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

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**RONALD D. SMITH**

**v.**

**Docket No. 89-19-214**

**JEFFERSON COUNTY BOARD OF EDUCATION**

**DECISION**

Grievant, Ronald D. Smith, is employed by Respondent, Jefferson County Board of Education as a health teacher at Jefferson High School. He filed a grievance at Level I protesting his non-selection as junior varsity baseball coach at Jefferson High School (JHS). The grievance was denied at Level I and at Level II following a hearing. Respondent upheld that decision following a Level III review and the matter was appealed to Level IV where it was submitted for decision on the existing record.

In February 1989, the junior varsity baseball coach vacancy was posted<sup>1</sup> and three persons, including grievant,

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<sup>1</sup> This posting resulted from Grievant's success in an earlier grievance whereby reposting of the vacancy was ordered by Hearing Examiner Sue Keller on November 29, 1988. See Ronald Smith v. Jefferson County Board of Education, Docket No. 19-88-082 (November 29, 1988).

made application for the position. An interview team<sup>2</sup> was assembled and conducted interviews of the applicants and recommended Mr. Tom Gainer, the successful applicant, for the position. The candidates were then interviewed by Mr. George Frame, Respondent's Personnel Director, and Mr. Judson Romine, Respondent's Director of Secondary Schools. Mr. Frame and Mr. Romine then conferred with the JHS interview team and recommended Mr. Gainer be selected to fill the vacancy. Respondent subsequently accepted this recommendation and Mr. Gainer was awarded the position.

Grievant essentially contends that he was equally qualified and had more seniority than the successful applicant and therefore should have been selected for the job. Respondent contends the position was properly filled on the basis of qualifications and the successful applicant had significantly greater qualifications than Grievant.

The record as a whole supports the Board's position. The members of the JHS interview team testified at Level II that they felt Grievant and Mr. Gainer were nearly equally qualified and the factor which prompted their recommendation was Mr. Gainer's eight years experience as both a head and assistant baseball coach at the high school level. The testimony at Level II revealed the candidates' credentials

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<sup>2</sup> The interview team consisted of James Carpenter, JHS principal, John Lowery, JHS head baseball coach, and Donald Metzel, JHS athletic director.

as follows. Mr. Gainer had served three years as an assistant coach and five years as a head coach in the baseball program at Clarke County (Virginia) High School. In addition to his service as a baseball coach, he was an assistant football coach and a head football coach for at least eight years. Grievant has been employed by Respondent as a teacher since 1977 with the exception of a leave of absence from 1983 through 1985 when he served in the United States Army. Prior to his military service, Grievant was head football and assistant track coach at Charles Town Junior High School. Since 1987, he has been an assistant coach in both football and track. Additionally, Grievant has coached Little League and Senior League baseball since 1975 except during his military service. However, he has never coached baseball at any level in a scholastic environment.

While there are some differences between the Grievant and Mr. Gainer, 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, 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). 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 the consideration of Grievant's past evaluations of his service with Respondent. It is undisputed that Grievant experienced some difficulties in handling his job responsibilities prior to joining the army in 1983. Several evaluations covering the period 1979 to 1983 were introduced into evidence. Most of these evaluations were not signed by Grievant and his personnel file revealed that he filed only one formal rebuttal with Respondent. While several areas through the years are noted as needing improvement, the area consistently noted was Grievant's relationship with his players. Specifically, it was variously recommended that he work to keep a distance from the students and spend more time coaching and less time fraternizing with the players. Grievant testified that he recognized this as a problem and that he felt he was still perceived by Respondent's administration as "the Ron Smith that was here before I went into the military." (T. 14). Further, he testified that he

enlisted in the military to improve himself and it was unfair of Respondent to utilize evaluations prior to this service when considering him for a vacancy. However, the members of the JHS interview team testified at Level II that they did not see or review Grievant's past evaluations in arriving at their conclusion that Mr. Gainer was more qualified. In fact, Mr. Carpenter testified that the sole reason for the choice of Mr. Gainer was his interscholastic coaching experience. Mr. Frame and Mr. Romine testified that, while they did view Grievant's evaluations, the primary reason for their recommendation of Mr. Gainer was his interscholastic experience. At best, therefore, Grievant's evaluations played a minimal role in the decision not to award him the job in question. Absent some evidence that the evaluations were false or were accorded undue weight, Respondent's consideration of them cannot be said to constitute a flaw in the selection process. 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 of fact and conclusions of law contained in the foregoing discussion and analysis, the following findings of fact and conclusions of law are made.

#### Findings of Fact

1. Grievant, a health teacher employed by Respondent, was an unsuccessful candidate for the posted position of

junior varsity baseball coach at Jefferson High School (JHS).

2. While Grievant had coached Senior League and Little League baseball since 1975, he had never coached baseball at any level in a scholastic environment. The successful candidate, Mr. Tom Gainer, had coached eight years as an assistant and head coach of a successful high school baseball program.

3. The primary reason for Grievant's non-selection was his lack of scholastic baseball coaching experience. Grievant's past evaluations played a minimal role in his non-selection.

4. Two separate interview teams recommended the successful candidate for the job and Respondent accepted these recommendations.

#### 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 Respondent erred in its determination that Mr. Gainer was more

qualified. He has not established any significant other flaw in the selection process, or any abuse of discretion.

Accordingly, the grievance is **DENIED**.

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

  
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**ROBERT M. NUNLEY**  
**HEARING EXAMINER**

**Dated:** February 27, 1990