BUDDY JARRELL

v. Docket No. 95-41-479

RALEIGH COUNTY BOARD OF EDUCATION

DECISION

The grievant, Buddy Jarrell, is employed by the Raleigh County Board of Education (Board) as Teacher/Basketball Coach/Athletic Director at Marsh Fork High School (MFHS). His original complaint, filed at Level I, August 28, 1995, alleged only “unfair evaluation.” His supervisor, newly-appointed MFHS Principal David Severt, (See footnote 1) responded by advising that he was not the administrator who completed evaluations at the school for the 1994-95 year. It is not clear whether Mr. Severt understood that the grievant was not protesting his own evaluation. (See footnote 2) At a Level II hearing held September 25, 1995, the grievant explained that he had filed because “there may have been an unfair coaching evaluation in [MFHS],” and that he was protesting what he believed to be undeserved ratings in the 1994-95 assessment of another coach employee. The grievant then explained that he was not personally aware of what rankings the employee had received but that he was prepared to show that there had been substantial deficiencies in his performance.

Pressed for the basis of his belief that the evaluation was inaccurate, the grievant represented that in late May 1995, at a sports award banquet, he overheard the former MFHS principal make favorable and perhaps complimentary remarks about the employee's performance during the 1994-95 athletic season. The grievant indicated that, as MFHS Athletic Director, he had made a recommendation on the evaluation; he appeared to assert that upon hearing the principal's comments, he determined that it had been discounted or ignored.

At Level II, the clearest explanation of the grievant's legal position in the case was that if the evaluation did not take the employee's alleged deficiencies into account, it was simply “unfair” to him and other MFHS athletic staff members. The Board responded that the grievant had no standing to

protest the evaluation, he had not been harmed and that, in any event, he had not filed per the timelines of W.Va. Code §18-29-4(a). The evaluator essentially dismissed the claim on those grounds. TheBoard, at Level III, declined to address the matter and appeal to Level IV was made November 3, 1995.

At an April 18, 1996 Level IV hearing, the Board moved for dismissal for the reasons cited at Level II. The grievant, through testimony and oral argument, responded that he had determined in late August 1995, shortly before his August 28 filing, that the former principal had not placed the employee on an improvement plan for the 1995-96 school year as he had recommended. He again maintained that it was “unfair” to all MFHS coaches to give one an inaccurate evaluation and further asserted that his authority as Athletic Director had been undermined.

Finally, the grievant represented that he had been ranked highly on his own evaluations for the 1994-95 school year and was not seeking, as relief, that his or other coaches' scores be adjusted. Alluding to several of the concerned employee's alleged shortcomings, he instead asked that the Board be directed to ”admit that things did happen and commit to closely look at the matter.” For the reasons discussed below, the Board's motion was granted. (See footnote 3)

Findings and Conclusions

The complaint was timely per Code §18-29-4(a). (See footnote 4) It is clear that if there is a grievable event in the case, it can only be the failure of the Board to accept the grievant's recommendation regarding an improvement plan for the concerned coach. It is also apparent from the grievant's unrebutted testimony that he filed within fifteen days of learning that it had been rejected. The grievant's claims must necessarily be confined to the grievable event.

It is doubtful that any employee can ever obtain, as relief in grievance proceedings per Code §§18-29-1 et seq., an ordercompelling his employer to place another employee on an improvement plan. Finnegan v. West Liberty State College, Docket No. 95-BOD- 350 (Oct. 31, 1995), and cases cited therein instruct that unless there is an allegation and showing that another employee's performance and/or conduct substantially interferes with the grievant's ability to perform his own duties or in some way places him at risk, the grievant has no standing to complain.

Aside from his general claim of unfairness, the grievant herein does not allege that he has been harmed in any way. Significantly, he also did not maintain that Board policy on the role of an Athletic

Director obligated a school principal in any way to accept or even consider the Director's input on a coach's evaluation. Indeed, the grievant's own testimony establishes that prior to the evaluation in issue, the former MFHS principal had assumed all duties relating to the assessment of the employee concerned and that the grievant did not then object. Moreover, and more importantly, assuming that the grievant could establish that his role as MFHS Athletic Director or notions of "fairness" imposed some duty on the Board to incorporate his recommendations on evaluations, and such claims were deemed actionable and substantiated, his request for relief, i.e., "admission" and "commitment" on the Board's part, is illusory in nature. Such remedies are unavailable from the Education and State Employees Grievance Board. Brewer v. Mercer County Bd. of Educ., Docket No. 91-27-152 (April 28, 1992).

Accordingly, the grievance is **DENIED**. Any party may appeal this decision to the Circuit Court of Raleigh County or the Circuit Court of Kanawha 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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JERRY A. WRIGHT

ADMINISTRATIVE LAW JUDGE

Dated: July 8, 1996

Footnote: 1

It appears that Mr. Severt began his duties as principal on or about the start of the 1995-96 school year.

Footnote: 2

The grievant did not articulate his claims well at any level. In his Level I response, Mr. Severt expressed an opinion that "evaluations are not grievable." It is difficult to discern whether the principal was commenting on the grievant's particular claim or was making a statement about evaluations in general. To the extent that he was expressing a legal opinion regarding all performance assessments, it was in error. Evaluations are grievable matters. See, e.g., Rakes v. Raleigh County Bd. of Educ., Docket No. 93-41-448 (March 17, 1994).

Footnote: 3

The Board's motion was generally worded and its standing- related arguments included a charge that the grievant had failed to state a claim upon which relief could be granted. The undersigned found at hearing that the Board's motion encompassed a claim that the relief requested was illusory and unavailable and it was granted on that basis.

Footnote: 4

In pertinent part, the statute provides,

> *Before a grievance is filed and within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date on which the event became known to the grievant or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance, the grievant or the designated representative shall schedule a conference with the immediate supervisor to discuss the nature of the grievance and the action, redress or other remedy sought.*
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> . . .
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> *Within ten days of receipt of the response from the immediate supervisor following the informal conference, a written grievance may be filed with said supervisor by the grievant or the designated representative on a form furnished by the employer or agent.*

It appears that the Board's timeliness assertions assume that the grievable event in the case was the grievant's "discovery" at the awards banquet that the former principal may have completed an inaccurate evaluation. There is no assertion on the Board's part that the grievant did not request and receive the informal conference mandated by the statute prior to his August 28 written filing.