

MAC HALL, .

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Grievant, .

.

v. . Docket No. 95-29-529

.

MINGO COUNTY BOARD OF EDUCATION, .

.

Respondent. .

.

and .

.

C. DOUG WARD, .

.

Intervenor. .

DECISION

Mac Hall (Grievant) alleges that Respondent Mingo County Board of Education (MCBE) violated W. Va. Code § 18A-4-7a when it failed to select him for the extracurricular position of Assistant Football Coach at MCBE's Tug Valley High School (TVHS). A Level II hearing was conducted in this matter on November 7, 1995, and John Fullen, the Superintendent's designee, issued a decision denying the grievance on November 20, 1995. Grievant waived Level III in accordance with W. Va. Code § 18-29-4(c), and appealed to Level IV on November 29, 1995. Following an evidentiary hearing in this Board's office in Charleston, West Virginia, on February 28, 1996, this matter became mature for decision.

DISCUSSION

On September 5, 1995, MCBE posted three extracurricular positions, including Assistant Football Coach at TVHS. J Ex 1. Grievant duly submitted an application for the TVHS coaching position and was scheduled for an interview. When Grievant appeared for his interview, he was advised that the interview was cancelled and the selection committee would be recommending a candidate for the position to MCBE's Superintendent without interviewing the candidates. Grievant subsequently learned that C. Doug Ward had been selected for the TVHS position, and filed this grievance shortly thereafter.

In support of his contention that MCBE acted improperly, Grievant cites to MCBE's Athletic Policy CP-814.02a, dated July 27, 1995. Grievant particularly notes that § 5.H. of the policy states:

All hiring for extra-curricular positions must be filled with the most qualified persons and determined by personal interviews and resumes. Teaching experience shall have no importance in determining the extra- curricular positions. A committee of two or more members from the county Athletic committee and the principal of the school involved will interview and recommend to the Superintendent the nominee for such position. G Ex B (emphasis in original).

This Grievance Board has previously determined that the provisions of W. Va. Code § 18A-4-7a are not applicable in the selection of professional personnel for coaching assignments. 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). Thus, "the appropriate standard of review for decisions concerning selection of professional personnel to fill coaching assignments is abuse of discretion." McCoy v. Kanawha County Bd. of Educ., Docket No. 94-20-141 (Oct. 13, 1994), citing Pockl v. Ohio County Bd. of Educ., 406 S.E.2d 687 (W. Va. 1991); Dillon v. Bd. of Educ., 351 S.E.2d 58 (W. Va. 1986); Foley v. Mineral County Bd. of Educ., Docket No. 93-28-255 (Oct. 29, 1993). It is likewise well established that "[a]n administrative body must abide by the remedies and procedures it properly establishes to conduct its affairs." Syl. Pt. 1, Powell v. Brown, 160 W. Va. 723, 238 S.E.2d 220 (1977). See Bailey v. W. Va. Dept. of Transp., Docket No. 94-DOH-389 (Dec. 20, 1994); Wright v. McDowell County Bd. of Educ., Docket No. 93-33-115 (Nov. 30, 1993).

MCBE Athletic Policy CP-814.02a clearly states that "personal interviews" will be conducted when filling extra-curricular coaching positions. G Ex B at 3. It is undisputed that, although Grievant was a qualified applicant for an extra-curricular coaching vacancy, he was not afforded a personal interview. (See footnote 1) On that basis alone, Grievant has established an entitlement to some relief.

Wright, supra.

Grievant's qualifications for the position, as established in the record at Levels II and IV, include serving as Assistant Football Coach at Chapmanville High School in Logan County from 1957 to 1959. From 1960 to 1967, Grievant was Head Football Coach at Burch High School in Mingo County. In 1964 he was recognized as the football "coach of the year" in that region by the Williamson Daily News. In 1972, he served as Assistant Football Coach at Symmes Valley High School in Ohio, coaching the junior varsity team to an undefeated record. At the time he applied for the coaching position at issue, grievant was employed by MCBE as its Chapter I Reading Program Director.

Grievant testified, without contradiction, that the successful applicant, Mr. Ward, had no experience as a football coach. The record indicates that Mr. Ward volunteered to assist with the football program at TVHS at the beginning of the season (L III HT), and had displayed a "commitment to athletics and the development of student-athletes" as of the time he was recommended to fill the posted position. R Ex 1. Inasmuch as Grievant's coaching credentials were clearly superior to the successful candidate, MCBE's decision to hire a less-qualified person without the benefit of comparing their qualifications through a personal interview, as required by MCBE's internal written policy, was arbitrary and capricious. Indeed, the record reflects indifference by MCBE administrators toward following mandatory hiring procedures for this position. Accordingly, Grievant is entitled to retroactive instatement to the position of Assistant Football Coach at TVHS for the 1995-96 school year with backpay.

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

FINDINGS OF FACT

1. On September 5, 1995, Mingo County Board of Education (MCBE) posted a vacant extracurricular position of Assistant Football Coach at Tug Valley High School (TVHS) for the 1995-96 school year.

2. Grievant submitted a timely application for the TVHS coaching position.

3. MCBE Athletic Policy CP-814.02a, approved on July 27, 1995, requires that extracurricular positions be filled through a process that includes a personal interview of the candidates.

4. The Principal and Athletic Director of TVHS recommended the selection of C. Doug Ward for

the TVHS coaching position without interviewing the candidates.

5. Grievant had at least 10 years of experience as an assistant football coach or head football coach at the high school level. The successful candidate, Mr. Ward, had no prior football coaching experience.

CONCLUSIONS OF LAW

1. Grievant is required to prove the allegations of his complaint by a preponderance of the evidence. Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988).

2. The provisions of W. Va. Code § 18A-4-7a are not applicable in the selection of professional personnel for coaching assignments. 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). 3. The appropriate standard for reviewing the selection of professional personnel for extracurricular coaching positions is whether the board acted in an arbitrary and capricious manner or otherwise abused its broad discretion in matters relating to the hiring of school personnel. Foley, supra, citing Pockl v. Ohio County Bd. of Educ., 406 S.E.2d 687 (W. Va. 1991); Dillon v. Bd. of Educ., 351 S.E.2d 58 (W. Va. 1986); Chaffin v. Wayne County Bd. of Educ., Docket No. 92-50-419 (Aug. 20, 1993).

4. A county board of education must abide by the regulations it promulgates notwithstanding that those regulations bestow rights upon employees which are not provided by statute. Powell v. Brown, 160 W. Va. 723, 238 S.E.2d 220 (1977); Wright v. McDowell County Bd. of Educ., Docket No. 93-33-115 (Nov. 30, 1993). See Bailey v. W. Va. Dept. of Transp., Docket No. 94-DOH-389 (Dec. 20, 1994).

5. Grievant demonstrated by a preponderance of the evidence that Mingo County Board of Education (MCBE) violated MCBE Athletic Policy CP-814.02a by selecting an Assistant Football Coach for a posted vacancy at Tug Valley High School (TVHS) without interviewing all qualified candidates. See Powell, supra; Wright, supra.

6. Where Grievant established by a preponderance of the evidence that his football coaching credentials were clearly superior to the individual selected to fill a vacancy at TVHS, MCBE's selection of another individual, without a good faith effort to follow its established internal procedures, represents an arbitrary and capricious decision by MCBE, entitling Grievant to reinstatement to the

contested position. See Cromley v. Mason County Bd. of Educ., Docket No. 94-26-573 (Apr. 27, 1995).

Accordingly, this Grievance is **GRANTED**. Grievant is entitled to retroactive instatement, with backpay, to the position of Assistant Football Coach at TVHS for the 1995-96 school year.

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

LEWIS G. BREWER

ADMINISTRATIVE LAW JUDGE

Dated: March 28, 1996

[Footnote: 1](#)

It is noted that the Level II decision states: "Interviews were held by the Tug Valley Principal with the assistance of the Head Football Coach at that school." However, there is no evidence in the record to support that statement.