MICHAEL VANMETER,

Grievant,

v. **Docket No. 04-12-270**

GRANT COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Michael VanMeter ("Grievant") initiated this proceeding on October 15, 2003, challenging his non-selection for a coaching position. The grievance was denied at level one on October 15, 2003. A level two hearing was conducted on February 15, 2004, and was subsequently denied on March 9, 2004. The matter was heard at level three on July 13, 2004, and was denied on July 14, 2004. Grievant appealed to level four on July 19, 2004. A hearing was held in Westover, West Virginia, on October 15, 2004. Grievant was represented by John E. Roush, Esquire, of the School Service Personnel Association, and Respondent was represented by counsel, Dennis DiBenedetto. This matter became mature for consideration at the conclusion of the level four hearing.

The following facts are undisputed in this matter.

Findings of Fact

1. Grievant is employed by Respondent as a bus operator.

2. On July 2, 2003, Respondent posted the position of varsity boys' basketball coach at Petersburg High School.

3. Grievant and two individuals who were not employees of Respondent applied for the position. 4. The position was refused by the other two applicants, but Respondent did not place Grievant in the position. Instead, it was reposted.

5. Pursuant to the second posting, dated October 17, 2003, Joe Mohr, a classroom teacher employed by Respondent, was placed in the coaching position. (See footnote 1)

6. Grievant was the only qualified applicant who was interested in the position in July of 2003, and he was entitled to placement in the position after the first posting. Respondent admits that Grievant was entitled to the position for the 2003-2004 school year.

7. Mr. Mohr has been allowed to continue in the coaching position for the 2004- 2005 school year, and it was not reposted.

8. Mr. Mohr received a one-year contract for the coaching position at Petersburg High School for each school year that he has held the position.

9. Respondent has offered to reimburse Grievant the salary he would have received in the coaching position for 2003-2004, but has refused to place him in the position for the 2004-2005 school year.

10. Grievant is currently serving as the freshmen boys' basketball coach at Petersburg High School, which he has been doing for at least four years.

Discussion

In a grievance involving a non-disciplinary issue, Grievant has the burden of proving his claims by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); Holly v. Logan County Bd.of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code § 18-29-6.

This case presents an unusual situation, in that Respondent concedes that Grievant should have been selected to fill the varsity boys' basketball coach position when he applied for it in the summer of 2003. The standard of review for filling coaching positions is to assess whether the Board abused its broad discretion in the selection or acted in an arbitrary or capricious manner. Dillon v. Bd. of County of Wyoming, 177 W. Va. 145, 351 S.E.2d 58 (1986); Chaffin v. Wayne County Bd. of Educ., Docket No. 92-50-398 (July 27, 1993). Under the circumstances presented, since Grievant was the only qualified applicant interested in the job, it was an arbitrary and capricious decision for Respondent to refuse to place him in the position.

Accordingly, the only issue before the undersigned is what relief Grievant is entitled to due to Respondent's error in failing to place him in the position in August of 2003. Grievant contends that, since Respondent concedes that he should have been placed in the coaching position for the 2003-

2004 school year, he is also entitled to placement in the job for 2004-2005. Grievant's reasoning is that, if he had been hired last year, then Mr. Mohr may never have even applied for the position for 2004-2005, so Grievant would likely have been the successful applicant once again. Grievant obviously loves coaching, and merely wants the opportunity to coach at the varsity level. Grievant is only seeking back pay for the difference between his salary as freshmen basketball coach and the salary he would have received if he had been selected for the varsity position for 2003-2004. Respondent counters that, as a "citizen's coach," (See footnote 2) Grievant would only have received a one-year contract for 2003-2004, and the position would have been reposted for the succeeding school year. Thus, Grievant's only entitlement would be to back pay for last year, and he is not entitled to placement in the position. Respondent's position is supported by previous Grievance Board decisions. As discussed in Reed v. Harrison County Board of Education, Docket No. 03-17-075 (July 7, 2003), service personnel are granted coaching certificates pursuant to the provisions of W. Va. Code § 18A-3-2a, which certificates are valid only for one-year periods, pursuant to West Virginia Board of Education Policy 5202. Moreover, these certificates may only be renewed if no currently employed, certified professional educators apply for the position. Accordingly, if Grievant had been placed in the coaching position last year, his certificate would have been for one year only, and could only have been renewed if no certified professionals applied. By implication, therefore, the position would have to have been posted for the 2004-2005 school year. This ruling is consistent with a State Superintendent's Interpretation dated June 2, 2003, which stated, in part:

> [C]oaching positions held by individuals who are not currently employed certified professional educators should be posted every year. In implementing the provisions of West Virginia Code §18A-3-2a(4), West Virginia Board of Education Policy 5202 . . . provides that a coaching authorization cannot be renewed unless the applicant for the authorization receives the recommendation of the county superintendent verifying that no currently employed certified professional educator has applied for the position. If the position were not posted on an annual basis, the coaching authorizations of individuals who do not hold teacher licensure could not berenewed because these renewal requirements set forth in Policy 5202 could not be met.

Accordingly, this Grievance Board has consistently recognized that it is proper for a school board to rebid a service employee's one-year coaching position at the conclusion of each school year, pursuant to the provisions of W. Va. Code § 18A-3-2a. Jerden v. Lewis County Bd. of Educ., Docket No. 93-21-349 (Aug. 19, 1994).

Consistent with the foregoing, the following conclusions of law are appropriate.

Conclusions of Law

1. In a grievance involving a non-disciplinary issue, Grievant has the burden of proving his claims by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code § 18-29-6.

2. Service employees may be granted coaching certificates for one-year only, which may only be renewed after the position has been rebid and no certified professional educators have applied. W. Va. Code § 18A-3-2a; Reed v. Harrison County Board of Education, Docket No. 03-17-075 (July 7, 2003); Jerden v. Lewis County Bd. of Educ., Docket No. 93-21-349 (Aug. 19, 1994).

3. If Grievant had been placed in the coaching position at issue, his contract would have been for one year only, and the position would have been reposted for the 2004-2005 school year.

Accordingly, this grievance is **GRANTED IN PART** and **DENIED IN PART**. Respondent is hereby **ORDERED** to compensate Grievant for the difference in salary he would have received if he had been placed in the varsity basketball coaching position for the 2003-2004 school year. All further relief is **DENIED**.

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

Date: November 5, 2004 _____

DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

Although he had already filed this grievance, Grievant did apply for the position during the second posting period.

Footnote: 2

Pursuant to the provisions of W. Va. Code § 18A-3-2a, special certificates are issued to non-employees and service personnel who are placed in coaching positions. These individuals, who do not possess professional teaching certificates, are commonly referred to as "citizen coaches."