CYNTHIA SPILLERS

v. Docket No. 95-05-329

BROOKE COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant Cynthia Spillers is employed by Respondent Brooke County Board of Education (BCBE) as a guidance counselor at Brooke High School (BHS). She grieves because she was not selected for an extracurricular position as head coach for the fledgling girls' soccer team at BHS. Grievant claims entitle ment to the position "under . . . the criteria" in W.Va. Code 18A-3-2a(4) and 18A-4-7a. BCBE denies any wrongdoing and claims that, under the circumstances, it did not abuse its discretion when it hired a candidate other than Grievant. A level four hearing was conducted on August 17, 1995, at which time the parties merely supplemented the record compiled at the July 17, 1995, level two hearing. Following an opportunity for the parties to submit fact/law proposals, the case became mature for decision on September 1, 1995.

Based on all matters of record, the following findings of fact are made.

Findings of Fact

1. Grievant has been a guidance counselor at Brooke High School (BHS) for over twenty years.

2. During the 1994-95 school year, Grievant served her first year as an assistant coach for BHS' boys' varsity soccer team, then in its fourth year of existence, under an extracur ricular contract. Grievant has never played any organized soccer.

3. Daniel Maur, head boys' soccer coach, evaluated

Grievant's performance as assistant coach. While the evaluation was overall satisfactory, Grievant was counseled to learn the strategies and rules of soccer and to attend some camps or clinics to learn more about the game.

4. Peter Veltri, who attended a local college, performed his student teaching in special education in the Brooke County school system. He played soccer during his four years of college, and participated in the organization and implementation of youth soccer training camps to promote the sport. Mr. Veltri also initiated a girls' soccer team at BHS during the 1994-95 school year, serving as head coach, and had also assisted the head coach for the boys' soccer team during the 1993-94 and 1994-95 school years.

5. On or about April 28, 1995, under Posting No. A-241, BCBE posted six vacancies. These vacancies included two extra curricular positions, one for head coach of BHS' girls' soccer team for the 1995-96 school year and the other for head coach of the boys' soccer team, effective the 1995-96 school year, as well as four temporary teaching positions for summer school, effective June 12 through July 7, 1995. May 4, 1995, was the stated last day to make application for the jobs.

6. With respect to the coaching vacancies, the job description for "Head Athletic Coach" lists "[e]xperience in both classroom teaching and the area of speciality" as partial "Qualifications" for the position.

6. Five persons, including Grievant and Mr. Veltri, applied for the girls' soccer team coaching position. Apparent ly, Mr. Maur, and perhaps others, applied for the boys' team coaching position.

7. The coaching applications for both jobs were reviewed

by BHS Athletic Director Ronald Mauck and BHS Assistant Athletic Director David Cucarese. Interviews were not conducted because the abilities of the applicants were already known. See T.9.

8. Prior to June 12, 1995, Mr. Mauck and Mr. Cucarese named Mr. Maur as their choice for the boys' soccer team head coach. On June 12, 1995, BCBE reemployed Mr. Maur as head coach for BHS' boys' soccer team, thus filling one of the two soccer coaching positions listed in Posting No. A-241. Although it is not perfectly clear in the record, it is presumed that the four summer teaching jobs were also filled on June 12.

9. Grievant did not file a grievance or otherwise protest because a head coach for the boys' soccer team had been employed on June 12, 1995, but not the head coach for the girls' soccer team. Mr. Mauck testified without contradiction that it was not "unusual" for BCBE not to hire both coaches at the same time. T.13.

10. On or about June 13, 1995, BCBE posted a position for a full-time learning disabilities (LD) teacher for the 1995-96 year, Posting No. A-243, for which Mr. Veltri applied.

11. Prior to June 26, 1995, Mr. Mauck and Mr. Cucarese determined that Mr. Veltri was the most qualified applicant for the girls' soccer team head coach. Because they believed Mr. Veltri would be professionally employed for the LD teaching position based on a forthcoming recommendation, they forwarded Mr. Veltri's name as their choice for the girls' soccer coaching job to Superintendent William Harvey. T.8-10, 14.

12. On June 26, 1995, Mr. Veltri was employed by BCBE as a full-time professional educator to fill the LD teaching position in Posting No. A-243. Also on June 26, 1995, pursuant to Mr. Harvey's recommendation, BCBE employed Mr. Veltri as the head

coach for BHS' girls' soccer team, the second of the two soccer coaching positions listed on Posting No. A-241.

13. On June 28, 1995, Grievant initiated grievance pro ceedings with respect to her non-selection as head coach of the girls' soccer team.

Discussion

W.Va. Code 18A-4-16 sets forth the legal requirements for the employment of persons for extracurricular assignments, and coaching is an extracurricular assignment pursuant to 18A-4-16(1). In essence, under Code 18A-4-16, the terms and conditions of the extracurricular assignment must be mutually agreed upon by the employer and employee, and formalized by a contract separate from the worker's regular contract of employ ment. See Ramey v. Mingo County Bd. of Educ., Docket No. 93-29-470 (May 12, 1994).

In addition, while W.Va. Code 18A-4-7a requires all professional positions to be posted for a minimum of five working days and filled with the most qualified applicant within thirty days of the last day of the posting period, the statute does not apply to the selection and hiring of professional personnel for extracurricular coaching assignments. When a dispute arises over the selection of a coach, the standard for review is whether the board of education acted arbitrarily and capriciously or otherwise abused its substantial discretion to hire and assign school personnel. McCoy v. Kanawha County Bd. of Educ., Docket No. 94-20-141 (Oct. 13, 1994); 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.)

Finally, W.Va. Code 18A-3-2a, entitled "Authority of state

superintendent to issue certificates; kinds of certificates," has been brought into play in this grievance. This statute authorizes the State Superintendent of Schools to issue certifi cates and permits to educators and others who would serve students, including those "who do not qualify for the profes sional or paraprofessional certificate." Specifically, under pertinent portions of 18A-3-2a(4), "Other certificates; per mits," the State superintendent of schools may issue certificates for persons to serve in the public schools as athletic coaches or other extracurricular activities coaches whose duties may include the supervision of students, subject to the following limitations: (A) Such person shall be employed under a contract with the county board of education . . . Provided, That . . . (B) a currently employed certi fied professional educator has not applied for the position; and (C) such person completes an orientation program designed and approved in accordance with state board rules[.]

This statute requires a person who does not qualify for profes sional certification to participate in an orientation program and obtain a special certificate in conjunction with a contract to coach and supervise students. It also requires a county board of education to employ currently-employed professional educators who have applied for coaching vacancies over other applicants, presumably non-employees or even presently-employed service personnel, because, otherwise, the non-employee without teaching credentials, or even a presently-employed service employee, will not be issued the requisite certificate to coach. See e.g., Jerden v. Lewis County Bd. of Educ., Docket No.

93-21-349 (Aug. 19, 1994); Hanlon v. Logan County Bd. of Educ., Docket No. 93-23-502 (Dec. 29, 1994).

At the level two hearing, Grievant's representative did not assert that W.Va. Code 18A-4-7a was violated on the basis that Grievant was more qualified for the coaching position than the successful applicant. Rather, Grievant cited Code 18A-4-7a and argued that BCBE failed to fill the girls' coaching position within the thirty working day period mandated by the statute. In that vein, Grievant also argued that, at the time of the posting, she was the only qualified applicant under Code 18A-3-2a because she was currently employed by BCBE and Mr. Veltri was not. At level four, Grievant dropped all reference to Code 18A-4-7a. Instead, she argued that BCBE was bound by the hiring procedures it had established. She reasoned that, in this case, because BCBE hired teachers as well as one coach within certain timelines, it was unreasonable, arbitrary and capricious for BCBE not to have followed those same timelines to fill the girls' coaching job. Simply put, Grievant questioned the propriety of BCBE's not filling the girls' coaching position until Mr. Veltri's employment status with BCBE had been defined and secured.

BCBE claims its extracurricular jobs are posted county-wide for five days, not because of the requirements in Code 18A-4-7a, but because that procedure disseminates the pertinent information about those jobs to more people. BCBE argues that it followed the mandates of Code 18A-4-16 when it offered the coaching contract to Mr. Veltri. BCBE also denies any violation of Code 18A-3-2a, because, on June 26, 1995, the day the coaching job was actually filled, both Grievant and Mr. Veltri were employed by BCBE as full-time professional educators. In

BCBE's view, Mr. Veltri was more qualified than Grievant to serve as head coach for the girls' soccer team. Therefore, it argues, there was no abuse of its substantial hiring discretion to employ Mr. Veltri to serve as the head coach, for the benefit of the players and the girls' soccer program at BHS.

The record in this case does not support a finding that BCBE acted in an arbitrary and capricious manner, relied upon improper factors, ignored important aspects of the candidates or their backgrounds, expressed the decision in a manner contrary to the findings, or reached an implausible decision when it employed Mr. Veltri as a teacher and head coach for the girls' soccer team on the same night. Harper v. Mingo County Bd. of Educ., Docket No. 93-29-064 (Sept. 27, 1993). Unquestionably, Mr. Veltri was more qualified than Grievant to coach the girls' soccer team.

Mr. Veltri had played on a college soccer team and was familiar with the rules, regulations, and strategies involved in the sport; had helped organize and run soccer clinics and camps to generate student interest and proficiency in the sport; and had experienced soccer coaching at the secondary school level, including actually initiating the girls' soccer team at BHS. On the other hand, Grievant had never played organized soccer and, according to her evaluation as assistant coach for the boys' soccer team during the 1994-95 school year, was unfamiliar with soccer's rules, regulations and game strategies, factors which could be remedied, in part, by attending seminars or classes to familiarize herself with the sport.

"Although reasonable minds may differ" on the subject of who should be selected for a coaching position, Hanlon, supra, it cannot be said in this case that BCBE's decision to hire Mr.

Veltri was an abuse of discretion. Indeed, some of the issues raised in this case are very similar to those raised in Hanlon. In Hanlon, a seasoned assistant coach lost a head varsity basketball coaching position to an applicant who was not an employee at the time of the posting for the coaching vacancy. The successful applicant, also a seasoned coach/teacher, was em ployed in another county. The board of education actually offered the coaching job to the non-employee, who accepted it, although the board had neither officially acted on the matter nor promised the successful applicant a job in the county as an itinerant substitute teacher. Later, a teaching vacancy opened up, and the successful applicant for the coaching job was officially hired as both teacher and coach on the same night. The grievant alleged a violation of Code 18A-3-2a(4), based on the successful applicant's non-employee status. The Adminis trative Law Judge found the statute did not even apply, because, in part, the successful applicant was hired both as a coach and a teacher in the county at the same board meeting. In this case, BCBE also hired Mr. Veltri as both teacher and coach at the same meeting, as was done by the board of education in Hanlon.

That BCBE did not employ the girls' soccer coach within thirty days of the closure of the posting or that it allegedly did not follow its own established procedures with regard to filling vacancies is really a non-issue, because Grievant did not file a grievance protesting the non-hiring of the girls' coach at the expiration of the thirty working days. Neither did Grievant file a grievance on June 12, 1995, when the boys' coach, and not the girls' coach, was hired. Rather, Grievant filed a grievance after the successful applicant was hired, well

beyond the period in which boards of education must fill profes sional positions under Code 18A-4-7a. Notwithstanding this virtual "waiver" on Grievant's part to challenge the timelines regarding the filling of the coach position for the girls' soccer team,1 a top athletic administrator at BHS testified without contradiction that it was not "unusual" to hire coaches at different times. Grievant offered no evidence that BCBE always hired coaches within thirty working days from the closure of the posting period or that it hired all coaches for certain sports at the same time.2

In addition to the foregoing findings and determinations, the following formal conclusions of law are appropriate.

Conclusions of Law

1. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. Dillon v. Board of Educ., 351 S.E. 2d 58 (W.Va. 1986).

1See, e.g., Wright v. Gilmer County Bd. of Educ., Docket No. 95-11-100/254 (Sept. 8, 1995); Taylor v. Mercer County Bd. of Educ., Docket No. 93-27-535 (Aug. 22, 1994).

2In her level four brief, Grievant also asserted for the first time that BCBE ignored a qualification and requirement on the posting, that the applicant for the coaching position have teaching experience. This belated argument lacks merit. There was no showing that Mr. Veltri did not successfully complete his student teaching, and the posting did not require professional, i.e., paid teaching experience.

2. W.Va. Code 18A-3-2a(4) and 18A-4-7 are not applica

ble in this case.

3. W.Va. Code 18A-4-16 sets forth the legal requirements for the employment of persons for extracurricular assignments, and coaching is an extra-curricular assignment pursuant to 18A-4-16(1).

4. The standard of review for filling a coaching position is to assess whether the board of education abused its discre tion in the selection process or acted in an arbitrary and capricious manner. Hanlon v. Logan County Bd. of Educ., Docket No. 93-23-502 (Dec. 29, 1994).

5. Grievant failed to demonstrate that BCBE violated established practice for hiring coaches when it filled the position of head coach for the girls' soccer team at a later time than it filled the head coach position for the boys' team.

6. It was not arbitrary or capricious for BCBE to select the obviously most qualified applicant to be head soccer coach.

7. Given the circumstances in this case, BCBE exercised its hiring discretion reasonably and in the best interests of the school system when it employed Mr. Veltri, a highly-quali fied individual with respect to the sport of soccer, as head coach for the girls' soccer team at the same time it profession ally employed him as a teacher. See Id.

Accordingly, this grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Brooke 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 can be prepared and transmitted to the appropriate Court.

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NEDRA KOVAL

Administrative Law Judge

Date: September 18, 1995