JAMES RAMEY, JR., III

Grievant,

v. DOCKET NO. 93-29-470

MINGO COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant James Ramey, Jr., III (hereinafter Grievant), employed by Respondent Mingo County Board of Education (hereinafter Board), as a health and physical education teacher at Kermit Junior High School, alleges that the Board violated W. Va. Code § 18A-4-7a in not selecting him for the head football coach position at Lenore Junior High School for the 1993-1994 school year. The Level I evaluator had no authority to decide this grievance. The grievance was denied at Levels II and III, in part due to lack of timeliness, and proceeded to Level IV. The parties agreed to submit the grievance on the record and proposed findings of fact and conclusions of law were filed on or about February 25, 1994. (See footnote 1)

The following findings of fact are derived from the record submitted by the parties.

FINDINGS OF FACT

1. Grievant is employed as a health and physical education teacher at Kermit Junior High School. At the time this grievance arose, Grievant had four years teaching experience and approximately three months coaching experience as an assistant football coach.

2. The Board posted a head football coaching position for Lenore Junior High School on April 6, 1993.

3. Grievant and Rod Cline, the successful applicant, applied for the coaching position.

4. Mr. Cline, at the time this grievance arose, had five years teaching experience, two years experience coaching girls' basketball, and one year of experience as a head football coach at Lenore

Junior High.

5. The Board carefully reviewed the qualifications of each of the two applicants.

6. The Board awarded the coaching position to Mr. Cline on August 3, 1993.

7. Grievant filed his grievance at Level I on November 8, 1993.

DISCUSSION

This grievance was denied at Levels II and III due, in part, to lack of timeliness. W. Va. Code § 18-29-4a states:

> Before a grievance is filed and within fifteen days following the occurrence of the event upon which the grievance is based . . ., the grievant or the designated representative shall schedule a conference with the immediate supervisor to discuss action redress, or other remedy sought.

The assigment of the head football coach occurred on August 3, 1993. Grievant did not file his grievance until November 8, 1993, some three months later. The record does not reflect that Grievant filed an informal complaint or attempted to discuss this matter with his immediate supervisor prior to the filing of the grievance. Therefore, this grievance is untimely and could be dismissed solely on that basis. However, in the interest of fairness, taking into consideration that Mr. Ramey has represented himself throughout these proceedings, the undersigned will undertake further discussion on the merits of this grievance.

Grievant alleges that, in selecting Mr. Cline for the coaching position, the Board violated W. Va. Code § 18A-4-7a. Grievant believes that, under the provisions of that statute, he is the most qualified candidate for the position. Section 18A-4-7a governs the selection of professional personnel and lists seven factors to be considered in determining the applicants' qualifications. That section also governs the selection of classroom teachers.

However, W. Va. Code § 18A-4-7a does not apply to the selection of professional personnel for coaching assignments. Chaffin v. Wayne County Bd. of Educ., Docket No. 92-50-398 (July 27, 1993). Therefore, Grievant's reliance on that statute is misplaced.

Extracurricular assignments, such as coaching, are governed by W. Va. Code § 18A-4-16, which provides that the assignment of a school employee to an extracurricular assignment shall be made

only by mutual written agreement of the employee and the superintendentof schools, or a designated representative, with said agreement being subject to approval by the board of education.

The applicable standard of review in cases involving extracurricular assignments under W. Va. Code § 18A-4-16 is an "abuse of discretion" standard:

> County 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 arbitrary and capricious.

See Pockl v. Ohio County Bd. of Educ., 406 S.E.2d 687 (W. Va. 1991); Dillon v. Bd. of Educ. of Wyoming, 351 S.E.2d 58 (W. Va. 1986); Chaffin v. Wayne County Bd. of Educ., Docket No. 92-50-398 (July 27, 1993). For the reasons discussed below, Respondent did not abuse its discretion in the selection of Mr. Cline for the head football coach at Lenore Junior High.

Grievant relies on Smith v. Mingo County Bd. of Educ., Docket No. 92-29-316, to support his contention that the Board violated
W. Va. Code § 18A-4-7a. However, Smith does not stand for the proposition that W. Va. Code § 18A-4-7a applies to the selection of professional personnel for coaching assignments.

The Board in Smith had used a "best qualified" standard to make its selection for the coaching position. However, the evidence indicated that the grievant, Smith, was the best qualified for the position, rather than the successful candidate. In addition, the Board had improperly considered community acceptance not related to the qualifications of the applicant in making its selection. See Milam v. Kanawha County Bd. of Educ., Docket No.20-87-270-1 (May 2, 1988); see also Whetstone v. Grant County Bd. of Educ., Docket No. 12-88-106 (Aug. 29, 1988); Wigal v. Pocahontas County Bd. of Educ., Docket No. 38-86-169-2 (Oct. 15, 1987).

The evidence presented in the instant case does not demonstrate that Grievant was the best qualified for the head football coach position. Grievant testified at the Level III hearing that community acceptance was a variable considered by the Board, and that Superintendent Conn was against his selection for "personal reasons". However, no evidence was introduced to support these contentions, which amount to mere innuendo, and consequently, no weight was afforded them in considering Grievant's claim.

Grievant had one year of experience coaching football in the Mingo County Schools. He had been

assigned as head football coach at Kermit Junior High for the 1989-1990 school year. However, due to a lack of sufficient participants to field a team, Grievant was assigned to Tug Valley High School as an assistant coach for the remainder of that school year in order to fulfill his extracurricular contract. During this assignment, Grievant was involved in an altercation with an official during a game which resulted in a one-year probation and suspension from coaching the first three games of the following season.

Mr. Cline had one year of experience as a head football coach at Lenore Junior High for the 1992-1993 school year. Mr. Cline volunteered as head football coach, because he was also the head girls' basketball coach at Lenore Junior High for the 1992-1993school year. Mr. Cline had also been the girls' basketball coach the year before at Lenore Junior High.

There is nothing in the record to indicate that the Board gave consideration to anything improper. Mr. Cline had more total coaching experience in the Mingo County Schools than Grievant, and Mr. Cline was a head football coach, while Grievant had experience as an assistant football coach. Therefore, Grievant has failed to produce evidence to support his claim that the Board acted in an arbitrary and capricious manner in the selection of the coaching position at Lenore Junior High.

CONCLUSIONS OF LAW

1. W. Va. Code § 18-29-4 provides that a grievance be filed within fifteen days of the occurrence of the event upon which the grievance is based. Grievant did not timely file his Level I grievance.

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

3. The provisions of W. Va. 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 (July 27, 1993).

4. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotionof school personnel. Nevertheless, this discretion must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and

capricious. 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); Chaffin v. Wayne County Bd. of Educ., Docket No. 92-50-398 (July 27, 1993).

5. Respondent did not abuse its discretion in selecting Mr. Cline for the head football coaching assignment at Lenore Junior High School.

Accordingly, this grievance is **DENIED**.

Any party or the West Virginia Division of Personnel may appeal this decision to the "circuit court of the county in which the grievance occurred," and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code §29-6A-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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MARY JO ALLEN

Administrative Law Judge

Date: May 12, 1994

Footnote: 1 *This case was assigned to the undersigned for administrative reasons from another Administrative Law Judge.*