WILLIAM McCOY, .

.

Grievant, .

.

v. . Docket No. 94-20-141

.

KANAWHA COUNTY BOARD OF EDUCATION, .

.

Respondent. .

D E C I S I O N

William H. McCoy (Grievant) alleges a violation of W. Va. Code § 18A-4-7a when Respondent Kanawha County Board of Education (KCBE) failed to select him for the extracurricular position of Head Baseball Coach at KCBE's St. Albans High School (SAHS). This grievance was initiated at Level I on February 16, 1994. Following a hearing at Level II on March 21, 1994, his grievance was denied by George Beckett, the Superintendent's designee, on April 1, 1994. Grievant waived Level III in accordance with W. Va. Code § 18-29-4(c) and appealed to Level IV on April 13, 1994. An evidentiary hearing was conducted in this Board's offices in Charleston, West Virginia on May 26, 1994. Following an opportunity for the parties to submit post-hearing briefs, this matter became mature for decision on June 8, 1994.

DISCUSSION

Grievant originally described his grievance as follows:

> I am grieving my non-selection for the Head Baseball Coach position at St. Albans High School. As the most qualified applicant and the candidate chosen by the Interview Committee I should have been awarded the position under the provisions of West Virginia State Code 18A-4-7a. I am asking for immediate placement into the position of Head Coach at St. Albans High School with all appropriate back pay awarded to me.

In the course of the grievance, Grievant further alleged that KCBE's actions in selecting another candidate for the position at issue was arbitrary and capricious.

Grievant is presently employed by KCBE as a physical education teacher at South Charleston Junior High School. He has an extracurricular contract with KCBE to serve as Assistant Football Coach at SAHS. Grievant has been employed by KCBE for eighteen years and has 16 years of coaching experience. Moreover, he was the Assistant Baseball Coach at SAHS for 14 years. In December 1993 the previous Head Baseball Coach at SAHS, Ed Carter, informed Grievant that he was resigning and that he was recommending Grievant as his replacement. Thereafter, Grievant applied for the Head Baseball Coach position at SAHS. Grievant was interviewed for the position before a committee consisting of Alvin Anderson (SAHS Principal), Ross Harrison (SAHS faculty senate representative), Stanley Smith (SAHS Athletic Director), and Larry Rawlings (SAHS Assistant Principal).

The committee members asked each of the five applicants a series of 11 questions in the course of the interview. G Ex 1. Mr. Anderson testified that the committee members were instructed to list their top three choices. However, some of the committee members either heard or understood Mr. Anderson instruct them torank the top three candidates. Thus, both Mr. Smith and Mr. Rawlings listed Grievant as their "first choice" for the position while Mr. Harrison simply listed Grievant as one of his top three candidates, along with Glenn Wilson, the individual eventually selected for the position. In any event, it is clear that the committee was simply responsible for making a recommendation which Mr. Anderson could then follow or not follow in his discretion.

Both Mr. Smith and Mr. Rawlings testified that Mr. Anderson told them that he selected Mr. Wilson for the position based on his head coaching experience and the fact that he was already working on the staff at SAHS. Mr. Anderson testified that he selected Mr. Wilson because of his superior experience as a head baseball coach and that being "in the building" (meaning already on the SAHS staff) might be beneficial, but it was not required for the position. This testimony is consistent with Mr. Anderson's "score card" which was prepared during the interview wherein he noted Mr. Wilson had 25 years' teaching experience and "more time as a coach." G Ex 2. Mr. Anderson further indicated that the committee was assembled to validate the qualifications of the candidates.

In Smith v. Logan County Board of Education, Docket No. 91-23-040 (July 31, 1991), this Grievance Board determined that "W. Va. Code § 18A-4-7a does not apply to the filling of

extracurricular coaching positions." See Ramey v. Mingo County Bd. of Educ., Docket No. 90-29-538 (July 17, 1991). Moreover, it is now well established that the appropriate standard of review for decisions concerning selection of professional personnel to fill coachingassignments is abuse of discretion as stated in Pockl v. Ohio County Board of Education, 406 S.E.2d 687 (W. Va. 1991) and Dillon v. Board of Education, 351 S.E.2d 58 (W. Va. 1986). Foley v. Mineral County Bd. of Educ., Docket No. 93-28-255 (Oct. 29, 1993). While reasonable people might differ concerning the merits of choosing Mr. Wilson over Grievant for the Head Baseball Coach position at SAHS, the evidence of record does not support a finding that KCBE's decision was arbitrary and capricious. Moreover, the Principal's decision not to follow the recommendations of two of the four committee members does not constitute an abuse of discretion. Whether the committee was to rank their preferences or simply list their top three candidates, the committee was formed to make a recommendation, not to make a selection for the vacancy.

In addition to the foregoing discussion, the following findings of fact and conclusions of law are appropriate in this matter.

FINDINGS OF FACT

1. Grievant, employed by KCBE as a teacher assigned to South Charleston Junior High School, was one of five applicants for the position of Head Baseball Coach at St. Albans High School (SAHS).

2. The applicants were interviewed by a four-member committee which included SAHS Principal Alvin Anderson. Two of the committee members listed Grievant as their "first choice" for the position while a third listed Grievant and the person ultimately selected, Glenn Wilson, among his top three candidates.

3. Principal Anderson elected to nominate Glenn Wilson for the position citing Mr. Wilson's superior experience as a head baseball coach. Mr. Wilson was ultimately selected for the position by KCBE.

CONCLUSIONS OF LAW

1. Grievant is required to prove the allegations of his or her complaint by a preponderance of the

evidence. Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). 2. The provisions of W. Va. Code § 18A-4-7a are not applicable in the selection of professional personnel for coaching assignments. Foley v. Mineral County Bd. of Educ., Docket No. 93-28-255 (Oct. 29, 1993); Smith v. Logan County Bd. of Educ., Docket No. 91-23-040 (July 31, 1991).

3. The appropriate standard for reviewing the selection of professional personnel for extracurricular coaching positions is whether the board acted in an arbitrary and capricious manner or otherwise abused its broad discretion in matters relating to the hiring of school personnel. Foley, supra, citing Pockl v. Ohio County Bd. of Educ., 406 S.E.2d 687 (W. Va. 1991); Dillon v. Bd. of Educ., 351 S.E.2d 58 (W. Va. 1986); Chaffin v. Wayne County Bd. of Educ., Docket No. 92-50-419 (Aug. 20, 1993).

4. The evidence of record does not demonstrate that KCBE acted in an arbitrary or capricious manner or otherwise abused its discretion when it selected Glenn Wilson over Grievant for the position of Head Baseball Coach at SAHS.

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 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.

LEWIS G. BREWER

ADMINISTRATIVE LAW JUDGE

Dated: October 13, 1994