WILLARD L. WRIGHT

v. Docket Nos. 95-11-100/254

GILMER COUNTY BOARD OF EDUCATION

D E C I S I O N

In January 1995, Grievant filed a grievance alleging a violation of W.Va. Code 18A-2-12 and "Policy 5300 and 5310" when Respondent Gilmer County Board of Education (GCBE) refused to extend a previously-issued coaching improvement plan beyond the end of the 1994-95 high-school football season. Later, after GCBE effectively declined to renew his coaching appoint ment for the 1995-96 school year, Grievant filed a second grievance alleging a violation of W.Va. Code 18A-2-7 and 18A-2-8, and seeking reinstatement to the coaching position. The parties agreed that the two grievances could be consolidated for decisional purposes, and also agreed that a decision could be based on the record adduced below, supplemented by written argument. The case became mature for decision on July 24, 1995, when the parties completed the briefing process.

Based on all matters of record, the following findings of facts are made.1

Findings of Fact

1. During the 1994-95 school year, Grievant was assigned to teach seventh and eighth grade science at Gilmer County High School (GCH), and was serving his fifth year as the head/varsity football coach at the school.

2. GCH's team was scheduled to play eleven football games during the 1994-95 season, ten regular games and a pre-season scrimmage. At one point during the Fall of 1994, players

participated in a "team walkout," and, by the end of the playing season in November 1994, eleven of thirty-two initial players had quit the team.

3. In addition to work required of Grievant on the field with his players, he was also required to complete some adminis trative duties, such as ensuring that invoices for new equipment or materials were paid, submitting a list of passengers to the bus driver for away games and completing and submitting game plans to GCH's Assistant Principal and Athletic Director John Bennett.

4. GCBE has no policy with regard to the evaluation or remediation of a coach's performance.

1The record consists of the pleadings, lower-level decisions and level two transcripts/exhibits of hearings held for the two separate grievances, on February 22, 1995, and June 8, 1995, respectively.

5. On or about September 13, 1994, prior to GCH's last four football games, Mr. Bennett shared with Grievant prepared observations of Grievant's coaching performance on three sepa rate occasions, a practice session conducted on August 8, 1994, and two varsity football games, played on August 26 and Septem ber 9, 1994, respectively.

6. Each observation cited some specific incidents and criticisms of Grievant's coaching performance. In part, Grievant was criticized for not uniformly imposing discipline on team players;2 for not giving the bus driver a list of play ers/passengers on an away game; for allowing unauthorized persons aboard the bus; for leaving players unsupervised for a

few minutes in a locker room at an away game; and for permitting females to be in proximity to the boys' locker room area.

7. Grievant supplemented the evaluative materials with his own written responses to the negative comments. Among other things, he reported his version of the incident at the practice session involving the ejected player, and explained that he had forgotten to bring the passenger list on the away game.

8. Based on the three written observations, Mr. Bennett presented to Grievant on October 3, 1994, a formal written evaluation. On the evaluation instrument, Mr. Bennett had supplemented some of the rating categories with written

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2Grievant had permanently ejected from the team a player who had left the field during a practice session, and he was accused of letting another player remain on the team following a similar infraction.

comments, some negative and critical in nature. Mr. Bennett seemed especially concerned about team morale and Grievant's relationship with his assistant coaches regarding the discipline of players. In addition, Mr. Bennett gave Grievant an improve ment plan relative to five performance areas rated "unaccept able" on the evaluation. The improvement plan called for Grievant to ensure supervision at all times of the players by utilizing the assistant coaches; provide positive reinforcement and enthusiasm to boost the "fragile" team morale; apply team discipline equally with input from assistant coaches and explain any differences in treatment to team members; improve communica tions with assistant coaches so that the team could become aware of the authority of all of the coaches; and supply the bus

drivers with an accurate list of passengers for away games. The improvement plan made no mention of scheduled conferences or any type of monitoring, or even an ending date for the plan.

9. During the October 3, 1994 evaluation conference, Grievant appended his own responses to the critical comments in the evaluation. Afterwards, Grievant took no action to formally challenge the three observations and the evaluation, or to otherwise complain about any aspect of the improvement plan.

10. The final game for GCH's football season occurred on November 4, 1994. Thereafter, Grievant was asked to submit some missing game plans.

11. On December 15, 1994, Mr. Bennett gave Grievant three additional observations, dated October 31, November 4, and December 7, 1994, and a final evaluation, which was rated unacceptable overall. On the evaluation, Mr. Bennett noted some improvement in Grievant's coaching performance relative to some prior citations, but nonetheless advised that he would not recommend Grievant's retention as head football coach for the 1995-96 school year. Among other things, Mr. Bennett cited Grievant's failure to timely submit his play plans for the final game sessions and failure to submit team-related purchase orders and invoices, resulting, in part, on at least one outstanding bill. He also opined that Grievant had not improved his rela tions with the assistant coaches and had not succeeded in improving the team's morale.

12. On January 11, 1995, Grievant filed a grievance over the final evaluation, and requested that the final evaluation be modified and that the improvement plan be extended.

13. Grievant received notice on or about March 28, 1995, that on April 18, 1995, GCBE would meet to consider a recommen

dation that he be transferred for the 1995-96 school term and inviting him to appear at the meeting.

14. Grievant appeared at GCBE's meeting on April 18, 1995. Following a hearing on the matter, GCBE approved the superinten dent's recommendation to "transfer" Grievant from his assign ments as teacher and coach at GCH, to that of teacher for the 1995-96 school year.

15. Grievant filed a second grievance on May 16, 1995, stating the transfer action was invalid "as it was based on the evaluation which is currently in the grievance procedure."3

Discussion

Extracurricular coaching assignments under W.Va. Code 18A-4-16 are contracted positions, and adverse personnel actions affecting persons holding coaching positions must comply with the procedural requirements of W.Va. Code 18A-2-7 (trans fer, etc.) and 18A-2-8 (termination). Smith v. Board of Educ., 341 S.E.2d 685 (W.Va. 1985). In particular, Code 18A-2-8 requires that a termination based on "unsatisfactory perfor mance" be predicated upon an employee evaluation, pursuant to W.Va. Code 18A-2-12 (1990). Code 18A-2-12(a) states in its entirety that

> [t]he state board of education shall adopt a written system for the evaluation of the employment perfor mance of personnel, which system shall be applied uniformly by county boards of education in the evalua tion of the employment performance of personnel em ployed by the board.

Code 18A-2-12(b) goes on to more fully address the evaluation of professional personnel only, in the context of professional administrative or teaching performance.

In response to W.Va. Code 18A-2-12 (1990), the State Board of Education amended and promulgated Policy Nos. 5300 (Policy 5300) and 5310 (Policy 5310) to set forth evaluation and

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3Grievant made no complaint about the actual process implemented by GCBE, relative to the non-renewal of his coaching contract.

remediation procedures for teaching performance. Policy 5300 provides that teachers be apprised of their performance through regular, "open and honest" evaluations, and be given an opportu nity to improve deficient performance prior to any adverse personnel actions. Generally, under Policy 5310, improvement plans for unacceptable teaching performance must be implemented in a manner consistent with the goal of raising the deficient performance to an acceptable level.

The parties essentially agree that, in their present form, Policies 5300 and 5310 do not address the performance evaluation of coaches. Banfi v. Lincoln County Bd. of Educ., Docket No. 93-22-125 (Feb. 28, 1994). However, the parties are also in basic agreement that, because GCBE does not have a written policy relative to the evaluation of coaches, nor a policy regarding improvement plans for coaches, Policies 5300 and 5310 should generally apply in this situation.

In his level four brief, Grievant does not challenge the accuracy of his final evaluation. However, he argues that he was not given the benefit of "regular" evaluations prior to the final evaluation. Grievant also contends that some of the observations which comprised his final coaching evaluation were not conducted in an "open and honest" manner because, in some

cases, Mr. Bennett considered external sources, such as reports from the assistant coaches, not his own personal observations. Finally, Grievant points out that the final evaluation contained some items which had never before been brought to his attention.4 With respect to the improvement plan, Grievant com plains the plan contained no specified time for completion and provided no staff to assist or provide the proper input and support to implement the plan. Finally, Grievant argues he was not given a reasonable amount of time to improve his performance and retain his coaching job.

At level four, GCBE stands on its level two decisions regarding these two (consolidated) grievances. Essentially, its position at level two regarding the first grievance was that Grievant failed to prove his case. In that vein, it urged that Grievant's objections to his final evaluation were without merit because Grievant had been provided an opportunity to remedy coaching deficiencies via a meaningful plan and sufficient time in which to improve his performance. With respect to Grievant's second grievance, GCBE's position was that it was not precluded, as Grievant asserted to the contrary in his grievance statement, from acting to transfer Grievant from teacher and coach to teacher only, simply because Grievant had a pending grievance on the subject of the coaching improvement plan. Implicit in GCBE's argument is that all procedural requirements were met with regard to the non-renewal of Grievant's coaching contract.

4Items in the December 15, 1994 evaluation which were not covered in Grievant's prior evaluation included accusations that Grievant failed to submit all of his game plans after the end of

the season and to provide the proper information so that outstanding bills could be paid. Grievant did not deny these infractions.

GCBE also cites W.Va. Dept. of Health and Human Resources v. Hess, 532 S.E.2d 27 (W.Va. 1993), and Roush v. Jackson County Bd. of Educ., Docket No. 95-18-020 (May 25, 1995), for the proposition that Grievant may not inject any new issue at level four which was not raised in the lower level grievance com plaints. While it did not express an opinion as to what the precise issues were in the consolidated grievance, GCBE did claim that the only issue raised by Grievant in what was to become Docket No. 95-11-254, and the only one relative to that case, is whether GCBE could properly act on removing Grievant from his coaching position while Docket No. 95-11-100 was still pending.

In light of GCBE's argument at level four, the question about what may be considered in this consolidated grievance must be addressed. To begin, it is clear from the records of the two separately-filed, but related grievances, that Grievant's initial grievance challenged the basis upon which Mr. Bennett decided not to recommend his reemployment as head football coach. Grievant did not wait for GCBE to act on the recommenda tion, but immediately filed a grievance. In essence, at the time Grievant filed his first grievance, while he may have suspected that GCBE would ultimately act adversely on the basis of Mr. Bennett's recommendation, his coaching status for the upcoming year had not yet been decided.

The only reason the first grievance was held in abeyance at level four, at the parties' request, was because no adverse action had yet been taken by GCBE on the question of Grievant's

coaching contract. The second grievance was filed after Grievant received notice of a pending transfer. Again, the first grievance was held in abeyance at level four at the request of the parties in order to complete the lower-level proceedings on the second grievance. In short, the issue raised in the second grievance is moot because GCBE, in fact, acted adversely upon Grievant's status as a coach.

However, it is true that there are issues which are not proper subjects of this grievance. One issue is the content of the observations and evaluation which formed the basis for the improvement plan. More importantly, aspects of the October 3, 1994 improvement plan itself should be considered as waived by Grievant. This is so because Grievant filed no formal complaint about either the October 3, 1994 evaluation or improvement plan when he received them. Taylor v. Mercer County Bd. of Educ., Docket No. 93-27-534 (Aug. 22, 1994); Ingram v. Berkeley County Bd. of Educ., Docket No. 02-87-125-2 (Sept. 9, 1987).

Given the above holding, the fact that the improvement plan did not include a schedule for ongoing monitoring or conferenc es, assign other parties to provide "assistance," or even contain a specified "ending" date, cannot now be raised as specific issues in this case. The merits of this grievance, whether GCBE acted improperly in not renewing Grievant's coach ing contract on the basis of Mr. Bennett's recommendation, can now be addressed.

Grievant's views regarding evaluations and improvement plans are not entirely correct. Common sense dictates that Grievant's improvement plan would run throughout the rest of the coaching season. However, Grievant seems to believe that after the last football game, he had no further obligation to his

coaching contract with GCBE. This view ignores the administra tive duties associated with Grievant's coaching, such as prompt ly submitting coaching/game plans and making sure that purchase orders for the team were timely prepared and appropriately paid. Grievant had not taken care of all of these matters at the time of the final evaluation.

Moreover, in some cases, it is not always necessary for a worker to be "monitored" while on an improvement plan, or to be provided assistance with support personnel, especially when the cited deficiencies involve personal judgment, and not necessar ily any specific skill to perform the job. Ongoing monitoring, training or skill-building are more appropriate, and even essential, in the case of a poorly performing teacher or custo dian. In short, monitoring the worker during an improvement period may not be necessary in cases when the worker has been provided with appropriate suggestions for needed improvement involving judgment. See Cohenour v. Greenbrier County Bd. of Educ., Docket No. 90-13-351 (July 31, 1991).

It is true, as Grievant argues, that he improved some aspects of his coaching performance, such as providing bus drivers with passenger lists, ensuring team supervision at all times, and keeping girls out of any proximity to the players' locker-rooms. However, one major problem with Grievant's coaching involved team morale. Evidence that Grievant had not been able to improve team morale is overwhelming, especially considering that eleven of thirty-two starters quit the team by season's end. Another major problem was Grievant's relationship with his assistant coaches. These persons apparently expressed their opinion that the relationship with their head coach had not improved. That Mr. Bennett considered this factor on

Grievant's final evaluation is not unreasonable, or a violation of "open and honest" requirements, because an evaluator is not necessarily precluded from including secondary sources on an evaluation or considering such sources as the basis for the non-renewal of a coaching contract. Hartlieb v. Ohio County Bd. of Educ., Docket No. 95-35-300 (Feb. 24, 1994); Grant v. Harri son County Bd. of Educ., Docket No. 17-87-328-2 (Nov. 10, 1988). Finally, the heart and soul of Grievant's case involves a contention, and ultimate request, that he is entitled to, and should be granted, more time in which to improve his job perfor mance. The request for more improvement time is not uncommon. See, e.g., Valentine v. Wood County Bd. of Educ., Docket No. 92-54-310 (Oct. 26, 1993). Without a doubt, one month is an unreasonable improvement period for a poorly-performing proba tionary teacher who may be at risk for non-renewal of his or her teaching contract. Slavin v. Cabell County Bd. of Educ., Docket No. 06-87-125-1 (Sept. 9, 1987). Newcomers to teaching may need much more skill-building and training than can be provided in just a few weeks.

However, this case does not involve teaching performance, rather, it involves coaching performance. Grievant was a seasoned coach, and he should have acquired the critical skills to coach a football team over the years. Given that Grievant's shortcomings in this case essentially involved personal judg ment, and not necessarily specific coaching skills, the amount of time at Grievant's disposal during the 1994-95 school year in which to improve his overall coaching performance was reason able. Grievant's belief that he is entitled to what would amount to another coaching year to improve his deficiencies as a coach is unreasonable, under the circumstances.

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

Conclusions of Law

1. It is incumbent upon a grievant to prove all the allegations constituting the grievance by a preponderance of the evidence. Rupich v. Ohio County Bd. of Educ., Docket No. 89-35-719 (June 29, 1990); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988).

2. Respondent substantially complied with lawful process es and procedural requirements by affording Grievant an adequate improvement period, timely notice and an opportunity for hearing prior to a final non-renewal action on a coaching contract. See Hartlieb v. Ohio County Board of Educ., Docket No. 93-35-300 (Feb. 24, 1994); Banfi v. Lincoln County Board of Educ., Docket No. 93-22-125 (Feb. 28, 1994); Cohenour v. Greenbrier County Bd. of Educ., Docket No. 90-13-351 (July 31, 1991).

3. At the time in question, neither W.Va. Code 18A-2-12 nor State Board of Education Policies 5300 and 5310 were applicable to the extracurricular contracts of professional personnel.

4. Grievant failed to prove an abuse of discretion on the part of Respondent, or any other violation of law, regulation or policy with respect to the non-renewal of his coaching contract.

Accordingly, this grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Gilmer 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 8, 1995