RICHARD BLAIN,

Grievant,

v.

DOCKET NO. 99-26-523

MASON COUNTY BOARD OF EDUCATION,

Respondent,

and

GENE MOORE,

Intervenor.

D E C I S I O N

Grievant, Richard Blain, filed this grievance against his employer, the Mason County Board of Education ("Board") on October 18, 1999, alleging a violation of local Board Policy 807 Hiring of Supplemental Positions, with regard to a varsity basketball coaching position. The Grievant's immediate supervisor, Principal Rick Northrup, denied the grievance on October 22, 1999, and a level two hearing was conducted on November 9, 1999, where Gene Moore intervened. The grievance was again denied by Dr. Larry E. Parsons, Superintendent, by decision dated November 29, 1999. The Board waived participation at level three, and Grievant appealed to level four on December 20, 1999. A level four hearing was conducted on February 8, 2000, and this matter became mature for decision on February 29, 2000, the deadline for the parties' submission of proposedfindings of fact and conclusions of law. Grievant was represented by Steve Angel and Judy Davis, West Virginia Federation of Teachers, Intervenor was represented by Susan E. Hubbard, West Virginia Education Association, and the Board was represented by Howard E. Seufer, Jr., Esq.,

Bowles, Rice, McDavid, Graff & Love.

SUMMARY OF EVIDENCE

Grievant's Exhibits

Ex. 1 -

Scoring Matrix for position of head varsity basketball coach.

Ex. 2 -

September 14, 1999, Mason County Schools posting of position vacancies.

Intervenor's Exhibits

Ex. 1 -

Policy 807-Filling of Supplemental Positions.

Board Exhibits

Ex. 1 -

March 16, 1998 letter from Edward G. Stephenson, UniServ Consultant, to Dr. Larry Parsons, Superintendent, Mason County Schools.

Ex. 2 -

November 5, 1997 memorandum from Kaye Legg to George Miller.

Ex. 3 -

Procedure for filling supplemental positions drafted by George Miller.

Ex. 4 -

Undated memorandum from George Miller to Brenda Scott.

Ex. 5 -

Undated Mason County Schools Employment form for Girls Assistant Softball Coach.

Ex. 6 -

Undated Mason County Schools Employment form for Golf Coach; August 18, 1999, handwritten letter from Leonard Bennett to Kaye Legg.

Ex. 7 -

Undated Mason County Schools Employment form for Varsity Girls Basketball Coach.

Ex. 8 -

Undated Mason County Schools Employment form for Head Varsity Basketball Coach.

Ex. 10 -

Listing of all contracts held by each applicant for varsity basketball coach position.

Ex. 11 -

Matrices for varsity basketball coach position.

Ex. 12 -

September 23, 1999, letter from Gregory W. Bailey to George Miller.

Testimony

Grievant testified in his own behalf. The Board presented the testimony of Kaye Legg. Intervenor did not testify or present witnesses.

FINDINGS OF FACT

1. From September 14 through 20, 1999, the Board posted notice of a vacancy in the position of head boys varsity basketball coach at Point Pleasant High School. G. Ex. 2.

2. The position announcement stated that preference would be given to in- school applicants. G. Ex. 2.

3. Four teachers applied for the posted position, including Grievant and Intervenor. G. Ex. 1.

4. Both Grievant and Intervenor were teachers at Point Pleasant High School. The other applicants were not. G. Ex. 1.

5. In determining which candidate to select, the Superintendent and the Board followed Mason County Board of Education Policy 807. G. Ex. 1.

6. Policy 807 resulted from the settlement, in 1998, of a grievance brought by the unsuccessful applicant for a middle school basketball coach position. In the written settlement agreement, the Board agreed to adopt a written policy to be used in filling future coaching vacancies. The Board also agreed to allow a panel of coaches to make recommendations concerning the policy's provisions. LII Tr., p. 37; Board Ex. 1. 7. In implementing the settlement agreement, the Board considered the recommendations of the coaches' panel. The Board also received public comment on the proposed policy before it was enacted. LII Tr., p. 37-38, 40-41.

8. The resulting Policy 807 has been consistently followed by the Board in filling every coaching vacancy which has occurred since the policy was passed in 1998. (See footnote 1) LII Tr., pp. 39-40; Board Exs. 4, 5, 6, 7, 8.

9. In pertinent part, Policy 807 provides that the following criteria will be used in filling extracurricular positions:

> *2. Applicants will be placed according to:*
>
> - *qualifications within that specific supplemental area (number of contracts successfully completed within the area)*
> - *evaluations within the past two years within the specific supplemental position area sought*
> - *number of supplemental contracts successfully completed in other supplemental areas within the county*
> - *evaluations within the past two years within any supplemental area successfully completed*
> - *a matrix will be formulated clarifying all qualifications held by each applicant for the position*
> - *non-employees holding a NFICEP-ASEP Certification required to qualify for West Virginia Coaches Authorization will be considered only as a last resort before dropping the supplemental activity (W. Va. Code § 18A-3-2a).*

3.

Preference in filling any supplemental position will be given only according to the posting. If in filling a position, the principal requests preference be given to personnel at the school, then it must/will appear on the posting.

Intervenor's Ex. 1.

10. The Board, in considering candidates for extracurricular positions since Policy 807 went into effect, has always honored any posted preference for in-school applicants by giving first consideration to in-school candidates. LII Tr., pp. 60-61. In the instant case, it did so by first considering the applications of the only in-school candidates, Grievant and Intervenor. LIV Test., Kaye Legg.

11. The Board, in comparing the credentials of the viable candidates, has always first determined whether any one of the applicants prevails over the others on the first of the factors listed under part 2 of Policy 807: “qualifications within that specific supplemental area (number of contracts successfully completed within that area)”. LII Tr., pp. 40-41; 61. In the instant case it did so. Intervenor had a history of eight (8) extracurricular contracts to coach basketball. Grievant had six (6). Gr. Ex. 1; Board Ex. 10.

12. If a candidate prevails over the others on the first of the factors listed under part 2 of Policy 807, the Board has always awarded the position to that applicant. LII Tr., pp. 40-41; 44-47; 58-60; LIV Test., Kaye Legg. Only if candidates are tied on the first factor does the Board resort to the second factor in Policy 807 (“evaluations within the past two years within the specific supplemental position area sought”) in an attempt to break the tie. Then, and only then, if the candidates are still tied after application of the second factor does the Board proceed to the third factor in an effort to break the tie, and, if necessary, the fourth. LII Tr., pp. 40-43, 59, 62-63. 13. A matrix was developed listing the qualifications of the applicants for the posted position. The matrix shows Intervenor was awarded 58 points, and Grievant was awarded 52 points. Gr. Ex. 1.

14. Neither Grievant nor Intervenor had written evaluations in their personnel files. However, both Grievant and Intervenor were awarded 10 points on the matrix in the evaluation category. Gr. Ex. 1.

14. Intervenor prevailed over Grievant on the first factor; therefore, the Board did not proceed any further to compare the two applicants under the second, third, or fourth factors of Policy 807. Under the Board's consistent practice, the first factor was determinative. LII Tr., p. 61. The Superintendent recommended, and the Board approved, the appointment of Intervenor.

DISCUSSION

Grievant contends the Board, in interpreting and applying Policy 807 with respect to the vacancy at issue, should not have allowed the first factor to determine which candidate received a coaching position. Rather, Grievant argues the Board should have considered all of the policy's factors together, in their totality, to determine which candidate was best qualified to fill the extracurricular vacancy. Grievant contends that the matrix was in error because it gave Intervenor 10 points for evaluations in the specific coaching area, when Intervenor had not coached for the last two years. Grievant believes Intervenor should not have received any points in this area, and if the 10 points are subtracted, Grievant ends up with more points than Intervenor. The Board responds that it has consistently applied Policy 807 to the selection of individuals for extracurricular contracts in the past, and applied Policy 807 to the selection of Intervenor in this case in the exact same manner. The matrix was prepared because Policy 807 requires preparation of a matrix in order to assist in the analysis if two or more candidates are tied on the first through fourth factors in Section 2 of the policy. Finally, the Board argues that, if it is determined that all qualifications should be considered, then Intervenor still prevails, because neither Intervenor nor Grievant had written evaluations in their personnel files. Therefore, if the 10 points in that category are subtracted for Intervenor, then they must be subtracted for Grievant as well, resulting in Intervenor still accumulating more points than Grievant.

The only issue to determine here is whether the Board erred in applying Policy 807 to the selection of Intervenor for the head boys varsity basketball coaching position at Point Pleasant High School. In order to prevail, Grievant must prove his case by a preponderance of the evidence.

County boards of education have substantial discretion in matters relating to the hiring, assignment, and transfer of school personnel. This 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, 177 W. Va. 145, 351 S.E.2d 58 (1986). County boards are authorized

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

"In many cases before [the] Grievance board dealing with selection of coaches, either the successful applicant or Grievant was clearly more qualified, or a county policy, which has been consistency applied, carried great weight in the selection process." Cromley v. Mason County Bd. of Educ., Docket No. 94-26-573 (Apr. 27, 1995). A policy or practice can carry great weight in selecting a candidate for a coaching position. Id, citing Prichard v. Lincoln County Bd. of Educ., Docket No. 93-22-522 (Oct. 21, 1994). An agency's decision by "appropriate personnel as to which candidate is the most qualified for a position will be upheld unless shown to be arbitrary or capricious or clearly wrong." Hanlon v. Logan County Bd. of Educ., Docket No. 93-23-502 (Dec. 29, 1994), aff'd 201 W. Va. 305, 496 S.E.2d 447 (1997); Chafin v. Wayne County Bd. of Educ., Docket No. 92-52- 398 (July 27, 1993).

It is well established that a government agency's determination regarding matters within its expertise is entitled to great weight. Princeton Community Hosp. v. State Health Planning & Dev. Agency, 174 W. Va. 588, 328 S.E.2d 164 (1985). See W. Va. Dep't of Health v. Blankenship, 189 W. Va. 342, 431 S.E.2d 681 (1993); Security Nat'l Bank v. W. Va. Bancorp, 166 W. Va. 775, 277 S.E.2d 613 (1981). Additionally, where the plain language of a policy does not compel a different result, deference must be extended to the agency in interpreting its own policies. See Dyer v. Lincoln County Bd. of Educ., Docket No. 95-22-494 (June 28,1996). Where the language in a policy is either ambiguous or susceptible to varying interpretations, the Grievance Board will give reasonable deferenceto the agency's interpretation of its own policy. See Dyer, supra; Edwards v. W. Va. Parkways Dev. and Tourism Auth., Docket No. 97-PEDTA-420 (May 7, 1998). See generally Blankenship, supra; Princeton Community Hosp., supra; Jones v. Bd. of Trustees, Docket No. 94-MBOT-978 (Feb. 29, 1996); Foss v. Concord College, Docket No. 91-BOD-351 (Feb. 19, 1993). Thus, the Board's interpretation of its policy is entitled to deference unless it is contrary to the plain meaning of the language, is inherently unreasonable, or is arbitrary and capricious. Dyer, supra.

As this Grievance Board concluded in the case of a county board which consistently interpreted and applied its own policy in filling coaching positions:

> [a]lthough reasonable minds may differ about this practice, it is not an abuse of discretion to interpret and apply the policy in this manner. Of course, if the successful applicant had no experience in or knowledge of football, or had no experience in coaching, this type of decision might be interpreted as an abuse of discretion. Such is not the case here.

Prichard v. Lincoln County Bd. of Educ., Docket No. 93-22-522 (Oct. 21, 1994). In the instant case, it is not disputed that the Board has consistently interpreted and applied Policy 807 in filling coaching positions. Although reasonable minds may differ about how the Board should interpret the policy, the Board did not abuse its discretion by interpreting and applying the policy as it did. This is not a case in which an inexperienced candidate, or one with no knowledge of basketball, was appointed to fill the vacancy. The evidence shows that Intervenor is experienced.

While Grievant clearly disagrees with the factors considered, or the weight they were given, that does not render the Board's decision arbitrary and capricious. “Past experience in the same level and activity as the posted vacancy is a reasonableconsideration and is not an abuse of discretion.” Clinton v. Monongalia County Bd. of Educ., Docket No. 95-30-451 (Mar. 30,1996).

CONCLUSIONS OF LAW

1. County boards of education have substantial discretion in matters relating to the hiring of school personnel. This discretion must be exercised reasonably, in the best interest of the schools and in a manner which is not arbitrary and capricious. Dillon v. Bd. of Educ. of Wyoming County, 177 W. Va. 145, 351 S.E.2d 58 (1986).

2. 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 and capricious manner. Hanlon v. Logan County Bd. of Educ., Docket No. 93-20-502 (Dec. 29, 1994), aff'd 201 W. Va. 305, 496 S.E.2d 447 (1997).

3. An agency's determination regarding matters within its expertise is entitled to great weight. Princeton Community Hosp. v. State Health Planning & Dev. Agency, 174 W. Va. 558, 328 S.E.2d 164 (1985); W. Va. Dep't of Health v. Blankenship, 189 W. Va. 342, 431 S.E.2d 681 (1993). When the language in a policy is either ambiguous or susceptible to varying interpretations, the Grievance Board will give reasonable deference to the agency's interpretation of its own policy. Dyer v. Lincoln County Bd. of Educ., Docket No. 95-22-494 (June 28, 1996); Edwards v. W. Va. Parkways Dev. and Tourism Auth., Docket No. 97-PEDTA-420 (May 7, 1998).

4. Grievant has failed to prove by a preponderance of the evidence that the Board's interpretation of Policy 807 in the filling of the subject position was unreasonable or arbitrary and capricious.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of the Mason County. Any 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. However, the appealing party is required by W. Va. Code § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

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MARY JO SWARTZ

Administrative Law Judge

Dated: March 20, 2000

Footnote: 1

In fact, the policy incorporates the approach consistently taken by the Board for many years before 1998 in filling extracurricular vacancies. See LII Tr., pp. 40-41, 62, 65; Board Ex. 2.