



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

v.

Docket No. 89-29-98

MINGO COUNTY BOARD OF EDUCATION

DECISION

Grievant, David Ledger, is employed by the Mingo County Board of Education (Board) as a driver education instructor and head football coach at Tug Valley High School (TVHS). He filed a grievance at Level I January 20, 1989 alleging an assistant basketball coaching position at TVHS had been improperly filled. Grievant's principal found he had no authority to grant the relief requested and the grievance was denied at Level II following a hearing held on or about March 1, 1989. The Board waived Level III proceedings and an appeal was made to Level IV March 15, 1989 where a hearing was held May 9, 1989.¹ Proposed findings of fact and conclusions of law were submitted by the parties by June 5, 1989.

¹A hearing scheduled April 20, 1989 was continued on the joint motion of the parties. The transcript of the Level II hearing and attached exhibits was admitted as Joint Exhibit No.1.

The position in question was posted sometime during the fall of 1988 and four persons including grievant made applications. The Board ultimately accepted Superintendent of Schools Harry Cline's recommendation that Mr. Frank Smith be awarded the position.

Grievant contends the Board did not conduct a fair or adequate review of the qualifications of all applicants and, if there had been such a review, he would have been awarded the position due to his greater coaching credentials and teaching seniority. Grievant further asserts the Board's consideration of his three-game suspension imposed by the West Virginia Secondary Activities Commission during the 1988 football season was improper.

The Board maintains Mr. Smith was the more qualified applicant and its consideration of grievant's suspension was justified. The Board also refutes grievant's assertion that seniority as either a coach or teacher has any bearing on the award of extracurricular activity contracts.

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

FINDINGS OF FACT

1. In the fall of 1988 grievant, Frank Smith and Tom Damron made applications for the posted position of Assistant Basketball Coach at Tug Valley High School.

2. At the time of the posting grievant had been a head football coach for approximately five years. He also served as Assistant Basketball Coach at Kermit High School from 1985 to 1988 and at Gilbert High School from 1978 to 1980.

3. During his tenure as either football or basketball coach, grievant never received any evaluation indicating he was performing poorly but during the 1988 football season he was suspended for three games by the West Virginia Secondary Schools Activities Committee for removing his team from the field during a game with Scott High School. The TVHS football program was also placed on probation for 365 days due to that infraction of WVSSAC rules.

4. Superintendent of Schools Harry Cline reviewed the respective qualifications of all the applicants and took into consideration the sanctions imposed by the WVSSAC before concluding Frank Smith was the most qualified applicant for the position in question.

5. Mr. Smith has never held a coaching position in the Mingo County School System but has extensive experience as either head or assistant coach of Amateur Athletic Union (AAU) teams. This experience entailed the coaching of teams of outstanding players from various counties in competition with similar teams from across the country.

CONCLUSIONS OF LAW

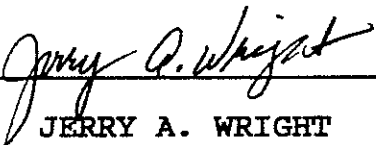
1. A county board of education is obligated to fill a vacant coaching position with the most qualified applicant therefor. Stover v. Kanawha County Board of Education, Docket No. 89-20-75 (June 26, 1989); Smith v. Jefferson County Board of Education, Docket No. 19-88-082 (November 29, 1988); Martin v. Lincoln County Board of Education, Docket No. 22-87-254-1 (March 23, 1988).

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 proper 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. Stover.

3. Grievant has not proven, by a preponderance of the evidence, see Black v. Cabell County Board of Education, Docket No. 06-88-238 (January 31, 1989), that the Board erred in its determination that he was less qualified than the successful applicant. He has also not established that Mr. Cline's consideration of the impact of WVSSAC's decision contravened any statute, policy or regulation or was otherwise improper.

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 transmitted to the appropriate Court.


JERRY A. WRIGHT

Chief Hearing Examiner

Dated: July 28, 1989