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**JOHN SURBER**

v.

**Docket No. 89-13-233**

**GREENBRIER COUNTY BOARD OF EDUCATION**

**DECISION**

Grievant, John Surber, is employed by the Greenbrier County Board of Education (Board) as a dropout prevention teacher. He filed a grievance at Level I January 4, 1989, protesting his non-selection for a basketball coaching position at White Sulphur Springs Junior High School (WSSJH). His immediate supervisor was without authority to grant relief and the grievance was denied at Level II following a hearing held January 20, 1989. The Board upheld that decision following a Level III hearing held March 14, 1989. An appeal to Level IV was made May 30, 1989, where a hearing was held June 28, 1989.<sup>1</sup> Proposed findings of fact and conclusions of law were received from the Board on July 10, 1989. Counsel for the grievant informed the undersigned August 3, 1989,

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<sup>1</sup>The parties submitted the record of the lower levels at this hearing and offered only supplemental testimony.

that he would make no such proposals and the grievant's legal position could be considered as made on the record.

In December 1988, the head basketball coach at WSSJH resigned and three persons, including grievant, made application for the position.<sup>2</sup> At the time there was also a Physical Education/Health teaching vacancy at the school. Mr. Robert McClintic, principal of WSSJH, conducted interviews of the applicants as directed by the then-Superintendent of Schools, Gordon Hanson. He subsequently informed Mr. Hanson that Mr. Greg Curry was his choice to fill both positions. Mr. McClintic based his choice on the assumption that Mr. Curry had the requisite certification for the teaching position and his preference to have a member of his teaching staff also perform the coaching duties. It was later discovered that Mr. Curry did not possess the required certifications for the teaching position and Mr. McClintic then recommended grievant for the coaching job. The record does not reveal how the Physical Education/Health position was filled but it was not awarded to grievant or Mr. Curry. Mr. Hanson did not accept Mr. McClintic's recommendation and tendered Mr. Curry's name for the coaching job and the Board accepted.

Grievant essentially contends there was not an adequate exploration of relative qualifications on Mr. Hanson's part and his decision not to follow Mr. McClintic's recommendation was, therefore, improper. Grievant cites Tallman v. Wetzel County

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<sup>2</sup>One applicant subsequently withdrew his name from consideration.

Board of Education, Docket No. 52-86-270-3 (March 20, 1987) in support of his assertion that a Superintendent must accept the recommendation of those to whom he delegates the authority to assess the qualifications of applicants for positions. He maintains a fair assessment of his coaching credentials would have resulted in his selection for the job in question.

The Board contends the position was properly filled on the basis of qualifications and disputes the applicability of Tallman. It is the Board's position that the determination that the successful candidate was more qualified should be presumed to have been made in good faith.

The record as a whole supports the Board's position. Mr. McClintic testified at Level IV that he felt the two candidates were nearly equally qualified and the factor which prompted his recommendation was grievant's experience with the WSSJH basketball program gained through his unpaid service as a volunteer assistant coach there for four years. His testimony at Level II revealed the candidates' credentials as follows. In addition to his volunteer service at WSSJH, grievant has also served as volunteer assistant coach in track and football at various Greenbrier County schools for approximately three years. His paid coaching experience includes three years in track, two years in football and one year in volleyball, all at Rupert Junior High School. Mr. Curry served as head coach of the basketball, track and volleyball at Williamsburg Elementary School for four years. He had also completed approximately three years as assistant football coach at Greenbrier East High School when the position

in question became vacant. These were all paid coaching positions. The record does not reveal whether or not Mr. Curry has any experience as a volunteer coach.

While there are some obvious differences in the two candidates, it appears Mr. McClintic's conclusion was correct. The primary focus, however, in grievances in which an infraction of W.Va. Code §18A-4-8b(a) is alleged, is not upon disparities in relative qualifications but upon the process by which a selection is made. The grievance procedure 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. See Stover v. Kanawha County Board of Education, Docket No. 89-20-79 (June 26, 1989). This is not to say that the respective qualifications of candidates is not relevant for review but that such review should be made for the purpose of detecting wide disparities in credentials which may, in themselves, reveal improper considerations in the process. See Harrison v. Wyoming County Board of Education, Docket No. 55-88-211 (February 15, 1989) (successful applicant for a coaching position had no coaching experience while grievant had twelve years). In the present case the differences in the coaching backgrounds of the applicants are not such that any such inference could be made and the success of the grievance depends on the sufficiency of evidence presented in support of the allegations that the selection process was flawed.

Grievant's contentions in this regard center primarily on Mr. Hanson's role in the decision to award Mr. Curry the position

and what, if any, authority was delegated to Mr. McClintic. It is essentially grievant's position that Mr. Hanson made no adequate assessment of respective qualifications and was thus bound by Mr. McClintic's findings. The evidence presented at Levels II, III and IV is not sufficient to support these contentions. Significantly, Mr. Hanson was never called to testify at any level and it is therefore impossible to determine what review of qualifications he conducted or what aspects of the candidates' backgrounds he may have afforded some weight. Mr. McClintic testified at Level IV that he discussed his findings with Mr. Hanson but, also of significance, grievant did not explore the content of the discussions. Absent some evidence that Mr. Hanson did not possess adequate knowledge of the applicants' credentials, it cannot be concluded that his decision to recommend Mr. Curry was made for improper motives.<sup>3</sup>

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<sup>3</sup>At Level IV grievant placed great importance on the fact that Mr. Hanson made a statement during a telephone conversation they had subsequent to Mr. Hanson's decision to recommend Mr. Curry to the effect that he had more paid coaching experience than grievant. The propriety of a practice of excluding volunteer coaching experience when determining who is the most qualified person for a position appears questionable at best. The evidence, however, does not lead to the conclusion that the Board has ever adopted such a practice or that Mr. Hanson did not give consideration to grievant's unpaid coaching experience. According to grievant's own testimony, Mr. Hanson also remarked that Mr. Curry was more qualified and had been more "successful", implying his win-loss ratio was better than grievant's. It should also be noted that, while grievant stressed his volunteer coaching, he produced no evidence regarding any similar experience for Mr. Curry.

Finally, Tallman, supra is easily distinguished from the facts of the present grievance. In that case it was clearly shown that the Board had an established policy of deferring to the judgment of the person assigned to assess credentials and that the superintendent not only deviated from the policy but also failed to apprise himself of respective qualifications of applicants. No evidence was produced which even tended to show the existence of such a policy in Greenbrier County. As previously noted, what knowledge of credentials Mr. Hanson possessed when he made his recommendation is not discernible. It cannot, therefore, be concluded that the process was "flawed to the point that the outcome might reasonably have been different otherwise". Stover, supra.

In addition to the findings and the conclusions contained in the foregoing discussion and analysis, the following findings of fact and conclusions of law are also made:

#### FINDINGS OF FACT

1. Grievant, a dropout preventive teacher employed by the Board, was an unsuccessful candidate for the posted position of Head Basketball Coach at White Sulphur Springs Junior High School (WSSJH).

2. After discussions with Mr. Jerry McClintic, principal at WSSJH and the person designated to conduct interviews of applicants for the position, Mr. Gordon Hanson, then-Superintendent of

Schools, recommended Mr. Greg Curry and the Board accepted the recommendation.

#### CONCLUSIONS OF LAW

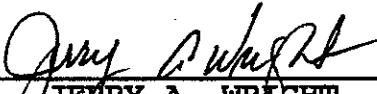
1. A county board of education is obligated to fill a vacant professional position with the most qualified applicant therefor. W.Va. Code §18A-4-8b(a); Dillon v. Board of Education for the County of Wyoming, 351 S.E.2d 58 (W.Va. 1986).

2. 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 Mr. Hanson erred in his determination that Mr. Curry was more qualified. Nor has he established any significant other flaw in the selection process.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Greenbrier County or the Circuit Court of Kanawha and said 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.

  
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JERRY A. WRIGHT  
Chief Hearing Examiner

Dated: November 20, 1989