

AARON PETTRY,
Grievant,

v. Docket No. 96-03-150

BOONE COUNTY BOARD OF EDUCATION,
Respondent,

and

MICHAEL "A.B." BROWN,
Intervenor.

DECISION

Grievant, Aaron Pettry, alleges the Boone County Board of Education ("BCBOE") violated W. Va. Code §18-29-2(a) and (o) when it did not hire him as the head baseball coach at Sherman High School ("SHS"). He seeks as relief instatement into the position with back pay and benefits. This case was denied at Levels I and II and waived at Level III. A Level IV hearing was held on July 18, 1996, and the case became mature for decision at that time, as the parties declined to submit proposed findings of fact and conclusions of law.

The majority of facts are not in dispute and will be set out below as formal findings.

Findings of Fact

1. Grievant has been employed as a math teacher at SHS for eleven years. He has worked for BCBOE a total of seventeen or eighteen years.
2. On February 7, 1996, BCBOE posted the head baseball coach position at SHS. The deadline for application was February 14, 1996, and both Grievant and the successful applicant applied in a timely manner.
3. Ms. Carol Carter, principal at SHS, interviewed four applicants, including Grievant, asked each the same questions, and then made her recommendation to Mr. Joe Tagliente, Assistant

Superintendent.

4. Grievant has never held a school baseball coaching position, but has coached for twenty-three years in all phases of the little league system. He coached T- ball, little league, senior league, and "big" league, with the majority of this time spent with senior (13-15 year olds) and "big" (16-18 year old) league. He had numerous successful teams and coached an All-Star team. He discussed some of this involvement with Principal Carter.

5. Grievant played high school baseball for three or four years and played college baseball for one week, but quit because of the time practice took away from his studies. Grievant did not inform Principal Carter of this experience during his interview.

6. Grievant is currently the girls' basketball coach and has some difficulty interacting with the players and their parents. He told Principal Carter the eight players do not do what he tells them.

7. Grievant was very involved in all aspects of baseball until about four or five years ago, when he did not receive a coaching position at SHS. He then stopped being the "Number 1 supporter" and devoted much of his time to church activities. Recently he returned to little league coaching.

8. MCBOE selected Mr. Michael "A.B." Brown to fill the coaching position.

9. Mr. Brown played three years of baseball in high school and four years of baseball at Alice Lloyd College. While in college he was a paid assistant collegiate coach for one and a half years. Every summer, during his college vacation, he assisted Mr. Jeff Nelson, the baseball coach at Scott High School with his high school team. Additionally, each summer after high school competition was completed, Mr. Brown coached little league baseball; with two years experience in little league, two years experience in senior league, and one year experience in "big" league. This past year, 1995, Mr. Brown took his "big" league team to the state championship and finished fourth. Mr. Brown told Principal Carter of these accomplishments during his interview.

10. Mr. Brown graduated from college in December 1995, and was hired as a substitute teacher in late January 1996. He is certified in math, chemistry and physics.

11. After Principal Carter interviewed the applicants, she recommended to Assistant Superintendent Tagliente that BCBOE hire Mr. Brown. She based her recommendation on Mr. Brown's experience, enthusiasm, interview responses, and written and verbal recommendations.

12. Assistant Superintendent Tagliente had only recently been assigned to assist with the selection of coaches. He developed a matrix for filling these positions by adapting the criteria in

W. Va. Code §18A-4-7a to coaching positions. The areas assessed in the coaching matrix are: 1) [s]pecialized training directly related to the job as stated in the job description; 2) [t]otal amount of experience relevant to position; 3) [b]est recommendations; 4) [b]est interview; 5) [p]rincipal recommendation; and 6) [o]ther.

13. Assistant Superintendent Tagliente completed a matrix after his discussion with Principal Carter, and found Mr. Brown superior to Grievant in areas 1 through 5. The “Other” category was not used. Assistant Superintendent Tagliente did not think Grievant's little league experience was of the same weight and quality as Mr. Brown's college playing and coaching experience.

14. No applicant recommendations were required or requested by BCBOE, but were accepted if tendered. Mr. Brown had multiple recommendations; Grievant had none.

Issues

Grievant argues BCBOE engaged in favoritism when it selected Mr. Brown. Grievant also argues he had more experience and specialized training than the successful applicant. Although not clearly stated, Grievant appeared to argue BCBOE abused its discretion in two ways: 1) not posting the position until February 1996; and 2) hiring a substitute in this coaching position instead of a regularly employed teacher. BCBOE argued it did not abuse the substantial discretion a county board is afforded in selecting a coach.

Discussion

This Grievance Board has previously discussed the selection of coaches and held the applicable standard of review is whether there has been an abuse of discretion. 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). “[T]his discretion must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious.” Dillon v. Bd. of Educ. of County of Wyoming, 351 S.E.2d 58 (W. Va. 1986). This standard of review makes it difficult for a grievant to prevail when contesting the filling of a coaching vacancy.

Grievant's allegation of favoritism must be reviewed against the above-identified standard. W. Va. Code §18-29-2(o) defines favoritism as “unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of another or other employee.” To prove

favoritism a grievant must establish a prima facie case which consists of demonstrating:

(a) that he is similarly situated, in a pertinent way, to one or more other employee(s);

(b) that he has, to his detriment, been treated by his employer in a manner that the other employee(s) has/have not, in a significant particular;

and,

(c) that such differences were unrelated [to] actual job responsibilities of the grievant and/or other employee(s), and were not agreed to by the grievant in writing.

If a grievant establishes a prima facie case, a presumption of discrimination or favoritism exists, which the respondent can rebut by presenting a legitimate, nondiscriminatory reason for the action. However, the grievant may still prevail if he can demonstrate the reason given by the respondent was pretextual. Steele, et al. v. Wayne County Bd. of Educ., Docket No. 89-50-260 (Oct. 19, 1989).

In this case it is unclear what treatment Grievant alleges was unfair, and in what way Mr. Brown was afforded exceptional or advantageous treatment. Both applied for the position and both were assessed using the same criteria. Grievant argues BCBOE did not post the coach's position as soon as it was vacant and this was favorable to Mr. Brown. No specific testimony was elicited on this issue. The testimony is unclear as to when Mr. Bill Miller, the former head coach, officially notified BCBOE that he was resigning. Further, Mr. Tagliente said the position was not posted earlier because there was no need to fill it until closer to the playing season.

Testimony reveals both employees were interviewed and asked the same questions, their experience and abilities were compared, and the decision to select Mr. Brown did not result from favorable treatment. Additionally, Grievant created some of his own problems in the selection process by failing to inform Principal Carter of some of his experience. Applicants have a duty to inform the interviewer of any experience and credentials they believe pertinent to the position, and their failure to do so will not be considered a flaw in the interview process. Vonkallist v. Mercer County Bd. of Educ., Docket No. 94-27-073 (Aug. 8, 1994).

As for Grievant's second argument, it must be noted that the selection of a substitute teacher to fill a coaching position does not violate either a statute or the rules and regulations of the Secondary Schools Activities Commission ("SSAC"). W. Va. Code §18A-3-2a requires that a currently employed,

certified, professional educator be hired over another individual. Both Grievant and Mr. Brown were employed, certified, professional educators. SSAC rules specifically identify a properly certified substitute teacher as an individual who can be selected as a coach. SSAC Rules; 09§127-3-6.

A review of all the evidence of record does not indicate BCBOE abused its substantial discretion or was arbitrary and capricious in selecting Mr. Brown for the coaching position. Although reasonable minds may differ, and frequently do when coaching decisions are made, a difference of opinion between the parties does not rise to the level of any improper or illegal behavior.

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

Conclusions of Law

1. A grievant is required to prove the allegations of his complaint by a preponderance of the evidence. Tenney v. Barbour County Bd. of Educ., Docket No. 89- 01-576 (May 30, 1990).

2. The appropriate standard of review for the filling of a coaching position is whether a board abused its substantial discretion or acted in an arbitrary or capricious manner. Dillon v. Bd. of Educ. of County of Wyoming, 351 S.E.2d 58 (W. Va. 1986); Smith v. Logan County Bd. of Educ., Docket No. 91-23-040 (July 31, 1991).

3. Grievant has failed to demonstrate that BCBOE was guilty of favoritism in the selection of Mr. Brown for the Head Baseball Coaching position, or that BCBOE's selection of Mr. Brown was arbitrary and capricious or an abuse of discretion. 4. BCBOE did not violate any statutes, rules, or regulations in filling a coaching position with a substitute teacher instead of a regularly employed teacher.

5. Grievant did not prove a posting violation.

Accordingly, this grievance is **DENIED**.

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

JANIS I. REYNOLDS

Administrative Law Judge

Dated: September 30, 1996