GERALD PRICHARD,

v. Docket No. 93-22-522

LINCOLN COUNTY BOARD OF EDUCATION

D E C I S I O N

Gerald Prichard, Grievant, is employed by the Lincoln County Board of Education ("LCBOE" or "Board") as a welding teacher at the Charles Yeager Career Center. He is grieving his nonselection for the junior high football coaching position at Guyan Valley High School ("GVHS"). Grievant alleges LCBOE abused its discretion when it did not select him for the position as he was the most qualified candidate. His requested relief is instatement into the position and any appropriate compensation. This grievance was initiated on August 25, 1993 and denied at all lower levels. A Level IV hearing was held on June 29, 1994 and became mature for decision on that date.

Findings of Fact

1. Grievant applied for the posted position in a timely manner.

2. There were three candidates for the position, Grievant, the successful applicant, Greg Lambert, and Vickie Dameron, anotherteacher. Ms. Dameron apparently withdrew her name from consideration.

3. Grievant has numerous years of coaching experience in multiple sports. He has been the Junior High Head Basketball Coach at GVHS for seven years, and the Junior High Assistant Football Coach for six years. He has been a teacher at the Career Center for eleven years.

4. Mr. Lambert had never officially coached a team before he received this position. He assisted as a volunteer with the football team. He also played football in high school and for four years at the collegiate level. He has five years of teaching experience.

5. Superintendent Dallas Kelley reviewed the applications without interviewing the candidates because he was familiar with each of them. He selected Mr. Lambert to fill the position.

6. Mr. Lambert was hired as coach at the August 16, 1993 meeting of LCBOE and transferred to GVHS by LCBOE on August 31, 1993.

7. Mr. Kelley knew at the time of his recommendation that Mr. Lambert would be hired as a special education teacher at GVHS. This information was based on his knowledge that the position had been posted, and Mr. Lambert was the most qualified candidate, because he possessed the proper certification. There had been no official action by LCBOE because the individual currently in that position had not formally notified the Board he was not returning.

8. Superintendent Kelley's decision was based on Lincoln County Policy 8-01.04, "convenience, welfare and needs of the employees of Lincoln County Public Schools shall be secondary in importance only to the needs of the students."

9. During his tenure as superintendent, Mr. Kelley has consistently interpreted this policy to require, when possible, that a coaching position be filled by a person who is or will be within that particular school. This is so that students involved in the sport would have access to the coach. Mr. Kelley has consistently followed this policy even though the Board has expressed displeasure with it.

10. Grievant identified several individuals who did not teach at the school where they coached. Mr. Kelley responded to each identified individual and explained that these positions had been filled with outside individuals because no one at the school had applied for the position, or these coaches had been in place when he became the superintendent.

Discussion

This Grievance Board has previously discussed the selection of coaches and held the applicable standard of review is whether there has been an abuse of discretion. Chaffin v. Wayne County Bd. of Educ., Docket No. 92-50-398 (July 27, 1993); Smith v. Logan County Bd. of Educ., Docket No. 91-23-040 (July 31, 1991). "[T]his discretion must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious." Dillon v. Bd. of Educ. of County of Wyoming, 351S.E.2d 58 (W. Va. 1986). LCBOE has consistently followed Policy 8-01.04 in filling its coaching positions. This Policy has been interpreted to mean it is in the best interests of the students for a coach to be accessible to the students he coaches (See footnote 1) . Although reasonable minds may differ about this practice, it is not an abuse of discretion to interpret and apply the policy in this manner. Of course, if the successful applicant had no experience in or knowledge of football, or had no experience in coaching, this type of decision might be interpreted as an abuse of discretion. Such is not the case here. While Grievant had more coaching experience, Mr. Lambert had played football at both the high school and collegiate level and had assisted as a volunteer coach.

Conclusions of Law

The above discussion is supplemented by the following Conclusions of Law:

1. A Grievant is required to prove the allegations of his complaint by a preponderance of the evidence. Tenny v. Barbour County Bd. of Educ., Docket No. 89-01-576 (May 30, 1990).

2. The standard of review for filling a coaching position is to assess whether a board abused its discretion in the hiring or acted in an arbitrary or capricious manner. Dillon, supra; Chaffin, supra; Smith, supra.

3. LCBOE's practice of selecting coaches based on Policy 8-01.04 is not arbitrary or capricious or an abuse of discretion in this incidence.

4. Grievant has failed to meet his burden of proving LCBOE abused its discretion in selecting Mr. Lambert for the GVHS junior high football coaching position.

Accordingly this 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 intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

JANIS I. REYNOLDS

Administrative Law Judge

Dated: October 21, 1994

Footnote: 1Other Grievance Board decisions dealing with teaching and administrative positions have discussed the weight placement in or familiarity with the surrounding area or school should have in the selection process. See Slone v. Putnam County Bd. of Educ., Docket No. 89-40-665 (Feb. 2, 1990); Ramsey v. Mineral County Bd. of Educ., Docket No. 28-88-234 (Aug. 29, 1989); Wilson v. Wyoming County Bd. of Educ., Docket No. 55-88-083 (Aug. 2, 1988). Since these cases did not deal with extracurricular assignments, they are not applicable. It must be noted that Dunn v. Cabell County Bd. of Educ., Docket No. 92-06-142 (Oct. 30, 1992) n.13, stated Slone, supra stood for the proposition that a county board of

education should not grant undue favor to an applicant for an extracurricular position because his regular work was at the same site. This is incorrect. Slone dealt with a half-time teaching, half-time principal position and held the county board of education "inappropriately excluded consideration of grievant's familiarity with the community and its resources." Id. at Conclusion of Law 2.