BUDDY JARRELL

v. Docket No. 93-41-341

RALEIGH COUNTY BOARD OF EDUCATION

DECISION

The grievant, Buddy Jarrell, is employed by the Raleigh County Board of Education (Board) as Head Boys' Basketball Coach and Athletic Director of Marsh Fork High School (MFHS). He initiated a grievance at Level I on June 9, 1993, protesting his ratings on June 22, 1993 evaluations of his performance in his coaching and Athletic Director capacities. The grievance was denied at Levels I (See footnote 1) and II and the Board, at Level III, voted to waiveparticipation. Appeal to Level IV was made on August 20, 1993, and a hearing was held April 14, 1994. The parties declined to submit proposed findings of fact and conclusions of law. (See footnote 2)

FACTS

The record developed at Levels II and IV supports the following findings.

1. The grievant has been employed by the Raleigh County Board of Education for seventeen years and has served as MFHS Head Basketball Coach for ten years and as MFHS Athletic Director for five years.

2. Gary Rumberg, a twenty-year administrator in the school system, was appointed Principal of MFHS effective the beginning of the 1992-93 school year.

3. 1992-93 was also the year in which Clear Fork High School (CFHS) was closed and students from that school were transferred to MFHS.

4. On or about November 15, 1992, several MFHS students, including at least two former CFHS students, approached Mr. Rumberg and expressed doubts about the grievant's coaching abilities. In response to their inquiry about the possibility of a new coach for the upcoming basketball coach, Mr. Rumberg responded that there would not be a new coach appointed.

5. The students' complaints prompted Mr. Rumberg to contact Assistant Superintendent of Schools Racine Thompson for assistance. 6. Mr. Rumberg and Mr. Thompson conducted

observations of the grievant's performance as basketball coach on November 16, 1992, the first day of practice. Mr. Rumberg also made an observation on November 17.

7. Mr. Rumberg's written observation reports for the two days reflects that he considered the grievant satisfactory in most areas but generally felt more structure was needed in the team's practice sessions.

8. Mr. Rumberg discussed his observations with the grievant on or about the same date they were made and offered suggestions for improvement.

9. Mr. Rumberg made other periodic "informal" observations of the grievant in his coaching capacity during the school year.

10. The grievant received a May 1993 evaluation which covered his performance as coach for the 1992-93 school term. Of the nine performance standards listed on the evaluation, the grievant was given a score of 3-Satisfactory in seven and a score of 4-Commendable in two. The form did not call for the evaluator to compute an overall score. The average of the scores given on the individual standards was 3.2, which placed the grievant's overall performance as coach in the Satisfactory to Commendable range.

11. During his post-evaluation conference with Mr. Rumberg, the grievant expressed dissatisfaction with his basketball coach rankings and reminded the principal that the MFHS basketball teamhad finished its season with an 18 and 6 win-loss record and that he had been voted Regional Coach of the Year by his peers in the basketball coaching field. In the comment section of the evaluation, Mr. Rumberg made note of the latter achievement and remarked "This [evaluation] is representative of significant and substantial progress over the course of the basketball season." He declined, however, to change any scores on the evaluation.

12. Assistant Superintendent Thompson completed a November 20, 1992 evaluation of the grievant in his coaching capacity which ranked him as 3-Satisfactory in four categories and 2-Needs to Improve in three areas. (See footnote 3)

13. The nine other MFHS coaches received 1992-93 evaluations which were higher than the grievant's. Mr. Rumberg did not assign any other coach a ranking lower than 4-Commendable. (See footnote 4)

14. Mr. Rumberg made no formal observations of the grievant's performance as MFHS Athletic Director but through regular conferences with the grievant and informal assessments of the overall

operation of the various sports programs at the school, he reached conclusions regarding the grievant's performance in the job for school year 1992-93. (See footnote 5)

15. In the grievant's May 1993 evaluation as Athletic Director, Mr. Rumberg awarded him scores of 3-Satisfactory in all nine performance standards.

ARGUMENT

The grievant asserts that the evaluations performed by Mr. Rumberg did not accurately reflect his actual performance in his positions and was thus, an arbitrary and capricious assessment. (See footnote 6) He cites, as supportive of this assertion, his basketball team's win-loss record, the success of the other MFHS sports teams under his general supervision as Athletic Director, and the disparities between his rankings and those of the other MFHS coaches. The Board responds that Mr. Rumberg properly focused the evaluations on the grievant's conduct in his positions and not the successes or failures of the teams under his direction. (See footnote 7) The Board alsogenerally avers that the grievant has failed to show that the process by which the evaluations were performed was arbitrary or capricious.

CONCLUSIONS

After a careful review of the parties' positions, the applicable law and the foregoing findings of fact, the undersigned makes the following conclusions of law.

1. West Virginia State Board of Education Policy 5300 requires that evaluations of employees of a county board of education be "open and honest." Wilt v. Flannigan, 294 S.E.2d 189 (W.Va. 1982). (See footnote 8)

2. The assessment of the performance of such employees should not be disturbed absent evidence of arbitrary abuse ofdiscretion. Brown v. Wood County Bd. of Educ., 400 S.E.2d 213 (W.Va. 1990).

3. While the grievant has established a disparity between the rankings received by other MFHS coaches and himself, he has otherwise presented no evidence that his evaluations were performed in an arbitrary and capricious manner. The disparity alone does not establish that they were performed in such a manner.

Accordingly, the grievance is **DENIED.**

Any party may appeal this decision to the Circuit Court of Kanawha County or the Circuit Court of Raleigh 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 Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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JERRY A. WRIGHT

CHIEF ADMINISTRATIVE LAW JUDGE

Dated: September 16, 1994

Footnote: 1The grievant's supervisor, MFHS Principal Gary Rumberg, made the following response at Level I: "In accordance with the articles of the School Laws of West Virginia dealing with Grievance Procedure, the results of an evaluation are not a grievable matter. The employee does have the right to include a written statement as an addendum to the evaluation." At the beginning of the Level II hearing, the hearing evaluator also expressed concerns over whether the assessments were grievable. The undersigned is unaware of any "school law" which prohibits county board of education employees from protesting their performance assessments. Such complaints clearly fall within the definition of grievance found in W.Va. Code §18-29-2(a) and the Grievance Board has consistently so held. See, e.g., Thomas v. Greenbrier County Bd. of Educ., Docket No. 13-87-313-4 (Feb. 22, 1988). The West Virginia Supreme Court of Appeals has also recognized that evaluations are grievable matters. See, Brown v. Wood County Bd. of Educ., 400 S.E.2d 213 (W.Va. 1990).

Footnote: 2At the conclusion of the grievant's presentation of evidence at Level IV, counsel for the Board made a motion that the grievance be dismissed on the grounds that the evidence did not support the allegations made. After affording grievant's counsel the opportunity to respond, the undersigned granted the motion. Hence, no proposals were necessary.

Footnote: 3Mr. Thompson declined to evaluate the grievant in the area of "Professional Growth."

Footnote: 4Mr. Thompson was not involved with any of these evaluations.

Footnote: 5Curiously, the parties presented very little evidence at Levels II and IV on the manner in which Mr. Rumberg completed his assessment of the grievant as Athletic Director. The findings herein are essentially based on Mr. Rumberg's limited testimony on the issue.

Footnote: 6Oddly, the grievant makes no allegations regarding Mr. Thompson's assessment of his performance as coach. The holdings herein are therefore limited to those evaluations performed by Mr. Rumberg. It is noted, however, that Mr. Rumberg was questioned regarding the "effect" of Mr. Thompson's evaluation and essentially responded that, as far as he

was concerned, the only "official" evaluations were the two he conducted. Since Mr. Thompson did not testify, Mr. Rumberg's conclusion was neither corroborated nor disputed. Because performance assessments can and do have consequences in subsequent personnel actions, see e.g., W.Va. Code §18A-4-7a, it is suggested that the Board clarify the purpose of Mr. Thompson's evaluation and advise the grievant as to whether it intends to make further resort to his findings.

Footnote: 7This assertion is primarily drawn from Mr. Rumberg's Level II testimony. He testified that his evaluation was based on "what [the grievant] had done, not what the team had done." Mr. Rumberg later qualified this answer by stating that a particular coach's win-loss record was a "spectrum" requiring consideration but that it was not "totally reflective" of what the coach achieved. It appears from this testimony that Mr. Rumberg probably gave little weight to the grievant's impressive win-loss record for the year inquestion. While the undersigned disagrees with this approach, it cannot be said that it was an arbitrary one. It obviously has advantages for both the employee and the county board. Most noticeably, an evaluation process which focuses on the coach's management of and interaction with a particular team does not punish the employee for a poor season. Such a process also takes into account that a poor win-loss record is in some cases the result of a limited field of students from which the coach has to choose his or her players. Accordingly, Mr. Rumberg's statements have not been deemed supportive of the assertion that his evaluations of the grievant's performance were arbitrary.

Footnote: 8Administrative notice is taken that Policy 5300 was repealed by the State Board of Education on August 20, 1992, and reinstated on August 1, 1993. Thus, the evaluations at issue herein were most likely not subject to its provisions. It appears, however, that a review of the propriety of the assessments still falls within the "arbitrary and capricious" standard first discussed in Dillon v. Wyoming County Bd. of Educ., 351 S.E.2d 58 (W.Va. 1986). Further, the record supports that the Board was not aware of the repeal of the policy and was conducting the evaluations as if it were applicable. Accordingly, the undersigned deems it unnecessary to address the issue further.