logan, 341 S.E.2d 685 (W.Va. 1985), that all procedural employment rights are applicable to the filling of extracurricular contracts. Shoemaker v. Hampshire County Board of Education, Docket No. 14-87-256-2 (January 29, 1988); Friend v. Nicholas County Board of Education, Docket No. 34-87-286-4 (January 19, 1988); Williams v. Roane County Board of Education, Docket No. 44-86-160-1 (August 8, 1986). The requirement that professional positions be filled on the basis of qualifications is an employment right and must also be followed when coaching positions are filled. Wamsley v. Doddridge County Board of Education, Docket No. 09-88-914 (January 31, 1989); Randolph v. Harrison County Board of Education, Docket No. 17-88-001-2 (June 30, 1988); Corder v. Barbour County Board of Education, Docket No. 01-87-329-2 (May 13, 1988); Martin v. Lincoln County Board of Education, Docket No. 22-87-254-1 (March 23, 1988).

It is undisputed that the grievant has been employed as a teacher for approximately fourteen (14) years and has served

as a basketball coach at various schools for approximately twelve (12) years.³ The successful applicant, according to the grievant's un rebutted testimony, has only been employed as a teacher in Wyoming County for three (3) years and has never served as a basketball coach. Although there was some subjective criteria used in the selection process and reliance on such criteria is reasonable,⁴ it is apparent that, by virtue of his number of years in coaching, the grievant is far more qualified than Mr. Thomas for the position in question. The Board produced no evidence that grievant's performance in his various coaching positions was in any way unsatisfactory and it appears that, if any evaluation of that performance was conducted, it was never reduced to writing.⁵

³According to grievant's testimony, he served as head basketball coach at Herndon High School for six (6) years and has served as assistant basketball coach at Mullens Middle for the past five (5) years. He was also coach for the sixth grade at Mullens Middle for two (2) years and the eighth grade for three (3) years.

⁴See, Higgins v. Board of Education of Randolph County, 286 S.E.2d 682 (W.Va. 1981); LeMaster v. Cabell County Board of Education, Docket No. 06-87-074-1 (June 16, 1988).

⁵The Board's proposed findings of fact allude to certain problems the grievant may have had with particular parents and general community support in previous coaching positions but none of this information was made part of the record and therefore cannot be given any weight whatsoever.

A finding that the grievant was more qualified than the successful applicant does not, however, necessarily entitle him to instatement to the position. A grievant's burden of proof in cases involving allegations that a position has not been filled on the basis of qualifications in violation of W.Va. Code §18A-4-8b(a) includes a demonstration that he or she is the most qualified of all the applicants if instatement is to be granted. Wilcox v. Wyoming County Board of Education, Docket No. 55-88-083 (August 2, 1988); Meredith v. Wyoming County Board of Education, Docket No. 55-88-077 (August 2, 1988). Grievant has established that the Board's failure to fill the coaching position at Mullens High School on the basis of qualifications caused the selection process to be seriously flawed and he is thus entitled to be part of a re-evaluation of qualifications. See Milam v. Kanawha County Board of Education, Docket No. 20-87-270-1 (May 2, 1988).

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

FINDINGS OF FACT

1. Grievant, Frank Harrison, has been employed by the Wyoming County Board of Education for approximately fourteen (14) years and during approximately twelve (12) of those years has served as a basketball coach at various schools in the county.

2. After posting the position of head basketball coach at Mullens High School, an interview committee conducted interviews of eight (8) applicants, including grievant, and subsequently recommended that Mr. Jerry Thomas be awarded the position and that recommendation was ultimately accepted by the Board.

3. Mr. Thomas has been employed as a teacher by the Board for three to four years and has no previous experience coaching basketball.

CONCLUSIONS OF LAW

1. Extracurricular activity contracts are not exempt from procedural requirements and rights afforded by statute and the award of such contracts must be made on the basis of qualifications. Corder v. Barbour County Board of Education, Docket No. 01-87-329-2 (May 13, 1988); Martin v. Lincoln County Board of Education, Docket No. 22-87-254-1 (March 23, 1988); Williams v. Roane County Board of Education, Docket No. 44-86-160-1 (August 8, 1986).

2. By virtue of his past coaching experience, the grievant was more qualified for the position of head basketball coach at Mullens High School than the successful applicant, Mr. Jerry Thomas.

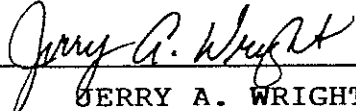
3. The Board failed to fill the position on the basis of qualifications in violation of W.Va. Code §18A-4-8b(a).

4. A grievant who alleges a violation of the requirement contained in W.Va. Code §18A-4-8b(a) that positions be filled on the basis of qualifications must normally prove by a preponderance of the evidence that he or she was the most qualified of all applicants; however, upon a showing that the county board of education's selection process was so seriously flawed that it became an arbitrary and capricious action, grievant is entitled to be part of a new and impartial process. Wilcox v. Wyoming County Board of Education, Docket No. 55-88-083 (August 2, 1988); Milam v. Kanawha County Board of Education, Docket No. 20-87-270-1 (May 2, 1988).

Accordingly, the grievance is GRANTED to the extent that the Wyoming County Board of Education is hereby ORDERED to conduct a re-evaluation of the qualifications of the applicants for the

position of head basketball coach at Mullens High School and if the grievant, Frank Harrison, is found to be more qualified than the applicants, Gene Reid, George Spolarich, Barry Smith, Donna Lee, J. Dean Lee and Darren Whitten, he is to be awarded the position and compensated for any loss of income he may have incurred as a result of the improper filling of said position.

Either party may appeal this decision to the Circuit Court of Wyoming 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.


JERRY A. WRIGHT
Chief Hearing Examiner

Dated: February 15, 1989