CARL SPARKS,

Grievant,

v.

DOCKET NO. 96-29-447

MINGO COUNTY BOARD OF EDUCATION,

Respondent,

and

DANNY KINDER,

Intervenor.

D E C I S I O N

Grievant, Carl Sparks, is currently employed by the Mingo County Board of Education ("Board") as a Dean of Students at Birch Middle School. Mr. Sparks filed a grievance pursuant to W. Va. Code §§ 18-29-1, et seq, on September 13, 1996, alleging Respondent:

> . . . violated W. Va. Code 18A-4-7a in not selecting him as the most qualified applicant for the boys' basketball head coaching position at Matewan High School. Grievant further asserts that the Board violated its own Athletic Policy in not selecting him as the most qualified applicant.

Grievant seeks to be placed into the position and to be paid all back pay, if any, plus attorney's fees and costs. Danny Kinder was granted intervenor status at level two pursuant to W. Va. Code § 18A-29-3(u). After denials at levels one and two, and W. Va.Code § 18-29-4(c) waiver at level three, the matter was advanced to level four where a hearing was held on December 4, 1996, at which time this case became mature for decision.

The material facts underlying this grievance are not in dispute and are set forth in the following findings of fact.

Findings of Fact

1. Grievant has been employed with the Board for 27 years, and is currently employed as Dean of Students at Birch Middle School.

2. Danny Kinder, Intervenor, has been employed by the Board for approximately 11 years, and is currently employed as a driver's education teacher at Matewan High School.

3. The Board posted the position of head boys' basketball coach at Matewan High School sometime in the Summer of 1996. Grievant, Intervenor and one other individual applied for the position.

4. The county athletic committee, consisting of John Maynard, Robin Porter, and Jim May, met on August 23, 1996 to interview and discuss the three applicants. Matewan High School Principal Jada Hunter and Assistant Superintendent of Schools John Fullen also were in attendance. LIV, R. Ex. 1.

5. Each applicant met with the committee in a lengthy interview process. The applicants were asked a considerable number of questions, and they were each given the opportunity to present their qualifications and any other information they deemed necessary to the committee. 6. Grievant has considerable basketball coaching experience with the Board, including 10 years as the head boys' middle/junior high coach; 5 years as the head girls' high school coach; and 2 years as the assistant boys' high school coach. Grievant also served as a counselor at the Charlie Huggins basketball camp, and has some experience as a baseball and football coach. LIV, G. Ex. 1.

7. Intervenor's experience consists of 2 years as assistant boys' high school basketball coach at Phelps High School in Pikeville, Kentucky; 1 year as a volunteer basketball coach; 4 or 5 years as assistant football coach, and 11 years as head football coach at Matewan High School. Intervenor also coached a basketball camp while at Phelps High School in Kentucky.

8. After interviewing the three applicants, the committee discussed the applicable law regarding the hiring of coaches, and the applicants' qualifications. Principal Hunter recommended Intervenor for the position. A vote was taken of the committee, which resulted in a 3-0 vote for Intervenor.

9. Intervenor was recommended by the Superintendent to the Board, and the Board accepted that recommendation and hired Intervenor for the head boys' basketball coach at Matewan High School, effective September 6, 1996. LIV, R. Ex. 2.

Discussion

Grievant alleges that he is the most qualified for the subject position, and thus the Board's action in selecting Intervenor for the position was arbitrary and capricious, and violated W. Va. Code § 18A-4-7a, and the Mingo County Athletic Policy. The Board argues that Code § 18A-4-7a does not apply to the selection of coaches, that it fully complied withits policy in selecting Intervenor for the position, and that its action was not arbitrary and capricious.

It is well-settled that the provisions of W. Va. Code § 18A-4-7a do not apply to the selection of coaching positions. Smith v. Logan County Bd. of Educ., Docket No. 91-23- 040 (July 31, 1991). 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. Ramey v. Mingo County Bd. of Educ., Docket No. 95-29-483 (Apr. 30, 1996). Nevertheless, it has been determined that the standard of review for filling coaching positions is to assess whether the Board abused its discretion in the selection or acted in an arbitrary or capricious manner. Dillon v. Bd. of County of Wyoming, 351 S.E.2d 58
(W. Va. 1986); Hanlon v. Logan County Bd. of Educ., Docket No. 93-23-502 (Dec. 29, 1994), aff'd Circuit Court of Kanawha County, Civil Action No. 95-AA-15 (July 8, 1996); Chaffin v. Wayne County Bd. of Educ., Docket No. 92-50-398 (July 27, 1993); Smith, supra. Further, the grievance procedure is not intended to be a "super interview" for unsuccessful applicants; rather, in this context, it allows an analysis of the legal sufficiency of the selection process at the time it occurred. Stover v. Kanawha County Bd. of Educ., Docket No. 89-20-75 (June 26, 1989) . An agency's decision by "appropriate personnelas to which candidate is the most qualified for a position vacancy will be upheld unless

shown to be arbitrary or capricious or clearly wrong." Sloane v. W. Va. Univ., Docket No. BOR-88-109 (Sept. 30, 1988).

In a non-disciplinary matter, the burden is on the grievant to prove his case by a preponderance of the evidence. "[I]f the grievant can demonstrate that the selection process was so significantly flawed that he/she might reasonably have been the successful applicant if the process had been conducted in a proper fashion," this Board will require the employer to reevaluate the qualifications of the grievant and the successful applicant. Jones v. BOD/W. Va. Univ., Docket No. 90-BOT-283 (Mar. 28, 1991).

The Mingo County Athletic Policy (7/27/95) states, in pertinent part:

> All hiring for extra-curricular positions must be filled with the most qualified persons and determined by personal interviews and resumes. Teaching experience shall have no importance in determining the extra- curricular positions. A committee of two or more members form the county Athletic committee and the principal of the school involved will interview and recommend to the Superintendent the nominee for such position.

Applying the above case law to the facts in this case, it is clear the Board followed the provisions of its Athletic Policy in the selection of Intervenor as the head boys' high school basketball coach. A committee of three members and the Principal of Matewan High School, Jada Hunter, met and interviewed the applicants for the position, and made a recommendation to the Superintendent based upon their vote of 3-0 in favor of Intervenor. The Board approved the recommendation. Grievant has failed to show that the selection process was flawed in any respect.

Still, Grievant argues that the inclusion of the standard "most qualified" in the Athletic Policy mandates that the Board use the objective criteria for filling positions underCode § 18A-4-7a, and if they properly evaluated those criteria, Grievant is clearly the most qualified. The undersigned declines to hold that the Board has imposed a stricter standard upon its selection process than that dictated by the current law. While Grievant may have more years' experience coaching basketball than Intervenor, that alone does not necessarily make him more qualified. Grievant did not present any evidence that the Board considered improper evidence in its deliberations, or otherwise acted in an arbitrary and capricious manner in making its selection. Cf. Cromley v. Mason County Bd. of Educ., Docket No. 94-26-573 (Apr. 27, 1995).

Conclusions of Law

1. In a non-disciplinary matter, the burden is on the Grievant to prove his case by a preponderance of the evidence.

2. It is well-settled that the provisions of W. Va. Code § 18A-4-7a do not apply to the selection of coaching positions. Smith v. Logan County Bd. of Educ., Docket No. 91- 23-040 (July 31, 1991).

3. County boards of education are authorized to hire coaches under extracurricular contracts pursuant to W. Va. Code § 18A-4-16. However, Code § 18A-4-16 does not designate how, or under what standard, extracurricular assignments to professional personnel for coaching positions are to be made. Ramey v. Mingo County Bd. of Educ., Docket No. 95-29-483 (Apr. 30, 1996).

4. The standard of review for filling coaching positions is to assess whether the Board abused its discretion in the selection or acted in an arbitrary or capricious manner. Dillon v. Bd. of County of Wyoming, 351 S.E.2d 58 (W. Va. 1986); Hanlon v. Logan County Bd. of Educ., Docket No. 93-23-502 (Dec. 29, 1994), aff'd Circuit Court of KanawhaCounty, Civil Action No. 95-AA-15 (July 8, 1996); Chaffin v. Wayne County Bd. of Educ., Docket No. 92-50-398 (July 27, 1993); Smith, supra.

5. The grievance procedure is not intended to be a “super interview” for unsuccessful applicants; rather, in this context, it allows an analysis of the legal sufficiency of the selection process at the time it occurred. Stover v. Kanawha County Bd. of Educ., Docket No. 89-20-75 (June 26, 1989) .

6. An agency's decision by “appropriate personnel as to which candidate is the most qualified for a position vacancy will be upheld unless shown to be arbitrary or capricious or clearly wrong.” Sloane v. W. Va. Univ., Docket No. BOR-88-109 (Sept. 30, 1988).

7. “[I]f the grievant can demonstrate that the selection process was so significantly flawed that he/she might reasonably have been the successful applicant if the process had been conducted in a proper fashion,” this Board will require the employer to reevaluate the qualifications of the grievant and the successful applicant. Jones v. BOD/W. Va. Univ., Docket No. 90-BOT-283 (Mar. 28, 1991).

8. Grievant has failed to show that the Board deviated from the selection process outlined in the Mingo County Athletic Policy when selecting Intervenor for the position.

9. The Mingo County Athletic Policy's directive that hiring for extra-curricular positions be based on a “most qualified” standard does not trigger an analysis of the objective criteria set forth under the hiring provisions of W. Va. Code § 18A-4-7a. 10. Grievant has failed to show that the

Board's selection of Intervenor for the head boys' high school basketball coach position was arbitrary and capricious or clearly wrong.

Accordingly, this grievance is **DENIED.**

Any party or the West Virginia Division of Personnel may appeal this decision to the circuit court of the county in which the grievance occurred, and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code §29-6A-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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MARY JO SWARTZ

Administrative Law Judge

Dated: February 18, 1997