

RANDALL HOPKINS

v. Docket No. 95-31-477

MONROE COUNTY BOARD OF EDUCATION

DECISION

The grievant, Randall Hopkins, is employed as a physical education and safety teacher at Gap Mills Junior High School. He filed this complaint at Level I on or about October 4, 1995, protesting his non-selection for the post of Head Girls' Basketball Coach at James Monroe High School (JMHS). After denials at the lower levels, the grievant appealed to Level IV November 1, 1995. The parties subsequently agreed that a decision could be rendered on the record developed at the October 11, 1995 Level II hearing. The Board submitted proposed findings of fact and conclusions of law by January 2, 1996. The grievant declined to submit proposals. [\(See footnote 1\)](#)

Background

Much of the factual background of the case is not in dispute. The July 24, 1995 posting for the position in issue specified as minimum qualifications only that the applicant be employed by the Board or meet eligibility standards of the West Virginia Secondary School Activities Commission (SSAC). Apparently, the grievant and Gap Mills Junior High School Principal Larry Mustain [\(See footnote 2\)](#) were the only viable applicants. [\(See footnote 3\)](#) JMHS Principal Giles Jones assessed their qualifications per the following provisions of the Board's "Extra- Curricular Personnel Hiring Procedures,"

Criteria for selecting personnel for extra-curricular assignments or duties shall include the following six items and be ranked by the interviewer according to the points designated.

1. **First consideration will be given to Monroe County School Personnel.**

[Give one point for individual who is currently an employee of Monroe County School System. Give a zero for individuals who are not now employed by the School System.]

2. **Evaluation as a Coach or Director of the Activity.**

[Rank the candidate's evaluation by giving a score of 0, 1, or 2]

3. **Success as a coach in the Monroe County School System and in sectional, regional, and state competition.**

[Rank the candidate's evaluation by giving a score of 0, 1, or 2]

4. **Experience as a coach in the particular sport or activity and number of years in the particular sport or activity.**

[Rank the candidate's evaluation by giving a score of 0, 1, or 2]

5. **Interview - to be conducted by principal of school involved.**

[Rank the candidate's evaluation by giving a score of 0, 1, or 2]

6. **References - Must provide two references, both from individuals**

who can evaluate candidate's potential for success in this position.

[Rank the candidate's evaluation by giving a score of 0, 1, or 2]

Mr. Jones and JMHS Athletic Director Danny Wickline conducted interviews [\(See footnote 4\)](#) with the candidates and scored them as follows:

Criteria	Mustain	Grievant
1. First consideration will be given to Monroe County School Personnel	1	1
2. Evaluation as a coach or director of the activity	2	1.5
3. Success as a coach in the Monroe County School System and in sectional, regional, and state competition	1.5	.5
4. Experience as a coach in the particular sport or activity and number of years in the particular sport or activity.	1.4	2
5. Interview	2	1.5
6. References	2	1
Total	9.9	7.5

Mr. Giles advised Superintendent of Schools Lyn Guy that he had determined that Mr. Mustain was the most qualified applicant. The Board ultimately accepted Superintendent Guy's

recommendation that he be appointed to the position.

It is undisputed that the candidates' respective scores in the "Evaluation as a coach" category were based on an April 21, 1995 assessment of Mr. Mustain's performance as JMHS' head junior varsity football and softball coach, and a May 8, 1991 evaluation of the grievant when he served as head basketball coach at Gap Mills Junior High School. The evaluations were furnished by the applicants per Mr. Jones' request and despite that the grievant had coached since 1991, they were the most recent written assessments of either's service as a coach. The record supports that the grievant's then-immediate supervisor did not complete written evaluations of his more recent coaching experience.

It is also undisputed that in assigning the scores in the "Reference" category, Mr. Jones discounted the grievant's two letters of support because they were not current and/or because he had been advised personally by the author of one of the letters that his or her endorsement of the grievant was not intended to apply to the coaching post in question. The grievant was not told, at least not during the selection process, that the reference had hesitated to support him fully for the position. [\(See footnote 5\)](#) Mr. Mustain's letters were recent and position-specific. [\(See footnote 6\)](#)

Argument

The grievant avers generally that Principal Jones erred in determining that Mr. Mustain was the more qualified candidate. More specifically, he contends that the Board was bound by its hiring policy and that Mr. Jones misapplied and/or violated its terms by discounting his most recent written evaluation and giving more than "face value" consideration to his reference letters. [\(See footnote 7\)](#) As relief, the grievant seeks a reassessment of his and Mr. Mustain's credentials. The Board concedes error in the "Evaluation" category and attributes it to ambiguity in the wording of the policy. The Board maintains, however, that the scoring in the remaining categories was proper and that the grievant has, therefore, failed to show that the selection decision would have been different.

Analysis

The parties agree, and the Grievance Board has held, that except for the procedural requirements of W.Va. Code §18A-4-16, [\(See footnote 8\)](#) a county board of education's

selection of coaching personnel is not controlled by statute and that such decisions are to be reviewed under the broad "arbitrary and capricious" standard pronounced in Dillon v. Wyoming County Bd. of Ed., 351 S.E.2d 58 (W.Va. 1986). Chaffin v. Wayne County Bd. of Educ., Docket No. 92-50-419 (Aug. 20, 1993). The parties also agree that a county board may adopt formal procedures on the subject and be obligated to comply, see, Powell v. Brown, 238 S.E.2d 220 (W.Va. 1977), and, depending on the terms of the policy, be held to a higher standard of review. See, Amick v. Nicholas County Bd. of Educ., Docket No. 95-34-037 (Aug. 23, 1995).

It appears that by limiting the areas of consideration and mandating a specific numerical scoring process which apparently binds the assessor to the results of point totals, the Board has restricted its discretion in hiring coaches. The undersigned finds, however, that Mr. Jones' assessment at least substantially complied with the terms of the Board's policy and that the decision to appoint Mr. Mustain to the position was, on the whole, neither arbitrary nor capricious.

The record fully supports that the scoring in the "Success as a Coach," "Interview" and "Experience as a Coach" categories [\(See footnote 9\)](#) was accurate and fair. [\(See footnote 10\)](#) The evidence also supports the Board's conclusion that while the scoring in the "Evaluations" area was flawed, more accurate ratings in that criterion would not have changed the outcome. Since Mr. Jones' Level II testimony reflects that he otherwise adequately explored the applicants' past coaching service with the Board, it seems that the applicants' ratings in the category could be disregarded without significantly distorting the overall assessment.

The undersigned finds that Mr. Jones erred in not advising the grievant that he intended to view the remarks of one of his references as negative for the purpose of assigning scores in the "References" criterion. As a general rule, a negative aspect of an applicant's qualifications which has not previously been brought to his or her attention should not be a consideration in the selection process. See generally, Mays v. McDowell County Bd. of Educ., Docket No. 95-33-311 (Sept. 26, 1995). The rule is particularly applicable here where the grievant had reason to believe that his references would be a positive rather than negative factor in the evaluation of credentials.

As noted, however, part of the disparity between the applicants' scores in the "References"

category was based on the timeliness and specificity of their reference letters. Since it was the grievant's responsibility to provide the letters, some of the disparity is attributable to his failure to see that they were recent and addressed to the position in issue. It can readily be seen, however, that any adjustment in points in the "References" criterion also would not result in a higher total score for the grievant. The inference to be made from Mr. Jones' testimony on the matter is that Mr. Mustain would still have outscored the grievant in the category by at least one-half of a point.

While it is troubling that there were significant flaws in Mr. Jones' assessment in two of only five areas of consideration permitted by the policy, it cannot be said that the overall selection process was so skewed that the result would have been otherwise. To obtain a reassessment in such cases, the employee must necessarily show that process was so flawed that outcome might reasonably been different. Stover v. Kanawha County Bd. of Educ., Docket No. 89-20-75 (June 26, 1989). Since the record establishes by a preponderance of the evidence that Mr. Jones' evaluation of the applicants in what appears to be the more crucial and pertinent categories of "Success," "Experience," and "Interview," was accurate and in compliance with the policy, the grievant has failed to meet this burden.

In addition to the foregoing, the undersigned makes the following formal findings and conclusions.

FINDINGS OF FACT

1) The grievant and Larry Mustain, professional employees of the Monroe County Board of Education, made timely applications for the position of Head Girls Basketball Coach at James Monroe High School. Both applicants had extensive coaching experience in a variety of sports on different grade levels.

2) James Monroe High Principal Giles Jones assessed the two applicants per the Board's "Extracurricular Personnel Hiring Procedures" which essentially mandated consideration of and numerical scoring in five aspects of the applicants coaching- related credentials.

3) Out of a possible eleven points, Mr. Mustain received a total score of 9.9 points. The grievant received a total score of 7.5. The Board ultimately accepted the recommendation of

Superintendent of Schools Lyn Guy that Mr. Mustain be awarded the post.

CONCLUSIONS OF LAW

- 1) **W.Va. Code §18A-4-16** imposes requirements of a procedural nature upon extracurricular contracts of employment, but a county board of education's selection of coaching staff is not otherwise controlled by statute. **Chaffin v. Wayne County Bd. of Educ.**, Docket No. 92-50-419 (Aug. 20, 1993).
- 2) The process by which a county board fills a vacant coaching position is reviewed under the "arbitrary and capricious" standard. The standard entails a thorough and searching inquiry into the assessment of applicants, but mandates considerable deference to the judgment of those who conducted it. **Chaffin; Bowe v. Kanawha County Bd. of Educ.**, Docket No. 93-20-269 (Dec. 28, 1993).
- 3) A county board may adopt a formal policy for the selection of coaching personnel and be legally obligated to follow it. **Powell v. Brown**, 238 S.E.2d 220 (W.Va. 1977). The review then encompasses compliance with the terms of the policy.
- 4) Generally, it is the grievant's burden in such cases to show, by a preponderance of the evidence, that the assessment was flawed and/or did not comply with policy, and that, but for the errors, the outcome of the selection process might reasonably have been different. **Stover v. Kanawha County Bd. of Educ.**, Docket No. 89-20-75 (June 26, 1989). While the grievant herein has demonstrated flaws in Principal Jones' assessment of applicants for the position in issue, he has failed to show that a more accurate evaluation would have produced a different result.

Accordingly, the grievance is DENIED.

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

JERRY A. WRIGHT
ADMINISTRATIVE LAW JUDGE

Dated: February 21, 1996

Footnote: 1

The grievant's legal position, as set forth herein, is drawn from his union representative's opening and closing remarks at the Level II hearing.

Footnote: 2

The transcript of the Level II hearing mistakenly refers to Mr. Mustain as Mr. Mustang.

Footnote: 3

There is evidence of record which suggests that initially there may have been other candidates. Apparently, Mr. Mustain and the grievant were the only applicants who met the requirements of the posting.

Footnote: 4

The record is unclear on whether Mr. Wickline played a further role in the selection process. The evidence suggests that Mr. Jones completed all of the numerical scoring of the candidates and that Mr. Wickline concurred with the ratings.

Footnote: 5

It appears that the grievant first obtained this information during the Level II hearing.

Footnote: 6

Since none of the letters were admitted into evidence at the Level II hearing, and Mr. Jones was not thoroughly examined on their contents, it is difficult if not impossible to make further inferences about the "References" aspect of the evaluation process. The resolution of the case, however, does not require more specific findings on the scoring in that area.

It is also noted that at the Level II hearing, Mr. Jones declined to reveal which of the grievant's references hesitated to endorse him for the position and was not called upon to provide details on their conversation. Superintendent Guy's Level II decision indicates that subsequent to the hearing, the person's name was provided to the grievant. Resolution of the case also does not require more particular findings on the substance of or the reasons for the reference's remarks to Mr. Jones. As discussed herein, it is sufficient that in assigning points in the category, Mr. Jones considered the remarks a "minus" for the grievant.

Footnote: 7

During his closing remarks at the Level II hearing, the grievant's representative asserted that the grievant had

been rejected for a number of coaching positions during the last several years and at least implied that the Board had engaged in a pattern of discrimination against him. The short and dispositive response to this contention is that the grievant presented no evidence whatsoever that he had applied for and failed to obtain any coaching position other than the one in issue.

[Footnote: 8](#)

Briefly, the statute requires that the the terms, conditions, hours and length of service of an extracurricular contract be in writing and that the agreement be separate and apart from the employee's regular contract of employment.

[Footnote: 9](#)

Since both candidates were employees of the Board, the "First consideration" category is of little significance to the analysis.

[Footnote: 10](#)

In her Level II decision, Superintendent Guy made detailed findings on these categories. It is not necessary to repeat her analysis here. It is sufficient to note that her findings and conclusions are amply supported by the evidence presented.