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

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**DONALD C. WOOLWINE**

**v.**

**Docket No. 89-20-711<sup>1</sup>**

**KANAWHA COUNTY BOARD OF EDUCATION**

**D E C I S I O N**

Grievant Donald C. Woolwine, employed by Respondent Kanawha County Board of Education as a teacher at Dunbar Junior High School (DJHS), filed the following complaint on or before August 31, 1989, at Level I:

I have been illegally denied a driver education/physical education teaching position at South Charleston High School. The position was not filled based upon qualifications; was conditioned upon an extra duty assignment of athletic trainer; and my proper use of sick leave was used to deny me the position. My qualifications are superior to the person hired yet I was not even interviewed. The interests of the athletic program at South Charleston High School have outweighed the instructional interests at the school in filling the position. I seek the position and related benefits and privileges retroactive to the start of the school year.

After denials there and at Level II and waiver at Level III, Grievant advanced his claim to Level IV on November 27,

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<sup>1</sup> This grievance was erroneously also assigned Docket No. 89-20-683, and that information was published to the parties. That designation has been purged from this case, and the docket number as shown above is correct.

1989. He requested a hearing at that time, although he noted "possibility of decision by Level II record" on the complaint form. Hearing was set for February 6, 1990, but in late January, Grievant advised the undersigned that, as far as he was concerned, the matter could be resolved on the record of administrative proceedings below. Respondent assented to this procedure and, with the submission of the Level II transcript on February 15<sup>2</sup> and opposing fact-law proposals by February 28,<sup>3</sup> the case is mature.

Many of the facts herein are without controversy. Grievant applied for an instructor's vacancy at Respondent's South Charleston High School (SCHS), which was posted as follows: "Physical Education/Driver Ed (Athletic trainer certificate desired)." Respondent delegated its candidate-review authority to a team composed of SCHS' Principal Higginbotham and Vice-Principal Compton.<sup>4</sup> Of the five candidates, only one, Dunbar High School teacher Jerry Smith, apparently considered to be likely the most qualified

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<sup>2</sup> The Level II hearing transcript constitutes the bulk of the record upon which this Decision is based. Its attendant exhibits were presented to the undersigned on February 27.

<sup>3</sup> Respondent did not offer such a presentation and therefore its reliance on the findings and conclusions of the Level II decision has been assumed.

<sup>4</sup> The record is unclear whether Compton was employed as SCHS or South Charleston Junior High School. However, the point is of no significance.

after an initial review of personnel folders,<sup>5</sup> was interviewed; this individual, with at least seventeen years in the Kanawha County Schools' system, was then indeed offered but declined the position. Notably, he did not possess certification in the area of athletic training.

Thereafter, Higginbotham and Compton conferred with Mr. Luther Cope of Respondent's central office, who advised no further interviews were needed if the team could make a reasoned decision based on the remaining applicants' personnel files. Those files were again reviewed, and both men agreed the information contained therein was sufficient to determine Bryce Casto to be the most qualified of the four. Mr. Casto, who then was an elementary special education instructor for Kanawha County working by special permit,<sup>6</sup> also had for two years been under extracurricular coaching contracts at SCHS.<sup>7</sup> T. 25. He accepted the offer and has been working as a physical education/drivers' education instructor at the school since the commencement of the 1989-90 year. At the time of his application, he was SCHS'

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<sup>5</sup> This person was the most senior applicant, according to the evidence. Grievant argued that Messrs. Higginbotham and Compton deemed him most qualified simply because of his greater seniority. While it is clear that factor was a consideration, nothing in the record suggests it was given inordinate or otherwise inappropriate weight. See W.Va. Code §18A-4-8b(a); Dillon v. Bd. of Educ. of the Co. of Wyoming, 351 S.E.2d 58 (W.Va. 1986).

<sup>6</sup> See W.Va. Code §18A-3-2.

<sup>7</sup> See Code §18A-4-16.

head football coach. T. 25-26. Apparently, he continues in this role; therefore, even though he is certified in athletic training, he cannot, per West Virginia State Board of Education Policy 5112<sup>8</sup>, utilize that credential at SCHS during football season.

Policy 5112 requires state-certified athletic trainers to be on-site at all senior high school football games and practices and encourages their use "with other school athletic programs and related school programs." Prior to term 1989-90, Monica Traney, a teacher at Respondent's Clendenin Junior High School, had an extracurricular trainer's contract for SCHS; Mr. Higginbotham, who had drafted the job advertisement, noted the preference for a certified athletic trainer since he had "heard rumors" Ms. Traney might be leaving the Kanawha County Schools, T. 9, 59, and since he believed it reasonable to require a physical education instructor to have that credential. T. 8.

At some point, Grievant, who is without athletic trainer's certification, called Mr. Higginbotham for an update on the status of his application. Mr. Higginbotham advised that Mr. Casto had been chosen, and, responding to Grievant's questions, explained Grievant's lack of the trainer's qualification was the main reason for his non-selection. Shortly thereafter on the same day, John Meeks,

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<sup>8</sup> 126 C.S.R. §118

another DJHS staffer and applicant for the SCHS job, called Mr. Higginbotham and made similar inquiries, although he apparently did not directly request reasons why he was not chosen. T. 50-51.<sup>9</sup> At Level II, Mr. Higginbotham opined that Grievant and Mr. Meeks were present during both calls, even though Mr. Meeks, when he called, pretended to know nothing about Mr. Casto's selection. Grievant and Mr. Meeks admitted this deception and that Mr. Higginbotham had been on a speaker-phone and thus audible to each of them during both conversations. T. 49-50.

Unrefuted testimony is that Mr. Casto now serves SCHS as an athletic trainer "for basketball and the minor sports." T. 51. Ms. Traney has continued to be football-season trainer; it is not clear at what point Mr. Higginbotham determined the rumors about her departure to be false.

Grievant's arguments are simply not persuasive. While it is no doubt convenient for SCHS to have its football coach on-site at the school full-time, the facility obviously has a history of utilizing extracurricular employees from other institutions. Further, Mr. Casto was not the

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<sup>9</sup> Unfortunately for Mr. Meeks, he apparently misunderstood the role of seniority in the job-selection process, since he stated "I was going to file the grievance. . .[but] [t]here was no use for me to file the grievance when Donnie had more years service in the county than I did." T. 51.

Mr. Meeks is certified in physical education, drivers education and athletic training.

first applicant selected for the vacancy. Finally, that first successful applicant, Mr. Smith, did not have the athletic trainer certification. It is true that Mr. Casto had only two years' elementary-special education instructional experience, while Grievant had ten years in secondary (junior high school) service with nine of those spent teaching physical education. However, Mr. Casto possesses a masters degree-plus thirty and "is presently working with additional hours towards a further degree [and] will be teaching at West Virginia State College. . .this year," T. 27, while Grievant has only a bachelors degree, T. 31, with a few graduate hours beyond, T. 40. Additionally, Mr. Casto has worked with senior high school students as a coach for the past two years. While interviews are an acceptable and sometimes preferable means of assessing qualifications, they are not required; here, the four applicants remaining after Mr. Smith's elimination were compared in an identical manner and therefore Respondent's failure to interview Grievant cannot be said to be error. See Ginn v. Hardy Co. Bd. of Educ., Docket No. 16-88-185 (Dec. 9, 1988).

It is true that Mr. Higginbotham, at Level II, retracted that Grievant's non-certification in athletic training was why he was not successful. Higginbotham explained he had known Grievant and others in his family for some time, that he wanted to spare Grievant's feelings, and that he might have told Grievant the truth had they been speaking face-to-face instead of over the telephone. He

admitted Grievant's lower level of education, failure to regularly pursue supplemental learning opportunities, and certain poor college-class grades were instead the primary determinants. T. 55-58. Grievant did not deny the existence of any of these factors or the accuracy of Higginbotham's view of them, although he did declare, without dispute, that his cumulative college grade-point average was between 3.2 and 3.3. T. 63. However, although Higginbotham's tactics may have been questionable, his Level II testimony was plausible and his actions do not reflect a flaw in the selection process. In fact, there is simply no evidence sufficient to meet Grievant's burden of proof that Respondent erred in determining Mr. Casto to be the most qualified applicant for the phys ed/drivers ed job at SCHS, or that there was any other significant marring of the process whatsoever.<sup>10</sup>

The remainder of this Decision will be presented as formal findings of fact and conclusions of law.

#### FINDINGS OF FACT

1. Grievant, certified only in physical education and drivers education, applied for a South Charleston High School (SCHS) position with credentials required in those fields and desired in athletic training.

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<sup>10</sup> No credible evidence was presented that Grievant's prior utilization of sick leave was improper or that it was a factor in his non-selection. Therefore, the issue will not be further addressed.

2. All five applicants were already in Respondent's employ. After interviewing only one, Jerry Smith, Respondent offered him the job, deeming him the most qualified candidate; he was not certified in athletic training. However, he declined the post.

3. Respondent decided against conducting further interviews, determining itself to have adequate information on the other four applicants via their personnel files. After a review of these files, Bryce Casto was chosen as the most qualified of the remaining candidates. He accepted Respondent's job offer.

4. Mr. Casto, who at the time was an elementary teacher, had been SCHS' head football coach since school term 1988-89. He is certified in athletic training, but due to West Virginia State Board of Education Policy 5112, is precluded from acting simultaneously as coach and trainer in football.

5. Mr. Casto has two years teaching experience to Grievant's ten; however, Mr. Casto has a masters degree-plus thirty, while Grievant has only a bachelors degree with a few graduate hours. Further, Mr. Casto is pursuing advanced studies and teaching college courses, while Grievant is doing neither or otherwise working with regularity toward improving his professional credentials educationally.

6. Grievant had taught physical education on the secondary (junior high school) level for nine years, and has also coached. Mr. Casto had never taught physical education



at the time of his selection, although he had coached at the secondary (senior high school) level for two years.

7. Mr. Casto is working as an athletic trainer for SCHS, but not during football season.

#### CONCLUSIONS OF LAW

1. Professional positions must be filled by county boards of education in West Virginia on the basis of qualifications, with seniority having a bearing only if the top candidates are, in essence, equally qualified. Dillon v. Bd. of Educ. of the Co. of Wyoming, 351 S.E.2d 58 (W.Va. 1986).

2. The filling of such positions may not be dependent upon the acceptance of an extracurricular contract. See State ex rel. Hawkins v. Bd. of Educ. of Tyler Co., 275 S.E.2d 908 (W.Va. 1980). In fact, extracurricular contracts, like other vacancies, must be independently filled, on the basis of qualifications. Smith v. Jefferson Co. Bd. of Educ., Docket No. 19-88-082; see also Stover v. Kanawha Co. Bd. of Educ., Docket No. 89-20-75 (June 26, 1989), at 30-31.

3. In order to prevail, a grievant must prove his claim by a preponderance of the evidence. Black v. Cabell Co. Bd. of Educ., Docket No. 06-88-238 (Jan. 31, 1989).

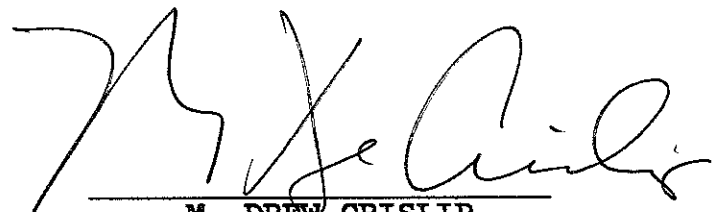
4. A county board of education has wide discretion in filling professional positions, and its hiring decisions will not be disturbed unless a flaw in the selection process, so significant that the grievant might have reasonably

been successful had the flaw not been present, is shown.  
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5. Grievant failed to demonstrate that Respondent erred in concluding Mr. Casto was "most qualified" for the job in question; that his certification in athletic training was a controlling factor in his hiring; or that there was any significant flaw in the process whatsoever.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to 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. This office should be advised of any intent to appeal so that the record can be prepared and transmitted to the appropriate court.



M. DREW CRISLIP  
Hearing Examiner

Date: March 12, 1990