EDWARD CROMLEY

v. **Docket No. 94-26-573**

MASON COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Edward Cromley, grieves his non-selection as head football coach at Wahama High School ("WHS") by the Mason County Board of Education ("MCBOE"). This grievance was waived at Levels I and III and denied at Level II. The parties agreed to submit this case on the record, and this grievance became mature for decision on February 10, 1995, after the submission of joint stipulations and proposed findings of fact and conclusions of law.

Issues

Grievant alleges he was the most qualified applicant, and the decision to not award him the position was arbitrary and capricious. He requests immediate instatement into the position, back pay, and any other benefits needed to make him whole.

MCBOE defends its selection by stating Grievant was not the most qualified applicant and their decision to award the position to the successful applicant was not arbitrary and capricious.

This grievance also raises three additional issues. One, whether the weight Superintendent Whalen afforded community input when selecting the successful applicant was appropriate. Two, whether the review of the candidates conducted by Superintendent Whalen was sufficient to allow him to disregard the principal's recommendation when the principal had been directed by Superintendent Whalen to interview and recommend a candidate. Three, whether the preference stated in the job posting was considered when selecting the successful applicant.

Findings of Fact

The following facts are not in dispute.

1. On May 27, 1994, MCBOE posted a vacancy for the position of head football coach at WHS

for the 1994-95 school year.

2. This posting stated "[p]reference will be given to Wahama High School staff applicants."

3. Grievant and Mr. Joe Johnson were the only two applicants for the position.

4. Grievant is a math teacher at WHS. At the time of the selection he had been Assistant Varsity Football Coach at WHS for the previous eight years. During these eight years, Grievant served as sole coach of the Freshman team for two years, and as the sole coach of the Junior Varsity team for six years. Grievant had coached football for sixteen seasons, fifteen of those years with WHS. Additionally, Grievant was the only coach for WHS's Junior High School team for the five years prior to becoming Assistant Varsity Coach.

5. Mr. Johnson is an elementary teacher at New Haven Elementary. He was Head Varsity Football Coach at Hannan High School for four seasons from 1985 to 1988 with an overall record of twelve wins and twenty-six losses. From 1989 to 1990, Mr. Johnson was Assistant Varsity Coach at Meigs Local High School, and for four years prior to the selection, he had been the only football coach at Wahama Junior High School.

6. Prior to the job posting, the principal at WHS was asked what specific information he would like included in the job posting. Trans. Level II at 22.

7. Principal Reymond wanted the coach to come from WHS' staff because it would aid in the transition, and he wanted to make sure the coach was there to supervise when practice started. Having a coach on staff is something he has tried "to achieve with every coaching position." Principal Reymond also stated he preferred to have the coach on staff so he could know "exactly what the boys are doing" and to handle "any kind of emergency that comes up." He opined it was "much more advantageous to have them right there on staff." Trans. Level II at 22-25.

8. Ms. Elizabeth Mattox, Director of Personnel, stated it was county policy that, where possible, "we have staff members within the school coach the teams." Trans. Level II at 32.

9. Superintendent Whalen directed Principal Reymond to perform interviews of the applicants.

10. Principal Reymond developed a list of nineteen questions to ask the candidates. Each interview took about two hours and Principal Reymond noted the answers of the applicants.

11. Following the interviews, Principal Reymond recommended Superintendent Whalen hire Grievant for this position. He did not forward his notes of the interviews to Superintendent Whalen.

12. Ms. Mattox drew up a matrix to compare the qualifications of the two candidates. Grievant's

Exh. 6. Ms. Mattox, after completing the matrix, thought Grievant was the most qualified candidate for the position. Trans. at 35.

13. After receiving these recommendations, Superintendent Whalen decided to conduct his own interviews. His goal was to find the candidate who would "best serve the students of Wahama - the athletic program."

14. During Grievant's interview, the only question Superintendent Whalen asked Grievant was how he felt about some people in the community not wanting him to be Head Football Coach. Grievant's response was that this would make him do a better job. Trans. at 16. The majority of the interview consisted of Superintendent Whalen's discussion of how difficult it had been for him to be accepted in the community, his resulting political failures, and the effect of community acceptance on his athletic career. Trans. at 16-18.

15. Superintendent Whalen did not ask Grievant about his past experiences as a coach, his goals for the football team, hisdisciplinary policy, evaluations of his players and staff, team rules or scheduling. Trans. at 17-18; 47.

16. Superintendent Whalen received letters from people in the community supporting Mr. Johnson for the position. These letters were not negative towards the Grievant. Superintendent Whalen stated these letters had "some value, but I wouldn't place a call on it . . . ."

17. Superintendent Whalen stated the primary reason he chose Mr. Johnson over Grievant was because he had varsity head coaching experience. Trans. at 38-39.

18. Superintendent Whalen recommended that MCBOE hire Mr. Johnson for the position. This recommendation was approved by a vote of 3 to 2.

Discussion

The standard of review for filling a coaching position is to assess whether the board abused its discretion or acted in an arbitrary and capricious manner when they made their selection. Hanlon v. Logan County Bd. of Educ., Docket No. 93-23-502 (Dec. 29, 1994); 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). In many cases before this Grievance Board dealing with selection of coaches, either the successful applicant or Grievant was clearly more qualified, (See footnote 1) or a county policy, whichhad been consistently applied, carried great weight in the selection process.

(See footnote 2)

In this case, the qualifications of Grievant and the successful applicant are basically equal. While the successful applicant had four years of high school head coaching experience, this experience had been five to six years in the past with a won/loss record of 32%. At the time of his selection he had been a junior high football coach for four years. Grievant had never been a head high school varsity football coach, but he had more years of coaching experience and had worked with high school football athletes for the eight years prior to his selection as the Assistant Football Coach. Thus, the qualifications, while not the same, were essentially equal. Accordingly, other factors must be examined to find if MCBOE abused its discretion or acted in an arbitrary and capricious manner.

A. WEIGHT OF COMMUNITY OPINION

The evidence of record reveals Superintendent Whalen received at least four letters from people in the community, three of which were submitted at Level II, that praised the successful applicant. These letters were not critical of the Grievant. Superintendent Whalen said he had considered these letters and they had "some value" but were not the determinative factor in the selection. Hearsay testimony of Ms. Mattox was that Superintendent Whalen'sselection of the successful applicant was based on "research in the community." Further, Superintendent Whalen's interview with Grievant indicated his primary concern was Grievant's response to individuals in the community not wanting him to be selected for the position. When the factor of community acceptance, not related to the qualifications of the applicants, is given "inordinate and inappropriate weight" and results in a selection which is arbitrary and capricious, the decision will be overturned. Milam v. Kanawha County Bd. of Educ., Docket No. 20-87-270-1 (May 2, 1988); Smith, supra.

A review of all the evidence available on this issue indicates Superintendent Whalen gave inappropriate weight to community acceptance of the successful applicant, and this community acceptance was not based on the qualifications of the candidates. The weight given community input resulted in a selection that was arbitrary and capricious and beyond the discretion a county board of education may exercise in personnel matters. Milam, supra; Smith, supra.

B. REVIEW OF CANDIDATES

Superintendent Whalen directed Principal Reymond to conduct interviews of the candidates. Principal Reymond, with the help of his Assistant Principal, conducted in-depth interviews and recommended the Grievant to Superintendent Whalen. Superintendent Whalen, of course, has the

right to reject this recommendation, but if he chooses to do so he must conduct his own meaningful review of the candidates. See Smith/Jarvis v. McDowell County Bd. of Educ.,Docket No. 89-33-588/586 (June 19, 1990); Surber v. Greenbrier County Bd. of Educ., Docket No. 89-13-233 (Nov. 20, 1989).

It is unknown what was discussed in Mr. Johnson's interview, but the testimony of both parties confirms that Grievant's interview did not deal with critical issues or questions. Grievant stated he was asked only one question, and that question dealt with community non-support. Superintendent Whalen stated they discussed qualifications, but when this issue was clarified on cross-examination he conceded he did not ask Grievant about his past experience as a coach, his goals for the team, his disciplinary policies, evaluations of players and staff, team rules or scheduling. Superintendent Whalen did not state what questions he did ask Grievant, and it is clear he did not have Principal Reymond's notes. Thus, Superintendent Whalen's recommendation of Mr. Johnson was not based on a meaningful review of the candidates' qualifications.

C. WEIGHT GIVEN TO PREFERENCE

Unrebutted testimony revealed the county practice was to fill a coaching position with someone on staff. This practice was routinely followed, if at all possible. In fact, this Grievance Board has held a policy or practice can carry great weight in selecting one coaching candidate over another with more experience. See Prichard, supra.

In this instance, with candidates who are similarly qualified, this preference could easily be the deciding factor, and the expectation would be that this criteria would tip the balance inGrievant's favor. Obviously this did not occur. Superintendent Whalen did not indicate that he gave this preference any consideration whatsoever.

Respondent's argument in the Level IV submissions, that Superintendent Whalen considered Mr. Johnson as a staff member of WHS because he had coached Junior High Football at the school, is without merit. Testimony indicated and the posting stated "[p]reference will be given to Wahama High School Staff Applicants." Mr. Johnson was not on staff at WHS; he was on staff at New Haven Elementary. Additionally, the posting specifies high school not junior high.

When a board of education establishes hiring procedures it is bound by these practices. State ex rel. Hawkins v. Tyler County Bd. of Educ., 275 S.E.2d 908, 912 (W. Va. 1981); Tallman v. Wetzel County Bd. of Educ., Docket No. 52-86-270-3 (Mar. 20, 1987). Additionally, it is arbitrary and

capricious for a county board of education to identify a preference for an experience in a posting and then disregard that experience. Murdock v. Raleigh County Bd. of Educ., Docket No. 91-41-149 (Apr. 8, 1992.) Here, MCBOE failed to follow its own policies and did not give preference to the candidate on staff. Superintendent Whalen's non-consideration of this preference is arbitrary and capricious and indicates an abuse of discretion.

After reviewing the qualifications of the candidates, the posting preference and county policy, the weight given community input, and the lack of a meaningful review conducted bySuperintendent Whalen, it must be found that Superintendent Whalen's recommendation of Mr. Johnson, and MCBOE's subsequent approval of this recommendation, were arbitrary and capricious acts and constituted an abuse of discretion.

The above discussion will be supplemented by the following conclusions of law.

Conclusions of Law

1. In a selection case, the Grievant has the burden of proving his case by a preponderance of the evidence. Hanlon v. Logan County Bd. of Educ., Docket No. 93-23-502 (Dec. 29, 1994).

2. Grievant has proven that Superintendent Whalen gave undue consideration to community input in making his decision to recommend Mr. Johnson for the position. Milam v. Kanawha County Bd. of Educ., Docket No. 20-87-270-1 (May 2, 1988); Smith v. Logan County Bd. of Educ., Docket No. 91-23-040 (July 31, 1991).

3. Prior county practice and the posting preference were not followed in filling this coaching position.

4. A superintendent may reject the recommendation of the individual he designated to interview the applicants, but he must then conduct a meaningful review of the candidates' qualifications. Smith/Jarvis v. McDowell County Bd. of Educ., Docket No. 89-33-588/586 (June 19, 1990); Surber v. Greenbrier County Bd. of Educ., Docket No. 89-13-233 (Nov. 20, 1989).

5. Grievant has demonstrated by a preponderance of the evidence that Superintendent Whalen and MCBOE acted in an arbitraryand capricious manner in filling the Head Football Coach position at WHS.

Accordingly, this grievance is **GRANTED**. The Respondent is directed to properly place Grievant in the position, give him back pay, and to grant any other benefits required to make him whole.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mason 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.

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JANIS I. REYNOLDS

Administrative Law Judge

Dated: April 27, 1995

Footnote: 1*Hanlon, supra; Morrone v. Wayne County Bd. of Educ., Docket No. 92-50-389 (Aug. 31, 1993); Chaffin v. Wayne County Bd. of Educ., Docket No. 92-50-419 (Aug. 20, 1993); Meadows v. Kanawha County Bd. of Educ., Docket No. 92-20-492 (May 13, 1993); Smith v. Mingo County Bd. of Educ., Docket No. 92-29-316 (Oct. 30, 1992);Harrison v. Wyoming County Bd. of Educ., Docket No. 55-88-211 (Feb. 15, 1989).*

Footnote: 2*Prichard v. Lincoln County Bd. of Educ., Docket No. 93-22-522 (Oct. 21, 1994).*