ANDREW BANFI

v. Docket No. 93-22-125

LINCOLN COUNTY BOARD OF EDUCATION

D E C I S I O N

In August 1992, Grievant, a teacher employed by Respondent Lincoln County Board of Education (LCBE), was placed on an improvement plan for the 1992 football season (1992-93 school year) relative to his head football coaching duties at Guyan Valley High School (GVS). Following a December 18, 1992 final evaluation of his performance for the season, Grievant was not recommended for reemployment as head coach. During a hearing on the matter before LCBE's members on March 30, 1993, Grievant alleged policy violations and requested that his coaching contract not be terminated, to no avail. Grievant thereafter timely filed the within action. (See footnote 1)

Grievant was initially terminated from his extracurricular coaching contract in Spring 1992, effective the end of the 1991-92 school year; that action prompted an earlier grievance, Banfi v. Lincoln County Bd. of Educ., Docket No. 92-22-120 (June 30, 1992), hereinafter referred to as Banfi I. Grievant prevailed in Banfi I because LCBE had not complied with then-existing requirements for the evaluation of coaching personnel. As such, LCBE failed to conduct ongoing evaluations of Grievant's coaching performance or offer any improvement period following the February 1992 unsatisfactory evaluation of Grievant's coaching performance for the 1991 football season.

On July 1, 1992, existing procedural rules for the evaluation of professional personnel mentioned in Banfi I, West Virginia Board of Education Policies 5300, 5310 and 5311 were repealed and a new procedure, titled Policy 5310, was promulgated for the evaluation of professional personnel. Sections 1 through 7 of Policy 5310 cover, in part, the scope, purpose, principles of operation and rating structures for uniformly evaluating "professional personnel" within West Virginia's public school system so as to promote professional growth and "provide evaluation data as one basis for sound personnel decisions."

The concluding portions of Policy 5310, Sections 9 through 14, contain highly detailed and extensive criteria for establishing professional teaching standards and growth and for evaluating and

remediating the performance of classroom teachers. The new policy simply does not establish or mandate any evaluative or remedial criteria for professional assignments other than teaching. Nevertheless, in compliance with Banfi I, LCBE reinstated Grievant and placed him on a season-long coaching improvement plan for the 1992 football season. (See footnote 2)

While the primary issue in Banfi I was "whether Grievant was properly evaluated and then dismissed from his duties as head football coach," the issue herein is whether Grievant was afforded a meaningful improvement plan and adequate improvement period. Generally, the improvement plan identified several deficiencies, called for the monitoring and observing of Grievant's and the football team's performance and identified various "Sources of Assistance," such as, Grievant himself, the principal and assistant principal, the assistant coach as well as written materials.

At least two written observations of Grievant's coaching performance were completed by GVS Principal Paul Winters, on September 29 and November 5, 1992, both signed by Grievant and Mr. Winters. Thereafter, a final, written "Professional Personnel Extra Curricular Duties Evaluation" was rendered on December 18, 1992. While the formal evaluation noted improvement in one specific performance area, it also indicated that Grievant had not met the performance standards in two other areas. In yet three other identified standards, Grievant's performance remained in the "Needs Improvement" category.

In her statement at the March 1993 pretermination hearing, Grievant's representative denounced LCBE for not following Policy5310. She specified that Grievant "has not been afforded the processes of the evaluation; that is, evaluate, observe, evaluate, improvement plan, re-evaluate, and then improvement team, and then re-observe, and re-evaluate. So, the policy has not been followed." She characterized LCBE's actions in 1993 as being the "same violation" that prompted a favorable decision in Banfi I.

In his level four brief, under proposed findings of fact numbers four through nineteen, Grievant faults some aspects of his improvement plan and remediation period, although he made no protest about the formulation, content or implementation of the improvement plan while working under the plan. The thrust of Grievant's argument in this case appears to be that LCBE is somehow obligated to provide him more time and assistance in which to improve his coaching abilities. However, Grievant has not demonstrated any factual or legal basis in support of his request for reinstatement as GVS's varsity football coach.

It cannot be found that LCBE violated Policy 5310 since the specific, detailed and exhaustive remediation provisions and procedures found in that regulation targets instructional improvement and applies to persons employed as classroom teachers, not coaches, whether the coaches are also professional employees or otherwise. (See footnote 3) Moreover, the record reveals that LCBE followed the spirit and intent of Banfi I and any other prevailing law when it afforded Grievant a reasonable period of time, an entire coachingseason, to improve his coaching performance and the team's playing abilities. (See footnote 4)

Unfortunately for Grievant, in Mr. Winters' judgment, Grievant's coaching performance during the improvement period did not sufficiently improve so as to warrant any further improvement time during a new season. During the specified improvement period, pre-evaluation observations were conducted, conferences were held and suggestions for improvement were memorialized. While it is true that no "improvement team" had been formed or utilized at any time during the improvement period, a factor about which Grievant now complains, Policy 5310 does not require that a classroom teacher with an unsatisfactory evaluation be referred to an improvement team. The matter is discretionary on the part of the teacher's supervisor. On the other hand, the regulation states that "the employee may request the assistance of an improvement team." There is no evidence of record that Grievant requested the assistance of an improvement team for his coaching performance prior to the final evaluation.

In short, Grievant simply failed to meet his burden of proof that the content or implementation of his improvement plan was flawed in any respect. Therefore, he has not established that he is entitled to reinstatement or any further improvement time as a matter of law.

In addition to the foregoing, the following formal findings offact and conclusions of law are made.

Findings of Fact

1. Grievant was terminated as GVS's football coach after the 1991-92 football season; he filed a grievance and prevailed due to LCBE's failure to evaluate his coaching performance properly in prior years and to offer him an improvement period subsequent to the issuance of an unsatisfactory coaching evaluation in February 1992.

2. LCBE reinstated Grievant as head football coach at GVS for the 1992-93 season and, based

on the unsatisfactory February 1992 evaluation, placed him on a season-long improvement plan.

3. In August 1992, Grievant signed the improvement plan without comment or objection; later that month and in November 1992, he signed two basically unfavorable observation reports without comment or objection.

4. In a final evaluation rendered December 1992, GVS's principal found some area of Grievant's coaching performance still deficient; he recommended that Grievant's coaching contract be terminated and that a new coaching staff be hired.

5. As a result of the unfavorable evaluation and unsuccessful improvement period, LCBE terminated Grievant's coaching contract in March 1993.

Conclusions of Law

1. The assignment of teachers and service personnel to extracurricular assignments shall be made by mutual agreement of the employee and the superintendent, or designated representative,subject to board approval. Code §18A-4-16.

2. "Procedural requirements mandated under W.Va. Code §18A-2-7 and W.Va. Code §18A-2-8, apply to all school personnel positions; therefore, school board actions relating to contracts entered into pursuant to W.Va. Code §18A-4-16, are not exempt from such procedural requirements. Smith v. Board of Educ. of County of Logan, 341 S.E.2d 685 (W.Va. 1985)." Banfi v. Lincoln County Bd. of Educ., Docket No. 92-22-120 (June 30, 1992).

3. Grievant was afforded a meaningful improvement period prior to the nonrenewal or termination of his extracurricular coaching contract.

4. Grievant failed to prove he was entitled to reinstatement to his coaching position as a matter of law. See Hartlieb v. Ohio County Bd. of Educ., Docket No. 93-35-300 (Feb. 24, 1994).

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Lincoln 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 appeal and provide the civil action number so that the record canbe prepared and transmitted to the appropriate Court.

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NEDRA KOVAL

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Administrative Law Judge

Date: February 28, 1994

Footnote: 1A level four hearing was conducted on June 11, 1993; the parties submitted post-hearing briefs on July 12. In mid-December 1993, the administrative law judge who heard the case resigned, and the case was transferred to the undersigned.

Footnote: 2The multiple-page improvement plan was dated August 10, 1992. Grievant signed and dated each page of the plan on the space provided, under a written statement, "I acknowledge receipt of this plan and have had an opportunity to discuss it."

Footnote: 3Under W.Va. Code §18A-3-2a, persons not employed by a board of education may be issued some type of certificate or permit to serve in the public school system as a contracted athletic coach, but only under certain circumstances and within specified limitations.

Footnote: 4Grievant also alleged violations of LCBE policies; however, no LCBE policy was submitted or made part of the record herein.