

EDWIN MOORE,

Appellant

v.

BALTIMORE CITY BOARD
OF SCHOOL COMMISSIONERS,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 05-26

OPINION

In this appeal, Appellant challenges the local board's decision denying his grievance of the decision of the principal of Walbrook Uniform Services Academy ("Walbrook") not to hire him as the JV boy's basketball coach for the 2003-2004 season. The local board has submitted a motion for summary affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal. Appellant has filed an opposition to the local board's motion.

FACTUAL BACKGROUND

In the fall of 2003, the Walbrook JV boys' basketball coach quit, while the teams were being chosen and just two weeks before the first game was scheduled to be played. (Tr. 60). The morning after the coach quit, an announcement was made over the public announcement system that a new coach would be hired. A flier to that effect was posted in the teachers' lounge. Another flier was handed out. Each announcement stated that any interested person should see the co-athletic director, Coach Yolanda Jackson, by the end of the day because interviews would be held the following afternoon. Because the first game was coming up quickly, it was imperative to select a coach as soon as possible.

Five candidates inquired about the position with Ms. Jackson, including Appellant. Each interested party was told by Ms. Jackson that at the interview each had to provide a resume, a letter of interest, and three letters of reference. (Tr. 85) The candidates were also told to bring their CPR cards and First Aid Certification, but if a party did not have a card and that party were selected, the card would have to be provided within two weeks. (Tr. 62)

Of the five candidates interviewed, Appellant and Greg Mobley were certificated teachers in the school. Two of the candidates, Capriso Chisolm and Duone Clay, were resource officers at the school and the remaining candidate, Gary Gray, was unaffiliated with the school.

After the interviews, Coach Jackson, Coach Bridges, the varsity coach, and Co-Athletic Director Hedrick, ranked the candidates. Mr. Mobley was ranked first, Mr. Clay second, Mr. Chisolm third, Mr. Moore fourth, and Mr. Gray fifth. The interview team looked at the certificated teachers first and recommended to the principal, Andre Bundley, that Mr. Mobley be offered the job. (Tr. 64).

Principal Bundley, who had the final choice in the matter, overruled the interview team's recommendation and offered the job to Mr. Chisolm. Principal Bundley deemed Mr. Mobley not qualified or acceptable for certain stated reasons. (Tr. 65-66).¹

When Appellant learned that Mr. Chisolm had been hired, he sent a memo to Dr. Bundley inquiring why he and Mr. Mobley, the only two certificated candidates, were not hired. Not satisfied with the principal's reply, Appellant filed a grievance.²

He argued that the local board's rules on athletics, COMAR, and the negotiated agreement between Baltimore City Public School System ("BCPSS") and the Baltimore Teachers' Union require that the local board give certificated teachers within a school priority when filling coaching assignments.³ Appellant asserted that because the successful candidate, a resource officer within the school, was not a certificated employee, Appellant should have been offered the job after the other certificated candidate was found unacceptable.

Appellant lost the grievance at Levels I through III. He then appealed to Level IV and a full evidentiary hearing was held before Hearing Examiner Elise Jude Mason on December 14, 2004. Appellant argued that he was a certificated teacher and an acceptable and qualified candidate, having previous experience coaching in youth leagues and serving as an assistant coach at a technical community college in Massachusetts. (Tr. 18-20) He also coached the Walbrook wrestling team for one season, although the team folded mid-season. Appellant testified that he brought letters of reference to the interviews even though he had only 24 hours to produce them. When the only other teacher candidate was found unacceptable, Appellant argued that the position should have been offered to him.

At the hearing, Coach Jackson testified that Appellant was not an acceptable and qualified candidate. (Tr. 75). She noted that Appellant did not provide a letter of interest, and that his letters of reference dated back to 1999 and were addressed to jobs other than the JV coaching job. (Tr. 67) She believed that the wrestling team folded due to Appellant's

¹A review of the record discloses that the higher-ranked Mr. Clay was not selected because his interest was limited to coaching football and he just wanted to "get his foot in the door" for a football position. (Tr. 67)

²The record does not reflect what response Appellant received from Principal Bundley. It can be reasonably inferred that Dr. Bundley did not find Appellant acceptable and qualified; otherwise he would have chosen him instead of Mr. Chisolm.

³Although Appellant argued that the negotiated agreement had been violated, he did not raise the issue in his original grievance report and at Levels I through III (Tr. 50). Moreover, the Hearing Examiner found this issue moot because there was sufficient record evidence to support the conclusion that the grievance be denied. (Hearing Decision, p. 8)

inadequacy. Even though thirteen students made the team, the athletic director had to close the program down because Appellant, who was the coach, failed to supervise practices. She testified that he had preferred to attend the basketball practices as a “volunteer” coach. (Tr. 69-70). Most importantly, Coach Jackson found that Appellant could not answer the basic questions in his interview such as what the duties of the JV coach were and how to motivate the players. (Tr, 67-68, 75). Since basketball is Walbrook’s only revenue-generating sport, the interview team believed that it was important to select a qualified candidate. (Tr. 68, 75-76).

Hearing Examiner Mason did not accept Appellant’s arguments and noted that the applicable rules do not require that a person be offered a position if he or she is not deemed to be otherwise qualified or acceptable. The Hearing Examiner found that since Appellant was not found to be a qualified and acceptable candidate, there was no requirement that he be offered the position. (Hearing decision, p. 8)

Hearing Examiner Mason also referenced record evidence that indicated that Mr. Chisholm provided the required resume, letter of interest, letters of reference, and CPR and First Aid certification. There was also record evidence that Mr. Chisolm had been a volunteer lacrosse coach at Walbrook for three years, winning two championships, and had coached Pop Warner football. (Coaches Interviews, local board exhibit CEO-X-1). The provision of all required items and his successes contrasted to Appellant’s failure to provide the required items and his failure as a wrestling coach. (Hearing decision, p. 5).

On February 25, 2005, the local board adopted the hearing examiner’s recommendation and denied the grievance. This appeal followed.

ANALYSIS

Because this case involves a local policy or dispute regarding the rules and regulations of a local board, the standard of review is that the decision of the local board shall be considered *prima facie* correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.01.03E(1), *Bellote v. Anne Arundel County Board of Education*, MSBE Op. No. 03-08 (February 26, 2003).

COMAR 13A.06.03.04B requires the employment of professional, certificated educators who are acceptable and qualified for athletic coaching positions. A temporary emergency coach may be employed only if no acceptable and qualified professional certified educator is available.

COMAR 13A.06.03.04B provides:

B. MPSSAA Coaching Eligibility

- (1) Member MPSSAA schools shall employ as coaches only teachers or certificated professional educator employees of the local

Board of Education for a specific coaching assignment.

- (2) If no acceptable and qualified coaches are available from the teachers or certifiable professional educator teachers employed by the local board of education, temporary emergency coaches may be employed if the following procedures are followed:
 - a. With no acceptable professional staff members available to fill the coaching vacancy, the local school system shall attempt to locate as a coach a person certifiable as a professional educator by the State Department of Education according to COMAR 13A.12.01;
 - b. With no acceptable and certifiable professional educator available, a person acceptable to the local school system may be employed as an emergency coach;
 - c. Any person employed as a coach under the emergency provision shall comply with the following:
 - (i) The person shall be officially appointed by the local Board of Education on a 1-season basis for a specific coaching assignment. . .

COMAR 13A.06.03.01B also provides:

B. Local School Systems may adopt rules governing their athletic programs that are more restrictive than those of the MPSSAA. Less restrictive rules may not be adopted.

The BCPSS Rules on Athletics provide:

- C. Coaching eligibility
 - (1) In most instances, member schools shall permit coaching only by teachers or by staff employees of the Board of Education for a specified coaching assignment....

EMERGENCY COACHES

If no acceptable and qualified coach is available from teachers or certifiable educators, an emergency coach may be employed if the following conditions are met:

...present three letters of recommendation outlining character, experience, and ability to do an effective job in the sport(s) for which application is made...

The emergency coach shall be officially appointed by the New Board of School Commissioners on a one-season basis for a specific coaching assignment and be paid by the Baltimore City Public School system per the approved coaches scale.

Appellant argues that BCPSS Rule C that permits both teachers and staff employees to serve as coaches violates COMAR because it is less restrictive than the COMAR. While that may be, it is not relevant to Appellant's case.⁴ Mr. Chisholm was hired on a one season contract under the provisions for hiring temporary emergency coaches. The BCPSS rule on emergency coaches mirrors COMAR in that an emergency coach may only be hired "if no acceptable and qualified coach is available from *teachers or certifiable educators*".⁵

Our review of the record in this case discloses that the two certificated teacher candidates were found not to be acceptable and qualified. Mr. Mobley was not acceptable and qualified for certain stated reasons. Appellant was not acceptable and qualified because he failed to provide the required documentation (letter of interest, current letters of recommendation), failed to be an effective wrestling coach, and failed to demonstrate his ability to respond to basic interview questions. Thus, an acceptable and qualified individual was hired as an emergency one season coach.

⁴We request BCPSS to align their rules more closely to COMAR as they relate to staff members.

⁵ Appellant raises for the first time in his opposition an argument that Mr. Chisolm is not an "employee" under the BTU Negotiated Agreement. Appellant did not raise this issue before the local board. The State Board has consistently declined to address issues that have not been reviewed initially by the local board. *See Craven v. Board of Education of Montgomery County*, 7 Op. MSBE 870 (1997) (failure to challenge suspension before local board constituted waiver); *Hart v. Board of Education of St. Mary's County*, 7 Op. MSBE 740 (1997) (failure to raise issue of age discrimination below constituted waiver on appeal). Thus, we find that Appellant has waived his right to raise this matter for the first time on appeal to the State Board.

CONCLUSION

For all of these reasons and finding that the local board did not act arbitrarily, unreasonably, or illegally in this matter, we affirm the decision of the Baltimore City Board of School Commissioners.

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July 20, 2005