CHARLES MAYNARD

v. Docket No. 93-27-473

MERCER COUNTY BOARD OF EDUCATION

DECISION

The grievant, Charles Maynard, is employed by the Mercer County Board of Education (Board) as a classroom teacher and basketball coach at Spanishburg High School (SHS). He filed a grievance at Level I September 8, 1993, protesting his nonselection for the position of head basketball coach at Pikeview High School (PHS). The grievant's supervisor was without authority to address the matter and the grievance was denied at Level II following a hearing held October 4, 1993. The Board, at Level III, affirmed the Level II findings and an appeal to Level IV was made November 16, 1993. The parties subsequently agreed to submit the case for decision on the record developed at the lower levels. The Board submitted proposed findings of fact and conclusions of law on December 28, 1993. The grievant did not submit proposals.

FACTS

The record is poorly developed and will support only the following findings.

1) The grievant has been employed by the Board as a teacher and basketball coach at SHS for approximately twenty-five years. He has achieved an impressive win-loss ratio during his tenure as a coach there.

2) In 1992 the Board decided to close four high schools, including SHS, effective the end of the 1993-94 school year. The student population of those schools were to be merged into newly-constructed PHS.

3) The head basketball coaching position at PHS was posted in July 1993 and several persons, including the grievant and Carmen Stauffer, made timely applications. Mr. Stauffer has approximately twenty-six years coaching experience including three or four years in the Monroe County school system.

4) An interview committee consisting of PHS Principal Dan Zirkle, Oma Fowler, Jeremiah Murphy, and John Daniels (See footnote 1) conducted interviews of all candidates in which each was

asked the same open-ended questions related to coaching. Each committee member ranked the applicant's responses on a scale of 1 to 5.

5) At the conclusion of the interviews, the committee members, without discussing the relative strengths and weaknesses of the applicants, submitted their rankings to Mr. Zirkle. Mr. Zirkle totaled the scores and reported to Superintendent of Schools Deborah Akers that the committee had ranked Mr. Stauffer the highest applicant. The Board, on July 27, 1993, accepted Ms. Akers' recommendation that Mr. Stauffer be awarded the position.

6) Board counsel made no assertion whatsoever at Level II that the grievance was untimely. The Level II evaluator, in her October 25, 1993 decision, made a "Judicial Note" that "this grievance is considered untimely."

ARGUMENT

The grievant's legal position is unclear. At the Level II hearing his representative alluded to a "flawed selection process" but never specified the nature of the flaw or flaws. Although pressed for a clearer statement by Board counsel, the representative responded only that "Mr. Maynard was indeed the most qualified and the hiring of Mr. Stauffer was arbitrary and capricious and a violation of State Code 18A-4-7a." As previously noted, no Level IV proposals were submitted in the grievant's behalf. During his Level II testimony the grievant remarked that he felt the interview process was fair and stated, "The only thing that really bothered me was the fact that, and once again this is not anything personal, I just felt like the years he [Mr. Stauffer] spent in Monroe County, I just didn't feel like that ought to be included as far as years of experience in Mercer County." It isinferred from this statement and his representative's remarks that the grievant believes that the committee afforded weight to Mr. Stauffer's service in Monroe County and that it was a violation of W.Va. Code §18A-4-7a to do so.

The Board maintains that Code §18A-4-7a is not applicable to coaching positions and that the selection falls under the broader "arbitrary and capricious" standard of review pronounced in Dillon v. Bd. of Educ. of County of Wyoming, 351 S.E.2d 58 (W.Va. 1986). The Board asserts that the process was not arbitrary or capricious. The Board also asserts that, since the position was filled on July 27, 1993, and the grievance was not filed until September 8, 1993, it was not timely filed.

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) "Any assertion by the employer that the filing of the grievance at level one was untimely must be asserted by the employer on behalf of the employer at or before the level two hearing." W.Va. Code §18-29-3(a) (1992). Since no such assertion was made by the Board's representative at or before the Level II hearing held October 18, 1993, its claim is not cognizable at Level IV.

2) In accordance with the provisions of Code §18A-4-16, the assignment of a school employee to an extracurricular assignment, such as coaching, shall be made only by mutual written agreement ofthe employee and the superintendent of schools, or a designated representative, with said agreement being subject to approval by the board of education.

3) The provisions of Code §18A-4-7a are not applicable in the selection of professional personnel for coaching assignments. Chaffin v. Wayne County Bd. of Educ., Docket No. 92-50-398, (Jul
y 27, 1993).

4) In the selection of professional personnel for coaching assignments, "[c]ounty boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. Nevertheless, this discretion must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrarily and capricious." See, Pockl v. Ohio County Bd. of Educ., 406 S.E.2d 687 (W.Va. 1991); Dillon v. Bd. of Educ. of County of Wyoming, 351 S.E.2d 58 (W.Va. 1986).

5) It was not an abuse of the Board's discretion to consider, as part of his overall credentials, Mr. Stauffer's coaching experience in the Monroe County school system. The grievant has failed to otherwise establish that the Board abused its discretion in selecting Mr. Stauffer for the head basketball coaching position at Pikeview High School.

Accordingly, the grievance is **DENIED.**

Any party may appeal this decision to the Circuit Court of Kanawha County or the Circuit Court of Mercer County and suchappeal 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.

_____

JERRY A. WRIGHT

CHIEF ADMINISTRATIVE LAW JUDGE

Dated: April 14, 1994

Footnote: 1Ms. Fowler was a substitute teacher employed by the Board and a parent of one or more students attending Matoaka High School, one of the schools to be closed. While the record reflects that other members of the committee were "parent" or "area" representatives, Mr. Murphy and Mr. Daniels, who testified at the Level II hearing, were never identified as such. It is also unknown whether they, like Ms. Fowler, were employed by the Board. The record does establish that there was no Spanishburg representative on the committee.