

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

September 1999 Term

FILED

November 17, 1999
DEBORAH L. McHENRY, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

No. 25979

RELEASED

November 18, 1999
DEBORAH L. McHENRY, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

VICTOR HOLMES,
Defendant Below, Appellee

v.

THE BOARD OF EDUCATION OF BERKELEY COUNTY,
Appellee Below, Appellee

AND

DAVID ROGERS,
Intervenor/Appellee Below, Defendant

Appeal from the Circuit Court of Kanawha County
Honorable Paul Zakaib, Jr., Judge
Civil Action No. 98-AA-9

REVERSED AND REMANDED

Submitted: September 21, 1999
Filed: November 17, 1999

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JUSTICE MAYNARD delivered the Opinion of the Court.
JUDGE RISOVICH, sitting by temporary assignment.
CHIEF JUSTICE STARCHER and JUDGE RISOVICH dissent.
JUSTICE SCOTT did not participate.

SYLLABUS BY THE COURT

1. “A final order of the hearing examiner for the West Virginia Educational Employees Grievance Board, made pursuant to W.Va. Code, 18-29-1, *et seq.* (1985), and based upon findings of fact, should not be reversed unless clearly wrong.” Syllabus Point 1, *Randolph County Bd. of Educ. v. Scalia*, 182 W.Va. 289, 387 S.E.2d 524 (1989).

2. W.Va. Code § 18A-2-9 (1990) does not prohibit a principal assigned to a school with a net enrollment equal to or greater than one hundred seventy students from simultaneously holding a coaching position.

3. “County boards of education are bound by procedures they properly establish to conduct their affairs.” Syllabus Point 2, *Dillon v. Bd. of Educ. of County of Wyoming*, 177 W.Va. 145, 351 S.E.2d 58 (1986).

Maynard, Justice:

The question before us is which of two applicants, David Rogers or Victor Holmes, should be awarded the position of head varsity basketball coach at Martinsburg High School (MHS). The defendant, David Rogers, appeals from the September 30, 1998 order of the Circuit Court of Kanawha County, West Virginia, which reversed the decision of the West Virginia Education and State Employees Grievance Board (Grievance Board) and reinstated Victor Holmes to the position. Rogers contends the circuit court erred. We agree.

FACTS

The facts in this case are essentially uncontroverted. Prior to the 1994-95 school year, David Rogers served as head varsity basketball coach at MHS for nineteen years. During nine of those years, he was also assistant principal of the high school. A principalship then opened at South Middle School (SMS) for the 1994-95 school year. Rogers applied for the position. The superintendent of Berkeley County schools, James Bennett, informed Rogers he could not be both a coach and a principal. Rogers thereafter resigned from the coaching position and was granted the principalship.

A permanent coaching position was subsequently posted. The appellee, Victor Holmes, who had served for nineteen years as junior varsity coach with Rogers at MHS,

along with varsity coaches from other regions of West Virginia, applied for the vacancy. However, the posting was withdrawn and a new position for a one-year, interim coach was posted. The only applicant was Holmes. He was hired as the interim coach and coached the 1994-95 MHS team.

At the end of the school year, the interim position expired and the coaching position was again posted. The Berkeley County Board of Education (Board) chose not to hire anyone at that time. The vacant position was once again posted on September 19, 1995. After the September posting closed, MHS principal, David Deuell, formed a selection committee to recommend a candidate for the position. The posting drew two applicants, David Rogers and Victor Holmes. Both were interviewed by the committee. The committee's vote was split 4-4, with Deuell ultimately casting the deciding vote in favor of Rogers. Committee member Dr. Taylor Perry objected to the vote and discussed the matter with the superintendent and Deuell. Thereafter, Deuell agreed to withdraw his vote for but not his recommendation of Rogers.

Superintendent Bennett sent the Board members a memorandum explaining the reasons he intended to recommend Holmes for the position. The superintendent based his recommendation of Holmes upon his belief that no principal should serve as a coach and, also, upon equity in pay. In other words, if Rogers were awarded the coaching position, he would rank second in pay in the system, earning only \$8.90 less per day than the

superintendent. The final reason given for recommending Holmes was that if Holmes filed a grievance, he would have a better than average possibility of prevailing. The Board rejected Holmes by a vote of 3-2. Superintendent Bennett then recommended Rogers, who was approved by a vote of 5-0. Rogers successfully served as both principal and coach during the 1995-96 basketball season.

Holmes filed a grievance, alleging the Board acted arbitrarily and capriciously. The Level I hearing took place before Principal Deuell, who denied the grievance. Holmes appealed to Level II. The Level II hearing was held before the superintendent's designee, Basil R. Legg, Jr., after which Holmes was awarded the position. Rogers intervened and appealed. The Board waived the matter to Level IV.

At Level IV, the Grievance Board hearing examiner (ALJ) found that the superintendent told Rogers during his interview that he would not be recommended for the position because he was a principal even though Bennett thought Rogers "was 'probably' the best qualified applicant." The ALJ reasoned that a majority of the Board simply disagreed with the superintendent's philosophy and that he could not substitute his judgment for that of the Board. The ALJ then concluded that "[c]ounty boards of education are authorized to hire coaches under extracurricular contracts pursuant to W.Va. Code § 18A-4-16, which does not designate how, or under what standard, extracurricular assignments to professional personnel for coaching positions are to be made." The ALJ could not "find that the Board's

decision to hire [Rogers] over [Holmes] was arbitrary and capricious, or clearly wrong.” Rogers was reinstated to the coaching position.

Holmes appealed the Level IV decision to circuit court, where the decision was reversed and the position was finally awarded to him. The circuit court found that the primary reason the superintendent believed Rogers should not serve as coach was because Rogers was a principal. The court quoted Bennett as stating, “the principalship in any school, and particularly a high school or a middle school is a full-time job.” The court also found the superintendent based his decision on W.Va. Code § 18A-2-9, which prohibits principals who work at schools with a student population of one hundred seventy or more from being assigned teaching duties, and Board Policy GBAA, which states that coaches must be teachers. It is from this order that Rogers appeals.

On appeal, Rogers alleges the circuit court erred for two reasons. First, he contends the court erred by ordering the Board to hire the applicant which is less qualified. Second, he contends the court erred by holding that the term “teacher” as it appears in Board policy GBAA could be construed in a fashion contrary to the definition of “teacher” as it appears in W.Va. Code § 18-1-1(g) (1998).

STANDARD OF REVIEW

The circuit court's scope of review of a hearing examiner's decision is set forth in W.Va. Code § 18-29-7 (1985), which states in pertinent part:

The decision of the hearing examiner shall be final upon the parties and shall be enforceable in circuit court: Provided, That either party may appeal to the circuit court of the county in which the grievance occurred on the grounds that the hearing examiner's decision (1) was contrary to law or lawfully adopted rule, regulation or written policy of the chief administrator or governing board, (2) exceeded the hearing examiner's statutory authority, (3) was the result of fraud or deceit, (4) was clearly wrong in view of the reliable, probative and substantial evidence on the whole record, or (5) was arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

This Court has previously said that “[a] final order of the hearing examiner for the West Virginia Educational Employees Grievance Board, made pursuant to W.Va. Code, 18-29-1, *et seq.* (1985), and based upon findings of fact, should not be reversed unless clearly wrong.” Syllabus Point 1, *Randolph County Bd. of Educ. v. Scalia*, 182 W.Va. 289, 387

S.E.2d 524 (1989). This standard was later explained by stating that

[t]his Court reviews decisions of the circuit under the same standard as that by which the circuit reviews the decision of the ALJ. We must uphold any of the ALJ's factual findings that are supported by substantial evidence, and we owe substantial deference to inferences drawn from these facts. Further, the ALJ's credibility determinations are binding unless patently without basis in the record. Nonetheless, this Court must determine whether the ALJ's findings were reasoned,

i.e., whether he or she considered the relevant factors and explained the facts and policy concerns on which he or she relied, and whether those facts have some basis in the record. We review *de novo* the conclusions of law and application of law to the facts.

Martin v. Randolph County Bd. of Educ., 195 W.Va. 297, 304, 465 S.E.2d 399, 406 (1995).

After finding the record did not support the Level II determination that the Board relied almost exclusively on community input as their reason for rejecting Holmes;¹ that coaches are hired under W.Va. Code § 18A-4-16 rather than W.Va. Code § 18A-4-7a; and that the most reliable evidence of the superintendent’s reasons for recommending Holmes was set forth in his memorandum to the Board, the ALJ concluded the Board did not abuse its discretion or act in an arbitrary or capricious manner in selecting Rogers to fill the coaching position. The circuit court disagreed and concluded as a matter of law that the ALJ “committed an error of law in failing to consider the Board’s refusal to adhere to its own Policy GBAA.” The court also concluded W.Va. Code § 18A-2-9 prohibited Rogers from serving as a coach while he was employed as a principal. We review these conclusions of law under a *de novo* standard.

DISCUSSION

¹The Level II Hearing Examiner found that “[t]he reason the Board did not select Mr. Holmes was overwhelmingly based on public opinion and community input.”

The narrow issue presented in this case is whether a principal of one school may simultaneously serve as the head varsity basketball coach in another school.² Holmes argues that Board Policy GBAA and W.Va. Code § 18A-2-9 restrict a full-time principal at a large middle school from serving as a varsity coach at a large high school given the responsibilities of a principal. We disagree.

W.Va. Code § 18A-2-9 (1990) is titled “Duties and responsibilities of school principals; assistant principals[.]” and is included in the chapter titled “School Personnel.”

The section states in relevant part:

Upon the recommendation of the county superintendent of schools, the county board of education shall employ and assign, through written contract, public school principals who shall supervise the management and the operation of the school or schools to which they are assigned. Such principals shall hold valid administrative certificates appropriate for their assignments.

* * *

A principal assigned to a school with a net enrollment equal to or greater than one hundred seventy students may not be assigned any teaching duties except on a temporary emergency basis.

²The only other error assigned in this appeal is that the circuit court awarded the coaching position to the applicant with lesser qualifications. However, neither Rogers nor Holmes seriously contends the other person is not fully qualified. It seems to us after reviewing the record that the two are equally qualified.

Holmes argues that under this code section Rogers may not be assigned a coaching job. He argues this is so because coaching is a teaching duty and Rogers is a principal of a school with an enrollment of five hundred eighty students.

We do not believe coaching is a teaching duty which is prohibited under W.Va. Code § 18A-2-9. Coaching is specifically included as an extracurricular activity in W.Va. Code § 18A-4-16(1) (1996). This section states in pertinent part:

Extracurricular duties shall mean, but not be limited to, any activities that occur at times other than regularly scheduled working hours, which include the instructing, **coaching**, chaperoning, escorting, providing support services or caring for the needs of students, and which occur on a regularly scheduled basis[.] (Emphasis added).

W.Va. Code § 18A-2-9 is intended to restrict principals to the performance of administrative tasks, prohibiting them from assuming teaching tasks, during the regular school day. This particular code section does not dictate how a principal may or may not spend his or her time after the regular school day ends. Rogers states that basketball practice and basketball games take place during evening hours but does concede that he may at times have to leave before the end of the regular school day to travel with the team. However, he states he has able assistants who cover for him when he must be away from his school. This situation will be handled no differently than one in which he must be away to attend an educational seminar or forced to stay home because of illness. We therefore hold that W.Va. Code § 18A-2-9 (1990) does not prohibit a principal assigned to a school with a net

enrollment equal to or greater than one hundred seventy students from simultaneously holding a coaching position.

We now consider whether board policy prohibits principals from being coaches. Board Policy GBAA states in pertinent part:

All coaches shall be teachers either full-time or substitute. In addition to the usual related duties, he/she shall work the additional time necessary to satisfy the requirement of a coach in any sport or sports assigned and accepted.

To make possible the above, no other position, job, or responsibility shall interfere with teaching and coaching or decrease the time and planning necessary to fulfill these responsibilities. (Emphasis added).

The circuit court determined that even though the policy does not say so, the Board meant the word “teachers” to be “classroom teachers.” In ruling on the question of whether this policy prohibits principals from serving as coaches, the court concluded, “Superintendent Bennett’s recommendation of Mr. Holmes as men’s varsity basketball coach was properly based in part upon and consistent with the Board’s own policy to hire only full-time and substitute classroom teachers as coaches.” However, when we read and apply the legal definitions of “teacher” and “classroom teacher” to the Board policy, we do not believe the Board intended to include only classroom teachers in the group that could apply for and accept coaching positions. We believe the policy would state “classroom teachers” if that was the Board’s intent.

W.Va. Code § 18-1-1(g) (1998) specifically states,

(g) “Teacher” means teacher, supervisor, **principal**, superintendent, public school librarian; registered professional nurse, licensed by the West Virginia board of examiners for registered professional nurses and employed by a county board of education, who has a baccalaureate degree; or any other person regularly employed for instructional purposes in a public school in this state[.] (Emphasis added).

This definition contrasts with the definition of “classroom teacher” which is narrowed in W.Va. Code § 18A-1-1(c)(1) (1997) to include only “[t]he professional educator who has direct instructional or counseling relationship with pupils, spending the majority of his time in this capacity.” Principals are explicitly included in the definition of “teacher.” The Board’s policy states that coaches must be teachers. Therefore, the policy includes principals in the group that can apply for coaching positions.

This Court has previously said, “County boards of education are bound by procedures they properly establish to conduct their affairs.” Syllabus Point 2, *Dillon v. Bd. of Educ. of County of Wyoming*, 177 W.Va. 145, 351 S.E.2d 58 (1986). The Board established a procedure which states that coaches must be teachers; the policy says nothing about classroom teachers. According to West Virginia law, principals are teachers. Therefore, according to the Board’s policy, principals can also be coaches. The Board is bound by this procedure. In fact, the Board’s prior practice supports this conclusion. Rogers previously served as coach of the varsity basketball squad for nine years while

simultaneously serving as assistant principal of the high school. No one contends he did not do both jobs successfully.

Education of students is, of course, the primary responsibility of our school system. For this reason, we believe these types of decisions must be made by each county on a case-by-case basis. Under the facts of this case, neither Board policy nor West Virginia law prohibits Mr. Rogers from serving as coach of the basketball team at MHS while he is principal at SMS. We cannot say the ALJ's decision was arbitrary or capricious or clearly wrong.

For the foregoing reasons, the decision of the circuit court is reversed, and this case is remanded for entry of an order affirming the decision of the ALJ.

Reversed and remanded.