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

GASTON CAPERTON
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JAMES W. JOHNSON

v.

Docket No. 89-49-508

UPSHUR COUNTY BOARD OF EDUCATION

DECISION

Grievant is presently employed by Respondent Upshur County Board of Education as classroom teacher and head cross-country and track coach at Buckhannon-Upshur High School (BUHS). On June 5, 1989 he initiated the following grievance, claiming a violation of W.Va. Code §18A-4-8b:

I applied for the position of Head Basketball Coach (Girls) at B-U-H-S. I am the most senior person and the most qualified person for the job and was not hired. Remedy - to be instated in the job.

After denials at Levels I and II¹ and waiver at Level III, Grievant advanced his cause to Level IV on August 28, 1989. Both parties having requested that a decision be rendered based upon the record developed below, the matter is mature.

¹ The Level II hearing transcript is a part of the record herein.

The essential facts of this case are undisputed. On May 9, 1989, Respondent posted a notice of vacancy for the position of head girls' basketball coach at BUHS. The qualifications were stated as follows:

The person employed for this position must be able to teach the fundamentals of basketball and instill good sportsmanship in the players. This person must be an employee of Upshur County Schools, preferably at Buckhannon-Upshur High School.

There were two applicants for this position - Grievant and Mr. Tim Murphy, the successful candidate. Grievant submitted his application via a letter dated May 15, 1989, in which he set forth his relevant qualifications. Mr. Murphy also submitted a resume for consideration.² No interviews were conducted as both applicants had been coaching and teaching at BUHS for several years and the selection committee³ was familiar with their experience and capabilities. On May 23, 1989, Respondent accepted the Superintendent's recommendation that Mr. Murphy be offered the position in question.

² Although the testimony indicates such resume was submitted by the successful applicant and reviewed by the selection committee, it was not offered as an Exhibit by either party.

³ The selection committee consisted of Larry West, Athletic Director at BUHS for the past twenty-five years and Hal S. McComas, Principal at the same school for the past three years and part of the school administration for the past eight years.

By letter dated June 5, 1989, Grievant requested Respondent's reasons for his non-selection, pursuant to the provisions of W.Va. Code §18A-4-8b. On June 8, 1989, he was advised by the selection committee that seniority was not an issue with respect to the filling of the coaching position, due to its extra-curricular nature. Nevertheless, the committee advised Grievant that Mr. Murphy was selected because of his three recent successful years as assistant coach of the boys' varsity basketball team and one year as head coach of the boys' freshman team. Additionally, the committee placed emphasis upon the fact that Mr. Murphy was a successful college basketball player.⁴

It is undisputed that Grievant has eighteen years of service with Respondent. Prior to his employment with Respondent, Grievant taught in Lewis County where he was also the head boys' basketball coach at Walkersville Junior High School from 1966 to 1971. While employed by Respondent, Grievant served as an assistant coach for the BUHS boys' varsity basketball team from 1971 to 1975. With the exception of school year 1988/89,⁵ Grievant has not coached basketball at any level since 1975. While Grievant has

⁴ Mr. Murphy played college basketball on the NAIA level where he was recognized as an All-American, as well as being selected WVIAC Player of the Year in 1985.

⁵ During school year 1988/89 Grievant served as a volunteer coach for a Little League basketball team consisting of twelve-year-old girls.

coached for Respondent since 1975, this experience has been in boys' and girls' track and cross-country.⁶ All of the teams with which Grievant has been associated during his career have been successful in terms of their win-loss record.

Both members of the selection committee testified at Level II that the decision to hire Mr. Murphy was based upon his current successful basketball coaching experience and his enhanced understanding of the sport by virtue of his recent playing experience. It was also significant to the selection committee that Grievant had not coached scholastic basketball for fourteen years, while the successful applicant had coached at BUHS for the past four years.

While there are some obvious discrepancies in the two candidates, the primary focus 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. Stover v. Kanawha County Board of Education,

⁶ Grievant has coached boys' and girls' track and cross-country for eighteen years and was selected Cross-Country Coach of the Year in the North Central Athletic Conference for the years 1983 and 1986 through 1988.

Docket No. 89-20-79 (June 26, 1989). This is not to say that the respective qualifications of candidates are 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. 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 difference in the coaching backgrounds of the applicants is not that any such inference could be drawn. Grievant has a total of nine years of basketball coaching experience. Of those, only four involved students at the high school level. Moreover, with the exception of a Little League team, Grievant has not coached basketball for fourteen years. The successful applicant, on the other hand, has had one year experience as a head freshman coach and three years experience as a varsity assistant coach, all within the last four years. Additionally, prior to this recent coaching experience, Mr. Murphy was a nationally-recognized collegiate basketball player. In light of the above, the undersigned is unable to conclude that any disparity in credentials is such as to indicate improper consideration in the selection process. As a result, the success of the grievance depends upon the sufficiency of evidence presented in support of the allegation that the selection process was flawed.

Grievant's contentions in that regard center on the selection committee's failure to conduct interviews. It is essentially Grievant's position that the failure to conduct interviews prevented the committee from adequately assessing the candidates' qualifications relating to their philosophy of coaching, familiarity with students and community activities and knowledge and understanding of basketball. This position is not supported by the evidence. Both members of the selection committee have been associated with BUHS for a considerable period of time. Mr. West has been Athletic Director at the school for twenty-five years. In that capacity he has had the opportunity to evaluate both applicants, to work with them regarding the scheduling of games and transportation and to observe them in their coaching duties. Mr. McComas has been an administrator at BUHS for eight years and, during that time, has communicated frequently with all the coaches. Both men testified that this familiarity with the experience and coaching abilities of each applicant was the reason no interviews were held.⁷ In addition to this working familiarity, the resumes of both applicants were reviewed prior to the selection. It cannot, therefore, be concluded that the process was "flawed to the point that the outcome might reasonably have been different

⁷ Both committee members testified that interviews for the position would have been conducted had there been any applicants from outside BUHS.

otherwise." Stover. Moreover, "[c]ounty boards of education have substantial discretion in matters relating to the hiring, assignment, transfer and promotion of school personnel." Syl.pt.3, Dillon v. Board of Educ. of County of Wyoming, 351 S.E.2d 58 (W.Va. 1986). No evidence establishing or ever suggesting abuse of that discretion has been presented in this case.

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

FINDINGS OF FACT

1. Grievant, James W. Johnson, has been employed by Respondent Upshur County Board of Education for approximately 18 years. During this entire time, he has been a coach in several sports. However, he has not coached basketball at the scholastic level for 14 years.

2. Tim Murphy, the successful applicant, has been employed by Respondent for approximately 4 years and has coached basketball this entire time. Additionally, Mr. Murphy played college basketball on the NAIA level where he was recognized as an All-American, as well as being selected WVIAC Player of the Year in 1985.

3. After posting the position of head girls basketball coach at Buckhannon-Upshur High School, a selection

committee was formed to evaluate both applicants. No interviews were conducted as the selection committee consisted of administrators from BUHS, where both applicants taught and coached, who were familiar with the applicants' coaching philosophies, familiarity with students and community activities and knowledge and understanding of basketball.

4. The selection committee recommended to the superintendent that Tim Murphy be awarded the position and that recommendation was ultimately accepted by Respondent.

CONCLUSIONS OF LAW

1. A county board of education is obligated to fill a vacant professional position with the post qualified applicant therefor. W.Va. Code §18A-4-8b(a); Dillon v. Bd. of Educ. for the Co. of Wyoming, 351 S.E.2d 58 (W.Va. 1986). This requirement applies fully to an extracurricular assignment, such as coach. 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).

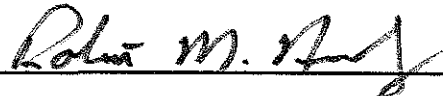
2. The grievance procedure, Code §§18-29-1 et seq., is not intended to be a "super-interview" for unsuccessful job applicants; rather, in this context, it allows analysis of the legal sufficiency of the selection process at the time

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 v. Kanawha County Board of Education, Docket No. 89-20-79 (June 26, 1989).

3. Grievant has not proven, by a preponderance of the evidence, see Black v. Cabell Co. Bd. of Educ., Docket No. 06-88-238 (Jan. 31, 1989), that Respondent erred in its determination that he was less qualified than the successful applicant. Nor has he established any significant other flaw in the selection process, see Conclusion of Law 2. Respondent made a reasoned decision based on the information presented to it.

Accordingly, this grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Upshur 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.

A handwritten signature in cursive script, reading "Robert M. Nunley", is written over a horizontal line.

ROBERT M. NUNLEY
Hearing Examiner

Dated: January 16, 1990