GREG CYRUS,

Grievant,

v. **Docket No. 96-20-410**

KANAWHA COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Greg Cyrus, the grievant, filed this grievance on or about August 19, 1996, against the respondent, Kanawha County Board of Education (KCBE), alleging that "I applied for the head coach (football) position at South Charleston High School and it was awarded to a less qualified applicant. I ask to be given the coaching job at South Charleston." Following adverse decisions at the lower levels, the grievant appealed to level four on October 2, 1996. (See footnote 1) The parties agreed to submit the case for decision based upon the lower level record. It became mature for decision on November 6, 1996, with the receipt of the proposed findings of fact and conclusions of law submitted by the grievant's representative. The matter was reassigned to the undersigned Administrative Law Judge on November 13, 1996.

BACKGROUND

Greg Cyrus, the grievant, is a classroom teacher employed at Nitro High School. In the past he also coached football and was head football coach at Nitro High as recently as 1994- 1995. On May 20, 1996, a job notice was posted advertising an opening for the position of head football coach at South Charleston High School, an extra-curricular activity. Mr. Cyrus responded, submitting his application along with a résumé, letters of reference, and a document called the "Cyrus Plan", explaining his philosophy of coaching and outlining his plans as coach of the South Charleston team. He had nine years experience as a head football coach on the high school level and a total of twenty plus years experience in coaching football as well as various other sports (L2, at 32, 33).

There were five candidates interviewed for the job. Despite his qualifications, the grievant was not selected. Then to make things more interesting, the successful candidate, Robert Cummings, after accepting, changed his mind and rejected the offer. The position was re-posted July 23, 1996, with

the remaining four applicants as the only candidates. Based upon the original applications and interviews, the grievant was again passed over, this time in favor of Todd Chevalier, the assistant football coach and the interim head coach at South Charleston High School. Mr. Chevalier had been an assistant coach and defensive coordinator since before 1989, but had no head coaching experience (L2, at 10). However, he had taken charge of the team and had been preparing them for the season, doing so upon his own initiative without a directive from KCBE or the school principal.

Apparently, the primary person responsible for making the recommendation to the board was the South Charleston High School Principal, Bill Walton. Although he relied upon aselection committee for their suggestions and advice, the recommendation was his to make. Principal Walton stated that he was aware that Mr. Chevalier had no prior head coaching experience (L2, at 23). He testified further that he placed emphasis on Mr. Chevalier's familiarity with the South Charleston football program, which would allow him to step right into the job with little preparation. Because of the delay caused by the belated rejection by Robert Cummings, this was an important factor. The final day of posting was July 30, 1996, with the football season starting August 5, 1996 (L2, at 11, 12). Time was running out. Mr. Walton found no fault with the grievant's qualifications, and in fact, knew him and liked him. He still felt that Chevalier was better qualified for this position. Although the grievant's résumé and other supporting exhibits were placed into evidence, there were no similar documents made available regarding Mr. Chevalier. They had been provided during the hiring process but were returned to him after its completion. No apparent attempt was made to produce them for use during the grievance procedure. Except for testimony by the school principal, there is little information available regarding Chevalier's qualifications.

DISCUSSION

To prevail, the grievant must prove by a preponderance of the evidence that the action of the respondent in selecting Todd Chevalier over him was an abuse of its discretion. The standard for review of KCBE's decision is to determine whether, based upon the information available, its actions were arbitrary and capricious or contrary to law. Chaffin v. Wayne County Bd. of Educ., Docket No. 92-50-419 (Aug. 20, 1993). Also see Martin v. Randolph County Bd. of Educ., 465 S.E.2d 399, 195 W.Va. 297 (1995). The Martin case is helpful in defining thestandard, “arbitrary and capricious”, although it pertains to a Circuit Court review of an ALJ's decision under W.Va. Code §§18-29-7 and

29A-5-4(g). The term is a common one, often used to describe the type of review an appellate forum will use in analyzing an administrative decision or decision of any governmental body, be it a board of education, a town council or zoning board. Historically, the judiciary is to use restraint and not to substitute its judgement for that of the administrative or executive body. Tenney v. Barbour County Bd. of Educ., 398 S.E.2d 114 (W.Va. 1990); Higgins v. Randolph County Bd. of Educ., 286 S.E.2d 682 (W.Va. 1982). The issue in this matter is not whether KCBE and Principal Walton made the best decision, but whether there was a reasonable basis for the decision. Perhaps a stronger argument could be made in support of the grievant's selection because of his experience as a head coach. However, Mr. Chevalier's initiative during the pre-season preparations and general familiarity with the team as an assistant coach were important, given the fact that the opening of the season was in a few days. There had to be much weight given to the problems a coaching change might have caused at that late date. Therefore, it must be concluded that there were strong and convincing reasons for hiring someone who was otherwise less experienced. The decision to do so was not arbitrary and capricious.

The scope of review under the arbitrary and capricious standard is narrow. It is not our responsibility to select the best football coach. There will be no attempt to substitute the grievance board's judgement for that of KCBE.

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 May 20, 1996, the Kanawha County Board of Education (KCBE) posted the vacant extra-curricular position of head football coach at South Charleston High School.

2. The grievant and four other candidates submitted timely applications for the coaching position.

3. KCBE selected applicant Robert Cummings who first accepted, then subsequently rejected the job offer.

4. The position was reposted July 23, 1996, through July 30, 1996, but there were no new applicants, and the choice came from among the remaining four candidates.

5. The grievant was again passed over, with the successful applicant being Todd Chevalier, who was the assistant football coach at South Charleston High School since before 1989 and was, at that time, the interim head football coach for the school.

6. The grievant had approximately nine years experience as a head football coach at the high school level and over twenty years total experience in coaching.

7. The selection of the head coaching position was made within a few days of the season's opening game.

CONCLUSIONS OF LAW

1. The standard for the review of KCBE's selection of a football coach is whether the board was arbitrary and capricious and therefore abused its discretion.

2. The grievant is required to prove by a preponderance of the evidence that KCBE abused its discretion by hiring Todd Chevalier as South Charleston High School head footballcoach rather than the grievant.

3. The decision to hire Todd Chevalier was based upon strong and convincing reasons and, therefore, the actions of KCBE were not arbitrary and capricious. McCoy v. Kanawha County Bd. of Educ., Docket No. 94-20-141 (Oct. 13, 1994); Chaffin v. Wayne County Bd. of Educ., Docket No. 92-50-419 (Aug. 20, 1993).

Accordingly the grievance is **DENIED**.

Any party may appeal this decision to 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 appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate Court.

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JAMES D. TERRY

Administrative Law Judge

DATE: January 24, 1997

Footnote: 1

A level two hearing was held on September 12, 1996, and references to that transcript will be noted as "L2, at __".