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

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ROBERT SPEROW

v.

Docket No. 89-02-479

BERKELEY COUNTY BOARD OF EDUCATION

DECISION

Grievant is presently employed by Respondent Berkeley County Board of Education as a classroom teacher at Martinsburg South Middle School. On May 18, 1989, he initiated the following grievance, claiming a violation of W.Va. Code §18A-4-8b:

I applied for, but did not receive the varsity basketball position at Musselman Senior High School. As the most senior applicant, I requested and received an official reason for the action. The reasons are not accurate and are quite vague. Therefore, to settle this grievance, I request to be named to the position and to receive any salary and benefits lost as a result of the board's action.

After denials at Levels I and II¹ and waiver at Level III, Grievant advanced his cause to Level IV where both

¹ The Level II hearing transcript, together with exhibits, is a part of the record herein.

parties requested that a decision be rendered based upon the record developed below.

On March 27, 1989, Respondent posted a notice of vacancy for the position of head varsity basketball coach at Musselman Senior High School. The only qualification listed on the job posting was a West Virginia teacher certification. There were two applicants for this position - Grievant and Mr. Guy Sharp, the successful candidate. Resumes were submitted by both applicants and interviews were conducted by Mr. John Cole, principal at Musselman, and Mr. Charles Cline, Musselman's athletic director. Following this process, Mr. Cole and Mr. Cline recommended to Respondent's Superintendent that Mr. Sharp be offered the position as he was the most qualified. Respondent then accepted the Superintendent's recommendation that Mr. Sharp be offered the position in question.

By letter dated April 20, 1989, Grievant requested Respondent's reasons for his non-selection, pursuant to the provisions of W.Va. Code §18A-4-8b. On April 28, 1989, he was advised by Dr. Alan Canonico, Respondent's Assistant Superintendent for Personnel, that Mr. Sharp was chosen based upon his superior qualifications. This grievance followed.

It is undisputed that Grievant has twenty-three years of service with Respondent. He served as head basketball coach at Martinsburg South Junior High School from 1967 through 1976, at which time competitive athletics were

discontinued. Grievant also served as an assistant coach in both track and football during this period. Grievant next coached from 1984 through 1987 at Musselman Senior High School as an assistant varsity basketball coach. During this time he received favorable evaluations despite the overall difficulties the program was experiencing, apparently associated with the head coach at that time.² In addition to his coaching duties with Respondent, Grievant has served as a volunteer coach of soccer, basketball and softball in the Martinsburg area since approximately 1980. He has also been active in attending various summer basketball camps.

Mr. Guy Sharp, the successful candidate, had not been employed by Respondent prior to accepting the Musselman job. However, he had been head varsity basketball coach at Paw Paw High School for the past seventeen years. Additionally, he had thirteen years of staff experience at various local, regional and national basketball camps. He was also the recipient of several national coaching awards.

The interview team was familiar with both candidates prior to the availability of this coaching vacancy. Mr. Cline had been employed at Musselman since 1969 and had

² While there was no procedure in effect for the evaluation of coaches during the 1967-1976 period, Grievant produced the testimony of his former assistant principal, Leighton Miller, and a fellow coach, Tom Roy Gates, both of whom stated Grievant's performance was favorable in his various coaching assignments during that period.

been athletic director since 1975. Mr. Cole had been principal at the school while Grievant was an assistant basketball coach there and, in fact, he and Cline completed Grievant's evaluations. Paw Paw High School, where Mr. Sharp coached previously, and Musselman High School are both members of the Potomac Valley Conference League. As a result, the schools were basketball opponents. Additionally, Mr. Cline was aware of Mr. Sharp's achievements through attendance at league meetings and awards banquets. As stated earlier, both men had supervised and evaluated Grievant.

Due primarily to the deteriorating state of the Musselman basketball program, Mr. Cole and Mr. Cline reviewed its current weaknesses and developed a list of desirable qualities for a new coach. As the new coach would have responsibility for development of the entire program,³ definite organizational skills were required. The successful candidate should also have knowledge of basic skills and fundamentals. The ability to devote the necessary time to the program was essential, as one of the goals was the establishment of a year-round program.⁴ Coaching philosophy

³ In addition to the varsity basketball program, the successful candidate would also be responsible for the junior varsity, freshman and midget programs, as well as the local boosters club.

⁴ This included establishment of an off-season conditioning and weight training program, encouraging
(Footnote Continued)

was also important as one of the goals was to develop a program that was philosophically different than the one in existence; specifically they wanted an upbeat program with an aggressive defense.

Based upon these goals and expectations, the interview team drew up a list of questions to be asked of each candidate during the interview. The interview process was characterized by Mr. Cole as an attempt "to establish the qualifications of the two candidates based on the things we thought were important." (T. 57). The questions were committed to paper and virtually the same questions were asked of each candidate.

Although both members of the interview team were in agreement that Mr. Sharp's qualifications exceeded those of Grievant in each of the areas examined, the difference between the two candidates appeared most noticeable in the results of the interviews. The interview team concluded that Mr. Sharp's responses were far more in-depth than Grievant's and he also did a better job of communicating those answers.

At Level II, Mr. Cole discussed the candidates' responses to each of the interview questions. Among those questions was one concerning establishment of a practice schedule for three teams (freshman, JV and varsity) using

(Footnote Continued)
attendance at summer basketball camps and non-supervised year-round practice sessions.

one gymnasium. This question was aimed at evaluating the applicants' organizational skills. Grievant responded that he would schedule the youngest team to practice first and should be able to accomplish in two hours all that needed to be accomplished. In contrast, Mr. Sharp stated that he too would schedule the youngest team first but would also make use of the whole building. Specifically, he would utilize empty classrooms for blackboard or "skull" sessions and the hallways for ball handling and conditioning drills.

As another example, when asked about an off-season conditioning program, Grievant acknowledged that it was important and that he would give the players a program, but he was unaware that the SSAC⁵ allowed such programs. Mr. Sharp, on the other hand, had developed three such programs, including one at Paw Paw. He stated that he would instate a running program to develop and maintain cardiovascular fitness and had also developed a weight-training program to develop overall strength, as well as jumping and rebounding abilities.

While there are some differences 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

⁵ The Secondary Schools Activities Commission regulates interscholastic athletic activities in the State of West Virginia.

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 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. See 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 normally depends on the sufficiency of evidence presented in support of the allegations that the selection process was flawed. However, Grievant essentially cited no flaw in the selection process and it can only be concluded from the evidence that the selection was accomplished after an extensive and unbiased assessment of credentials.

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, Robert Sperow, has been employed by Respondent Berkeley County Board of Education for approximately twenty-three years. He served as head basketball, assistant track and assistant football coach at Martinsburg South Junior High from 1967 through 1976 and as assistant varsity basketball coach at Musselman Senior High from 1984 through 1987. He has never been head varsity coach at the high school level.

2. Guy Sharp, the successful applicant, had not been employed by Respondent prior to accepting the job in question. He had been head varsity basketball coach at Paw Paw High School for the past seventeen years. Additionally, he had extensive staff experience at various summer basketball camps and was the recipient of several national coaching awards.

3. After posting the position of head varsity basketball coach at Musselman Senior High School, an interview team was formed to evaluate both applicants. The team recommended that Guy Sharp 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 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).

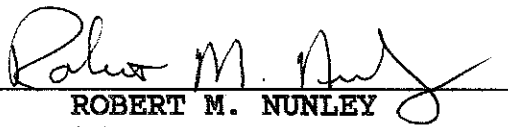
2. The grievance procedure is not intended to be a "super interview" for unsuccessful job applicants; rather, in this context, it allows analysis of the legal sufficiency of the selection process at the time it occurred. If the decision was properly based on the information then available to the board 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. 89-20-75 (June 26, 1989).

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 Mr. Guy Sharp was the more qualified applicant for the position in question. Nor has he established any significant other flaw in the selection process. The recommendation was a well-reasoned decision based on an extensive review of the qualifications of the applicants.

Accordingly, the grievance is **DENIED**.

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


ROBERT M. NUNLEY
HEARING EXAMINER

Dated: February 27, 1990