

JAMES RAMEY, .

Grievant, .

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V. . DOCKET NUMBER: 95-29-483

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MINGO COUNTY BOARD OF EDUCATION .

Employer. .

DECISION

Grievant, James Ramey, an employee of the Mingo County Board of Education filed this grievance pursuant to West Virginia Code §§18-29-1 et seq., against his employer, alleging as follows: James Ramey applied for an assistant football coaching position at Tug Valley High School. The position was given to an individual who was not a “currently employed educator” in violation of W. Va. Code §18A-3-2a. The grievance was denied at the lower levels of the grievance procedure and appeal was made to level four on November 6, 1995. An evidentiary hearing was held on January 23, 1996, at the Grievance Board's Charleston, West Virginia office. The case became mature for decision on February 29, 1996. The following findings have been deduced from the evidentiary record of the case:

Findings of Fact

1. Grievant is employed by the Mingo County Board of Education (Mingo) as a classroom teacher.
2. At the beginning of the 1995-1996 school year, Mingo filled a vacancy in the position of assistant coach of the boy's football team at Tug Valley High School.

3. Grievant applied for this position but was not determined to be the most qualified candidate.

4. Applicant Carl Ward was determined to be the most qualified applicant and was chosen for the position by Mingo.

5. Carl Ward retired as a teacher/coach in 1989 from the Wayne County Board of Education.

6. Prior to being selected for the coaching position in question, Mr. Ward was not an employee of Mingo.

Discussion

Grievant's position is hard to ascertain from the record. It appears he contends Mr. Ward should not have been hired by Mingo because other professional educators currently employed by the Board applied for the position. Then, he would contend that he was better qualified than the other qualified applicants for the position. Mingo argues that Grievant was not qualified for the position based upon his past performance and conduct as a coach. It contends that Mr. Ward was the most qualified candidate for the position.

County boards of education are authorized to hire coaches under extracurricular contracts pursuant to W. Va. Code §18A-4-16. This Code section states that extracurricular assignments shall be made "only by mutual agreement of the employee and the superintendent, or designated representative, subject to board approval." Further, the terms and conditions of the agreement shall be in writing and signed by both parties. Finally, an employee's regular contract of employment shall be separate from the extracurricular assignment. Code §18A-4-16 does not designate how, or under what standard, extracurricular assignments to professional personnel for coaching positions are to be made. ([See footnote 1](#))

Typically, licensed professional employees of the county boards are hired to coach athletic teams; therefore, these coaches already possess a professional certificate at the time they are assigned coaching duties. However, W. Va. Code §18A-3-2a(4) allows for the issuance of "other certificates" and permits by the State Board of Education for persons other than teachers to serve as coaches. This subsection states as follows:

Within the category of other certificates and permits, the state superintendent 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 which specifies the duties to be performed, which specifies a rate of pay equivalent to the rate of pay for professional

educators in the district who accept similar duties as extra duty assignments and which provides for liability insurance associated with the activity: Provided, That such persons shall not be considered employees of the board for salary and benefit purposes other than as specified in the contract; (B) a currently certified 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 which shall be adopted no later than the first day of January, one thousand nine hundred ninety-one. (Emphasis added).

While it is clear from this provision that persons other than professional educators may be hired pursuant to Code §18A-4-16 to coach athletic teams, they may not be assigned such duties if a currently employed professional educator has applied for the position.

Mingo adopted an Athletic Policy on July 7, 1995, which states as follows:

All hiring for extra-curricular [sic] positions must be filled with the most qualified persons and determined by personal interviews and resumes. Teaching experience shall have no importance in determining extra-curricular [sic] 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.

This policy indicates that coaching positions shall be filled on the basis of a "most qualified standard," however, no distinction is drawn between the hiring of currently licensed professional educators and other persons. [\(See footnote 2\)](#) Here, the successful applicant is a retired teacher who was obviously, at one time, a licensed certified professional employed by the Wayne County Board of Education. W. Va. Code §18A-3-2a(4) does not state that a "currently certified professional educator" must be an employee of the board of education that is filling the coaching position. Mingo's policy, likewise, does not address this issue. Contrary to Grievant's statement of grievance, a board of education is not limited to hiring a "currently employed educator" but only a currently certified professional.

The Undersigned is not aware of any statute or rule of the State Board of Education that indicates a teacher's retirement invalidates or causes his professional license to lapse or that one's license cannot be continually renewed even after retirement. Further, Grievant has failed to produce any evidence to indicate that Mr. Ward is not currently a licensed professional educator. He has failed to meet his burden on this issue. Therefore, he has failed to establish that Mingo violated, misapplied or misinterpreted Code §18A-3-2a(4). Finally, he has failed to prove by a preponderance of the evidence that he was more qualified for the position at the time of the selection.

The foregoing discussion of the facts is hereby supplemented by the following appropriately made conclusions of law:

Conclusions of Law

1. Grievant bears the burden of proving his claims by a preponderance of the evidence. See, W. Va. Code §18-29-6. 2. Grievant has failed to prove by a preponderance of the evidence that Mingo violated, misapplied or misinterpreted W. Va. Code §18A-3-2a(4) in hiring Carl Ward for the position of Assistant Football Coach at Tug Valley High School.

3. Grievant has failed to establish by a preponderance of the evidence that Mingo violated, misapplied or misinterpreted its policy on extracurricular activities in hiring Mr. Ward for the position in question.

4. Grievant has failed to establish by a preponderance of the evidence that Mingo abused its discretion in finding that he was not the most qualified candidate for the position in question.

Therefore, this grievance is hereby **DENIED**.

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

ALBERT C. DUNN, JR.

Administrative Law Judge

April 30, 1996

[Footnote: 1](#)

This is not to say that service personnel may not be assigned coaching duties. See, W. Va. Code §18A-3-2a(4). Code §18A-4-16 does provide that school service personnel extracurricular assignments are to be made pursuant to Code §18A-4-8b or in accordance with county policy.

[Footnote: 2](#)

Grievant does not contend that Mingo is prohibited under Code §18A-3-2a from adopting a policy that establishes a hiring standard for extracurricular positions nor does the language of that sectionsupport such a conclusion.