

No. 25979 - Victor L. Holmes v. The Board of Education of Berkeley County and David Rogers

FILED

January 12, 2000
DEBORAH L. McHENRY, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

RELEASED

January 14, 2000
DEBORAH L. McHENRY, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Starcher, C. J., dissenting:

I.

In reversing a well-reasoned decision of the circuit court, this Court has erroneously focused solely upon the interests of a teacher or principal who wishes to engage in extra-curricular work or other activities, rather than on our clear law that school hiring decisions must be based upon a professional judgment regarding the best interest of the school system as a whole. The majority opinion in this case states that “[t]he narrow issue presented in this case is whether a principal of one school may simultaneously serve as the head coach in another school.” The majority totally misapprehends the basis for the circuit court’s decision, and ignores the record, which is replete with evidence that indicates that the Board hired Mr. Rogers on an improper and illegal basis.

The record clearly shows that the Berkeley County Superintendent’s recommendation of incumbent Coach Holmes was based upon the superintendent’s evaluation, as a professional educator, as to which candidate’s hiring would further the best interests of the school system as a whole. The professional opinion of the superintendent that Coach Holmes’ temporary appointment should be made permanent was cavalierly rejected by a 3-2 decision of the school board. Mr. Holmes’ appointment was rejected and

Mr. Rogers was hired by the Board solely on the basis of private lobbying by Mr. Rogers' supporters and family members.

The majority opinion's diversionary focus upon "the narrow issue" of whether a principal may serve as a head basketball coach in another school thus misapprehends and overlooks the real issue in this case: the extent to which school board hiring decisions may ignore the sound professional opinion of the school superintendent in favor of private lobbying of board members by supporters of one job candidate.

For more than a decade, *Dillon v. Bd. of Educ. of County of Wyoming*, 177 W.Va. 145, 351 S.E.2d 58 (1986) has stood for the proposition that school board hiring decisions must consider the best interest of the entire school system, not the preferences of those who most effectively lobby school board members in private. The majority decision in this case pays lip service to the spirit of *Dillon*, stating that "[e]ducation 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." But the majority holding actually constitutes a major departure from the important and fundamental principle of *Dillon*, that school hiring decisions must be rationally based upon the best interests of the school system as a whole. The majority has said that it is okay -- in the best interests of the schools -- to permit one individual to simultaneously serve as the principal of a 500-plus student middle school and as the head varsity basketball coach of the county's major high school. I disagree.

This Court should have either affirmed the Circuit Court’s judgment, or remanded to the Berkeley County School Board, to reopen the hiring process, so that a head basketball coach may be selected in an open public process, based on rational criteria and the best interests of the entire county school system and its students.

II.

Prior to the anomalous decision in the instant case, this Court has consistently followed the standard of review applied to hiring decisions of county boards of education as set forth in Syllabus Point 3, *Dillon, supra*:

County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. Nevertheless, this discretion must be exercised reasonably, *in the best interests of the schools*, and in a manner which is not arbitrary and capricious.

See also Syllabus Point 6, *Triggs v. Berkeley County Board of Education*, 188 W.Va. 435, 425 S.E.2d 111 (1992) (emphasis added).

Totally absent from the ALJ’s decision at level IV (and this Court’s majority opinion) is any reference or consideration of the “best interests of the schools” requirement of *Dillon*, which the Level II hearing examiner and the circuit court properly considered. Indeed, in citing the holding of Syllabus Point 3 of *Dillon* in his order, the ALJ at Level IV did not even mention the “best interests of the schools.”

The circuit court properly recognized that *Dillon* requires that the school board take into consideration the best interests of the schools in its hiring decisions. The circuit

court's conclusions of law numbered 3, 14 and 16 are based upon the "best interests of the schools" criteria in *Dillon*:

3. The Supreme Court of Appeals of West Virginia has consistently recognized that county boards of education must also consider the best interests of the schools in hiring decisions:

County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. Nevertheless, this discretion must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious. Syllabus Point 3, *Dillon v. Bd. Of Educ. Of County of Wyoming*, 177 *W.Va.* 145,351 S.E.2d 58 (1986).

14. *Dillon* mandates that the Board exercise its discretion not only reasonably and in a manner which is not arbitrary and capricious, but also in the best interests of the schools.

16. By ignoring *Dillon*'s requirement that the best interests of the schools be a consideration in any decision reached by the Superintendent and the Board, the Administrative Law Judge erred as a matter of law in concluding that the best interests of the schools was not a legal standard under *Dillon* by which the Board was bound in exercising its discretion in hiring a men's varsity basketball coach at [Martinsburg High School].

III.

The record below clearly shows that the Board of Education of Berkeley County did not base its decision upon the best interests of the schools; rather, its hiring process was entirely driven by private lobbying by Mr. Rogers' supporters and family. The majority opinion ignores this crucial fact.

The undisputed record evidence establishes that prior to recommending Mr. Holmes as men's varsity basketball coach, Superintendent Bennett learned that members of the Berkeley County Board of Education were contacting members of the selection committee, and were receiving public input. Superintendent Bennett felt the Board members were "overstepping their bounds as a board" and warned that their actions "could conceivably taint the whole process." Superintendent Bennett advised Board members to contact their counsel, and subsequently, Board President Jane Miller, Board counsel Erwin Conrad and the superintendent met. The Board's attorney advised Ms. Miller and Superintendent Bennett testified that it was brought to his attention that "the Board had been lobbied, that they had, in fact, become involved in selection" and "that there had been some direct contact with Mr. Rogers and individual Board members[.]" Superintendent Bennett also testified that the Board had been contacting the members of the selection committee after they voted on Mr. Rogers and Mr. Holmes. Significantly, Superintendent Bennett believed the Board had received *ex parte* communications and become involved "prior to the recommendation."

Board members testified that they had received phone calls from the community about the two candidates, but that most of the calls were made on behalf of Mr. Rogers. For example, Board member George Sonnik testified that he received 42 telephone calls in favor of Mr. Rogers as basketball coach. Mr. Sonnik also admitted that he received a telephone call from Mr. Rogers' brother.

The testimony of all five Board members was taken at the Level II hearing, all of whom acknowledged that they had not evaluated Mr. Holmes. Board members admitted that their vote for Mr. Rogers was based upon community input. One board member, John Miller, acknowledged at the Level II hearing that he did not even know Mr. Holmes, until he “walked in here today.”

Dillon requires that hiring decisions be based upon the best interests of the schools. Clearly, the interest of the schools is best promoted by a policy which requires hiring decisions to be made based on a fair and rational evaluation of the candidates and not undocumented, *ad hoc*, lobbying by supporters of one candidate .

The Board’s process for selecting a coach for Martinsburg High School was an exercise in the art of political connections and backdoor lobbying, in which Rogers’ supporters contacted Board members for the purpose of influencing their vote. The record is undisputed that the Board did not conduct any independent evaluation of the candidates. Board members acknowledged that community support and personal preferences were the primary factors in the selection Mr. Rogers. *Dillon* does not allow a school board’s selection of coaches to be based upon private lobbying of Board members. *Cf. Mason County Bd. of Educ. v. State Superintendent of Schools*, 165 W.Va. 732, 274 S.E.2d 435 (1980) (while citizens can initiate complaints against an employee of a school system, the evaluation of the competency of professional and administrative school personnel is placed in the hands of school professionals).

In its final order, the circuit court properly concluded as a matter of law that “[t]he Board’s rejection of the Superintendent’s recommendation of Mr. Holmes and its subsequent choice of Principal Rogers was unlawfully and arbitrarily based on an unscientific measurement of public input and opinions regarding public preference of Mr. Rogers as basketball coach, a factor which cannot lawfully serve as the basis for such a decision.”

Based upon the undisputed record evidence, the circuit court properly concluded that the Level IV ALJ erred as a matter of law in approving a hiring Process by the Board which was based upon uncontrolled public input contrary to *Dillon*.

IV.

The circuit court in its final order recognized that the Superintendent of Berkeley County, who was charged with the responsibility under *W.Va. Code*, 18A-4-16 [1996], of recommending a coach to the school board, considered the best interests of the entire school system in recommending the appellee for the coaching position. The circuit court found that “[t]here is no evidence in the record that responds to or otherwise rebuts Superintendent Bennett’s rationale for concluding that the best interests of the school system required that a principal such as Mr. Rogers focus his entire attention upon his responsibilities as principal of a large middle school.”

In a memorandum to the Board, the superintendent explained that his “final decision is based on what [he] feels is best for Berkeley County Schools and particularly the academic growth of the system:”

1. Past history would indicate that administrators (principals) have been removed from extra-duty activities which have run concurrently with their administrative contracts, i.e., school coordinators, school referral agents, etc. By employing Mr. Rogers as Principal of South Middle School and an extra-duty contract for coaching at Martinsburg High School, we would be reviving a problem that has already been solved.

3. The importance of the principalship in developing quality instructional programs has been proven time and time again by research to be the key element in a successful school program. As we continue to make schools and teachers more accountable, the principalship will become even more important.

4. What we accept as our lowest standard is our standard. As an example, if we are to instruct [one principal] to remain at his school longer in the evenings, can we then turn around and excuse Dave Rogers for basketball practice or to leave early for an away game.

5. I would predict that we will experience a deterioration in the effectiveness of the South Middle School faculty. We have already picked up on some of these indicators.

At hearing, Superintendent Bennett testified that he recommended Mr. Holmes as basketball coach because Mr. Holmes

. . . had served as the interim coach for a year and had successful evaluations and in fact on his evaluations been recommended for reemployment by the athletic director.

He was a member of the faculty in the building at Martinsburg High School. He had had several years in coaching in various sports and had been successful, and I felt that for Martinsburg High School and for the system, that for the two candidates, he was the better candidate.

Moreover, Superintendent Bennett testified that he “firmly believe[s] that the most vital, important thing in the school system is what you do academically, whether kids do achieve and whether they do remain in school, and I think that--without any question, the principal directs those activities and I think it’s the most important position as far as success in a school system[.]”

By statutorily delegating to the superintendent the responsibility of recommending coaches for employment, the Legislature has recognized the managerial prerogatives of the superintendent in deploying personnel in the manner which he considers most likely to achieve the overall educational objectives of the school system as a whole. Moreover, as discussed above, the Superintendent was concerned about the Board’s selection of a coach based upon community input, rather than the best interests of the schools.

In its final order, the circuit court properly recognized that the power of the superintendent must be exercised in the best interests of the schools, and that this was the ground upon which the superintendent recommended Mr. Holmes to serve as coach at Martinsburg High School.

The circuit court further found that “there is no dispute in the record at either Level II or at Level IV that Superintendent Bennett’s responsibility in recommending coaches and other school personnel for hiring is to take into consideration the best interests of the entire county school system.” The circuit court properly concluded that “Superintendent Bennett’s recommendation of Mr. Holmes as men’s varsity basketball coach was based upon the valid legal criteria that the best interests of the schools would not be served by having the

full-time [South Middle School] principal charged with ‘administrative and instructional supervisory responsibility for the planning, management, operation and evaluation of the total educational program’ of over 500 children also serve as varsity coach at [Martinsburg High School].”

The circuit court’s findings of fact and conclusions of law as they relate to the best interests of the schools are clearly supported by the undisputed record evidence and the criteria established in *Dillon*.

V.

In addition to the glaring defects in the hiring process of the Board in this case, the majority also ignored the undisputed record evidence which shows that the best interests of the children at South Middle School are not served by having Mr. Rogers act as principal of South Middle School and varsity basketball coach at Martinsburg High School.

The record shows that South Middle School, where Mr. Rogers serves as principal, has the highest drop-out rate and is among the lowest in attendance rate and promotion rate. While the majority opinion essentially concludes that Mr. Rogers’ responsibilities as principal at South Middle School do not preclude him from serving as varsity basketball coach at Martinsburg High School, there is absolutely no consideration given to what the county superintendent found to be in the best interests of the students at South Middle School.

The circuit court stated that “[w]hile the school report card for SMS does not indicate that principal Rogers is responsible for such low marks, such a report card supports Superintendent Bennett’s view that the best interests of the schools requires principals at large middle and high schools to serve full time and not coach.”

The interests of the children of South Middle School would best be served by a principal who is devoted full-time to the planning, management, operation and evaluation of the total education program of his school rather than focusing on the success of a basketball program at another school. The majority opinion gives no consideration to the educational interests of the students at South Middle School. Indeed, the majority suggests that Mr. Rogers has assistants who can perform his job so that he can dedicate his time to varsity coaching at Martinsburg High School. This Court overlooks the important fact that the principalship at any large school is a full-time position and that the principal, not his assistants, is charged with the “administrative and instructional supervisory responsibility for the planning, management, operation and evaluation of the total educational program of the school . . . to which he is assigned.” *W.Va. Code*, 18A-2-9 [1990].

The evidence below is undisputed that the responsibilities of a principal at a large middle school are full-time and that they extend beyond the dismissal of students at the end of each school day. This Court overlooks the fact that principals have responsibilities after school. At the Level IV hearing, Rick Deuell, the principal of Martinsburg High School, was questioned about his full-time responsibilities and testified as follows:

Q . . . And would you agree that the principal's duties are full-time?

A My duties are very full-time. Yes, sir.

Q And that's - in fact, I think you said that it's more than just a 7:00 to 3:00 type job, isn't that correct?

A Yes, sir. My job is way more than 7:00 to 3:00. I'm responsible for the entire operation of the school.

Q And, in fact, I believe you have - what time do you arrive at the school in the morning?

A 6:15.

Q And that goes on to, what, 3:00 in the evening?

A I have if I have activities, I like to leave at 3:30 so I can get back; if not, I'll stay as I need to.

Q And most principals do, in the school system, correct? And you have after-school functions that you have to attend in the evenings, too?

A That's correct. That's correct.

Superintendent Bennett also testified that "the principalship in any school, and particularly a high school or a middle school is a full-time job" which includes extra duties after school. Superintendent Bennett further explained that "the research, for years, has pointed to the key element in any effective school program is the building level principal, and how effective they are."

As a practical matter, in light of incidents at Columbine High School in Littleton, Colorado and other schools throughout the country, our law properly requires a principal to dedicate his attention to the full-time responsibilities of overseeing the management, administration, education, supervision, welfare and safety of the students and faculty at his school. The overwhelming responsibilities of a principal, especially in light of the recent school violence which has shocked our country, mandate that the principal be present at his school, not away, somewhere else, coaching a varsity basketball game for

another high school. Coaching men's varsity basketball cannot be more important to a principal than a principal dedicating his full-time attention to his increasingly demanding responsibilities. The circuit court's decision was consistent with *Dillon*, and in the best interests of South Middle School children, and should be affirmed.

VI.

For the foregoing reasons, I dissent. I am authorized to state that Judge Risovich, sitting as Special Justice, joins in this dissent.