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THE LEGAL ASPECTS OF THE DISMISSAL OF A TEACHER/COACH FROM ONLY HIS COACHING RESPONSIBILITIES

by

Johnny H. Phillips

A Dissertation Submitted to
the Faculty of the Graduate School at
The University of North Carolina at Greensboro
in Partial Fulfillment
of the Requirements for the Degree
Doctor of Education

Greensboro
1987

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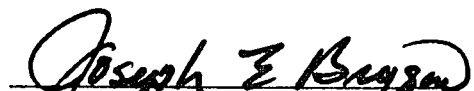

Dissertation Advisor

APPROVAL PAGE

This dissertation has been approved by the following committee of the Faculty of the Graduate School at the University of North Carolina at Greensboro.

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March 30, 1987
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Date of Final Oral Examination

PHILLIPS, JOHNNY H., Ed.D., The Legal Aspects of Dismissing a Teacher - Coach From Only His Interscholastic Coaching Responsibilities. (1987) Directed by: Dr. Joseph E. Bryson, Pp. 218.

This study is an investigation of the legality of the dismissal of a teacher/coach from only the interscholastic coaching responsibilities.

As long as American society is considered "sports minded," coaches will be examined by those individuals who feel qualified to determine the staffing and conduct of interscholastic sports programs. The typical process of community, parental, and administrative involvement with interscholastic sports has allowed the peripherally involved to approach, criticize and eventually ask for the dismissal of coaches not meeting certain expectations.

After an extensive study of the historical and legal aspects of teacher/coach dismissal, the following conclusions were drawn:

1. All indications lead one to believe that there will be continuous legal activity concerning the employment of teacher/coaches and their dismissal.

2. The nature of the educational function does not lend itself to new areas of legal questioning; therefore, it is predictable that the same attempts to challenge due process will continue to appear.

3. Forces such as the questioning attitude of the public and an increased awareness of individual constitutional rights are affecting teacher rights and working conditions in America today as never before.

4. Litigation of teacher/coach dismissal issues in North Carolina has been infrequent. To date, there are less than five on record.

5. In nineteen states teacher/coaches do not have due process as coaches.

6. As of 1985 thirty-four states do not grant tenure as a coach.

7. Intentional discrimination must be proved when a disparate racial or sexual impact is achieved when hiring, promoting, transferring, or firing employees.

8. Most states have basically followed the same pattern in utilizing divisible contracts for teacher/coaches. That is, separate contracts are signed for the teaching and coaching responsibilities.

9. Due process must be adhered to in teacher/coach dismissal proceedings.

ACKNOWLEDGEMENTS

I would like to extend special appreciation to Joseph E. Bryson for serving as Dissertation Advisor and for his guidance, advice, assistance and encouragement during this study. My sincere appreciation is also extended to Dale Brubaker, Harold Snyder and Elisha M. "Bud" Rallings for their suggestions and encouragement as well as for their willingness to serve as committee members.

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Finally, my greatest debt of appreciation is extended to my family -- my wife, Sylvia and my three children, Jon, Jan and Jef, for their understanding, patience, sacrifices, love and support during the development and completion of this study.

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CHAPTER I

INTRODUCTION

> I have always resented coaches who filed suit, but now I feel that I do not have any alternative -- I am not eager to plead the situation through the media. The courts will suffice.[1]
>
> Coach "Chuck" Mills

This statement by Chuck Mills, former football coach at Wake Forest University, cited in Sports and The Courts by Herb Appenzellar and Thomas Appenzellar typifies the position taken by most coaches -- they prefer not to appear in court. They would rather be on the playing fields and in the gymnasiums competing in the athletic arena.

Coaching is an occupation that leaves one constantly vulnerable to criticism. In America's increasingly litigious society, more and more athletic-oriented cases are appearing in the courtroom. These cases may involve academics, admissions to colleges and universities, athletic equipment and

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[1]Herb Appenzellar and Thomas Appenzellar, Sports and The Courts (Charlottesville, Virginia: The Michie Company, 1080), p. 151.

fields, discipline, athletic injuries, and many other things. But the majority tend to involve some issue that deals with employment.

For years both state and federal courts have tended not to override the discretionary responsibilities of local school boards when it comes to personnel matters. Consequently, local school boards have enjoyed considerable freedom in affairs that deal with employment, assignment, nonrenewal, suspension, transfer and dismissal of teachers and coaches. However, in recent years, courts have begun to require school boards to be more reasonable in their dealings with personnel.[2]

Herb Appenzeller has looked at coaching issues that pertain to employment of coaches. He maintains:

> The majority of lawsuits involving coaches deal with some area of employment. Coaches frequently go to court when discrimination is attributed to racial or sexual bias. They also seek judicial relief in cases pertaining to tenure, dismissal, divisible contracts and defamation of character.[3]

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[2]Herb Appenzeller, Sports and Law (Charlottesville, Virginia: The Michie Company, 1985), p. 79.

[3]Ibid., p. 151.

The very survival of athletic programs depends on the ability of personnel to remain responsible for their actions. It stands to reason then that the evaluation of coaches is more important than ever before.

Effective coaching is a concern of most school superintendents, high school principals, athletic directors, and coaches. What are the qualities demanded in effective coaches? Often coaches are asked to be expert teachers and tacticians as well as trainers, counselors, disciplinarians, and acceptable role models. Most of the time a knowledge of public relations, motivation, learning readiness, training techniques, motor learning, and maturity rates is a must. Coaches are also expected to attend professional clinics or workshops. Winning is often emphasized as a criterion for evaluating secondary school coaches.

Certainly evaluation of coaches in their performance of coaching duties needs no defense. It is no less important than the evaluation of any other school program. Positive evaluation demonstrates that the school system is responsibly using tax dollars.

Constant evaluation is vital to both administrator and teacher/coach. Periodic exchange may help the employee and employer avoid unpleasant situations. Then again, situations may develop that lead to dismissal proceedings. A good evaluation includes both judgmental and developmental features. Judgmental evaluation concentrates on past performance and seeks to reward improved performance. Developmental evaluation concentrates on improving future performance through self-learning and growth.[4]

Therefore, one aspect of this study will be to consider the issue of teacher/coach evaluations in the dismissal procedure. Whether evaluation of the dismissed coach has been done in a professional manner may be a question. Whether or not proper due process has been afforded the coach with regard to the evaluation may be another.

There are many reasons why coaches have been relieved of coaching duties. No attempt in this study will be made to examine each and every one of

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[4]John W. Gratto, "Competencies Used to Evaluate High School Coaches," Journal of Physical Education Recreation and Dance (V. 54 No. 5, May 1983) p. 59.

them except as they may bear on the issue of dismissal. A look at some of the issues and an examination of the legal implications for school administrators and boards of education forms the basis for this study.

PURPOSE

The purpose of this study is to determine the legal issues involved for boards of education and school administrators when a teacher/coach is dismissed from his coaching position but not his teaching position. The available court cases were analyzed for the possible consequences and implications. This study is being developed in a factual manner and will deal with the legal questions and the extent to which these have been challenged and litigated.

QUESTIONS TO BE ANSWERED

Some very basic questions relating to the topic of study which will be answered are:

1. What are the major legal issues regarding teacher/coaching assignments?
2. Which of these issues are most often included in court cases related to the dismissal of a teacher/coach from his coaching responsibilities?

3. Which of the legal principles established by the "landmark" decisions regarding teacher dismissal are applicable to legal issues involving dismissal from coaching responsibilities?

4. Based on the results of recent court cases, what specific issues related to teacher dismissal from coaching assignments are being litigated?

5. Can any specific trends be determined from an analysis of the court cases?

6. Based on the established legal precedents, what are the legally acceptable criteria for the dismissal of a teacher/coach from his coaching responsibilities?

SCOPE OF THE STUDY

This is a historical and legal study of the legal ramifications of the dismissal of a teacher/coach from only his coaching responsibilities in the public schools of the United States. The research describes the extent to which these dismissals have been challenged and litigated, the reasons for the litigation, the results of the major court cases, and the possible effects these court decisions will have on school boards and school officials.

The major thrust of the research is directed toward the legal aspects of litigation related directly to the dismissal of a teacher/coach from the coaching position.

METHODS, PROCEDURES, AND SOURCES OF INFORMATION

The basic research technique of this historical and legal study is to examine and analyze the available references concerning the legal aspects of the dismissal of a teacher/coach from the responsibility of coaching.

In order to determine if a need existed for such research, a search was made of Dissertation Abstracts for related topics. The researcher did not find any dissertations that addressed the issue of teacher/coach dismissals from a legal perspective. Journal articles related to the topic were located through use of such sources as Reader's Guide to Periodical Literature, Education Index, and the Index to Legal Periodicals.

General research summaries were found in the Encyclopedia of Education Research, and in a review of related literature obtained through a computer search from the Educational Resources Information Center (ERIC).

Federal and state cases related to the topic were located through use of the Corpus Juris Secundum, American Jurisprudence, the National Reporter System, and the American Digest System. Recent court cases were found by examining case summaries contained in issues of the NOLPE School Law Reporter. All of the

cases were read and placed in categories corresponding to the issues noted from the general literature review.

In using these sources one should consult with a reference law librarian and a legal secretary for appropriate guidance.

Other references included books, journal articles and newspaper articles. Information obtained from personal interviews is also presented in this study.

DESIGN OF STUDY

This study is an investigation of the legality of the dismissal of a teacher/coach only from coaching responsibilities and has been carried out by an analysis of cases related to the subject matter that have been litigated. Chapter One will serve as an introduction which will describe the study.

Chapter Two contains a review of related literature. In addition to a review of the literature dealing specifically with the legal aspects of the dismissal of a teacher/coach from coaching responsibilities, this chapter includes a summary review of the general educational research on teacher/coach dismissal.

Chapter Three includes a narrative discussion of the major legal issues related to the dismissal of a teacher/coach from the coaching position. An attempt is made in this chapter to show the relationship between

the legal issues and the major educational issues identified in the reviews of the literature in the previous chapter.

Chapter Four contains a general listing and a narrative discussion of the recently litigated court cases which contain some references to the topic of teacher/coach dismissal. The first category of cases includes those United States Supreme Court landmark decisions relating to such broad constitutional issues as the legality of divisible contracts, racial and sexual discrimination, and due process of law. The other categories of cases selected for review in this section include those related to teacher/coach dismissal.

The concluding chapter of the study, chapter five, contains a review and summary of the information obtained from the review of the literature and from the analysis of the selected court cases. The questions asked in the introductory part of the study are reviewed and answered in this chapter. Finally, legally acceptable criteria for the dismissal of a teacher/coach from coaching responsibilities are included.

DEFINITION OF TERMS

For the purpose of clarification, the following terms used in this study are defined:

Secondary school teacher/coach. This term will designate a contracted teacher who is also assigned the responsibility of athletic coaching.

Teaching contract. This is the legal contractual-document, entered into by the state and the individual teacher, which establishes the basic terms of employment for teaching.

Divisible contract. This is a contract that is divided into more than one part. There is usually a part which pertains to teaching duties and another part which pertains to other assigned duties (in this case, coaching responsibilities).

Indivisible contract. This is a contract that is singular in nature. There is only one part which specifies the duties of the contracted party and the responsibilities of the state.

Extra-curricular assignments. These are the assigned activities outside the regular course of study or beyond the limits of the teaching duties.

Teacher tenure. This means that a teacher has successfully experienced a trial period and now enjoys more permanence in the position.

Due process. This means the legal steps and measures to which a person is entitled to protect himself and his interests.

Racial discrimination. This means to make a distinction or make a difference in favor of or against someone because of his or her race.

Sex discrimination. This means to make a distinction or make a difference in favor of or against someone because of his or her sex.

The legality of the dismissal of a teacher/coach from his coaching position has become a more litigous question in recent years. During the sixties, seventies, and now into the eighties the courts have handed down more teacher/coach dismissal decisions than in the previous decades of the twentieth century. The level of legal action now appearing in the courts is indicative of the times and reflects the urgency of the need for appropriate professional activity between boards of education and teacher/coaches.

CHAPTER II

REVIEW OF RELATED LITERATURE

OVERVIEW

The literature regarding the role of the teacher/coach addresses the issue of performance in both areas. However, desirable as it may be, the teacher/coach may be unable to give his or her best effort to these dual role responsibilities.[1]

What does seem to be most important is to be successful and thus to fulfill the expectations of significant others in the school and community settings.[2]

According to Charles Hungerford, the hiring process plays a large role in establishing the prospective coach's attitude toward his teaching and coaching.

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[1]Thomas J. Templin and Jeff Washburn, Winning Isn't Everything...Unless You're the Coach," Journal of Physical Education, Recreation and Dance 52 (November-December 1981):16.

[2]Ibid., p.16.

While all conflicts in the teaching/coaching issue may never be eliminated, they may be improved upon in the hiring process when the following are considered:

- Philosophy of the community/school
- Philosophy of the physical education and athletic programs
- Written job descriptions
- Review of candidates
- Involvement of other teacher/coaches in the selection process
- Conditions of employment
- Orientation of new personnel
- Evaluation[3]

Hungerford further observes that although it may be possible for many persons to teach and coach competently, exemplary dual role performance may be unrealistic for individuals on whom pressures of coaching weigh most heavily. Thus, it is not surprising that many teacher/coaches retreat to the coaching role.[4]

In Athletics and the Law, Herb Appenzeller goes beyond the questions of hiring practices and observes that on the secondary level, many teachers and coaches are beginning to sue school boards when their contracts

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[3]Charles W. Hungerford, "Hiring Physical Educators and Coaches," Journal of Physical Education, Recreation and Dance 52 (November-December 1981):19.

[4]Ibid., p. 20.

are terminated. A 1973 case is typical of the latest trend that is developing in such situations.[5]

In the case of Hoover v. Lexington Board of Education et al[6] Wayne Hoover had coached for 21 years in North Carolina. For eight years he had served as a director of physical education, a social studies teacher, basketball coach and golf coach. When the Lexington School Board fired him by a 3-2 vote, Hoover filed a $150,000 lawsuit against the school board, superintendent, and principal. Hoover charged the defendants with denying him his right of due process.[7]

After Hoover was called before the Board to discuss his coaching ability, not his teaching record, the Board voted 2-2-1 to rehire him. The school attorney interpreted the tie as favorable to Hoover, but Robert Morgan, North Carolina's Attorney General, considered it a mandate for dismissal.[8]

A final hearing was held and Hoover was offered the position of "probationary teacher," which he rejected. He insisted that he qualified for the position of "career teacher" due to his length of service.[9]

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[5]Herb Appenzeller, Athletics and the Law, (Charlottesville, Virginia: The Michie Company, 1975), p. 6.

[6]Hoover v. Lexington Board of Education et al, 253 S 73 (1973).

[7]Idem.

[8]Ibid.

[9]Ibid.

Following a civil action suit in the United States District Court, a consent order was entered into by Mr. Hoover, plaintiff and the Lexington City Board of Education, et al, defendants, which stipulated: the plaintiff shall resume teaching duties on September 24, 1973, with the City of Lexington, North Carolina, Administrative School unit for the entire school year, 1973-74, with full pay from August 13, 1973, through the end of the school year.[10]

The Hoover case is typical and Appenzeller observes in Sports and the Courts that the majority of court cases involving the coach come under the heading of tenure and dismissal. Many coaches insist that they are teachers and should be protected by teacher tenure acts. Situations that center around dismissal raise questions of due process and the legality of divisible contracts. When a coach is fired or his salary is reduced, the school officials' authority to sever the contract is often challenged and the court usually becomes the arbitrator in such a situation.[11] Public school coaches in most instances are hired on

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[10]Consent Order, The United States District Court for the Middle District of North Carolina Salisbury Division, September 24, 1973.

[11]Appenzeller, Sports and the Courts, p. 160.

contracts that are separate from the teaching contract. As such, the school system can terminate a coaching contract at the end of an academic year for little or no reason. Many coaches insist that they are teachers and should be protected by teacher tenure acts. Situations that center around dismissal raise questions of due process and the legality of divisible contracts. A common allegation is that the coach failed to receive due process of the law and guarantees of the fourteenth amendment.[12]

It may well be that modern-day coaches will spend many hours preparing for their most important contest ever, one that will be contested in the courtroom and not on the playing field.[13]

Another case, found in Appenzeller's Sports and the Courts, illustrates the charge of due process violation and occurred in Florida in 1972 at the collegiate level.

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[12]Idem., p. 79.

[13]Idem., p. 151.

In Parker v. Graves[14] John Parker, a law student and part-time assistant for the University of Florida Athletic Department, became embroiled in a campus-wide controversy that led to his dismissal. Parker became the spokesman for a group of disgruntled athletes who formed an organization known as the League of Florida Athletes. The athletes tried to alter the athletic department's rules regarding dress and grooming.

Parker wrote several articles in the school paper criticizing the athletic department's rules. After the articles appeared in the school paper, Parker's supervisor recommended his dismissal. The assistant athletic director charged Parker with failure to enforce regulations concerning dress codes, grooming and quiet hours in the athletic dormitory. The athletic director met with Parker in the presence of a university official and dismissed him for conduct disloyal to the athletic program. He contended that Parker's personal views seriously conflicted with his assignment in the athletic department.

The controversy took place during a disappointing football season and increased tension among athletics and coaches alike. While some athletes supported the

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[14]Parker v. Graves, 340 F. Supp. 586 (N.D. Fla. 1972).

articles, others bitterly resented them and insisted that they did not reflect the views of all the athletes. In addition, the unfavorable publicity created by the articles caused prospective athletes to turn down visits to the campus and adversely affected the recruiting.

Parker instituted a lawsuit claiming that he had been denied his right of free speech and expression as guaranteed by the First Amendment. The United States District Court, however, viewed the plaintiff's conduct as divisive since it created:

> Serious disciplinary problems and discord within the University Athletic Association which disrupted the orderly and efficient administration of the athletic department.[15]

The court held that the plaintiff was disloyal to the athletic director by failing to carry out the responsibilities for which he had been employed. It did not believe that his right of free speech had been violated. It favored the defendants by concluding with a statement from the United States Supreme Court's decision in Epperson v. Arkansas in which the high court said:

> Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values.[16]

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[15]Idem.,p. 161.

[16]Idem., p. 162.

Though this case did not involve the dual role issue as clearly as many secondary school cases, it establishes some of the issues involved in cases dealing with coaches.

In Richards v. Board of Education Joint School District No. 1, City of Sheboygan[17], a basketball and cross-country coach taught driver education. He received $10,472.00 for teaching and $980.00 for his coaching duties. At the end of the school year the superintendent issued him a new contract to teach, but not to coach. The superintendent told him that he had taken this action because of numerous complaints about his coaching, but refused to disclose the nature of these complaints. The coach was granted a hearing and disputed the charges against him. He sued the school district for allegedly failing to provide him due process and raised the following questions:

1. Is the refusal to disclose the reasons for dismissal a violation of the Due Process Clause of the Fourteenth Amendment?

2. Did the school board violate state law by failing to give him a notice in writing that he would not be assigned an extra-curricular activity?

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[17]Richards v. Board of Education Joint School District No. 1, city of Sheboygan, 206 N.W. 2d 597 (Wis. 1973).

The court referred to a previous case in which a school librarian was fired. In that instance the Supreme Court of Wisconsin made a strong statement regarding a school board's power to dismiss a non-tenured employee. It emphatically said:

> The right to hire carries the concomitant right to fire - this power may be exercised by the board arbitrarily and without cause.[18]

The question in the coach's case was whether the school board violated his rights by issuing him a contract that did not include coaching duties. The school district noted that the coach was employed as a teacher (for which he was certified) but that he was not required to be certified to coach. It reasoned that he was therefore not entitled to a hearing.

The court commented that the school board had not maligned the coach's reputation in any way and that he was free to seek employment elsewhere. It affirmed the action of the school board in retaining him to teach driver education, but releasing him as the basketball coach.[19]

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[18]Idem., p. 163.

[19]Idem., p. 163.

Coaching As Teaching

An important article by Karl Lindholm discusses the relationship between the coaching and teaching roles. Clearly, at the very core, coaching is teaching. Playing fields are classrooms of great possibility, and every coach is a teacher. Teaching the skills and broad strategy of a game they enjoy, coaches foster learning and achievement in a competitive atmosphere. In the contemporary situation, a coach who is centrally concerned with the total development of his youthful charges will face some formidable challenges and real pressures.[20]

The coach indeed faces conditions other academicians can avoid. In few other professions are one's skills and performance evaluated in so public and simplistic a fashion. It is a common though unfortunate tendency for one to look merely at a coach's won-lost record to judge his success. Wins and losses in the academic classroom are certainly registered more subtly. Joseph Margolis, athletic director at Brooklyn College, has written, "Unfortunately, the pressures and demands on many coaches have caused them to subvert these [educational] values and betray the virtues attributed to sports to achieve the bottom line -- winning."[21]

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[20]Karl Lindholm, "Coaching As Teaching: Seeking Balance," Phi Delta Kappan 60 (June 1979): 734.

[21]Ibid., p. 735

Lindholm further maintains that inconsistency threatens the coach from within and inhibits the realization of balance. The forces that threaten him from without are even more challenging. The obsessiveness of American society's attachment to sports is a powerful obstacle to the teaching coach and his efforts to develop a healthy sporting environment. Americans take their sports so very seriously, grimly exhorting their teams to be "Number One." A coach can bring a sane, balanced attitude to the playing field only to have it sabotaged by his players and their parents and fans. As Americans are all well aware, sports in America constitutes a powerful social, cultural and commercial force. At the highest levels, the commercial nature of sports introduces a hardcore pragmatism that filters down and affects young players and their mentors.[22]

Coaches themselves often pay lip service to broad educational goals; few will admit to narrow-mindedness in their approach to games, yet many display it. One constantly find schools and school leaders who espouse participatory and educational goals with regard to sports, while their teams and coaches reflect a victory-at-all costs approach.[23]

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[22] Ibid.

[23] Ibid.

This overemphasis, though hardly a new phenomenon, must be addressed. It is the obligation of schools and their leaders to let coaches know clearly what the values of the institution are and where the leaders stand in relation to these values.[24]

Teacher/Coach Role Conflict

An article that treats the conflicts of teacher/coaches is that of John Massengale. He notes that in addition to the apparent socialization from athletic participation, the majority of teacher/coaches are formally educated in physical education. Compared to other prospective teachers, physical education majors have a more traditional philosophy of education, have a slightly lower social class background, tend to be more dogmatic, and appear to have different social values.[25]

This uniqueness may be a product of a specialization process within the professional teacher preparation program. Earning an academic degree or teacher certificate does not ensure professional preparation in coaching. Consequently, the aspiring teacher/coach may be well prepared academically but may lack coaching preparation.[26]

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[24] Ibid.

[25] John D. Massengale, "Researching Role Conflict," Journal of Physical Education, Recreation and Dance, 52 (November - December 1981):p.77.

[26] Ibid.

In an article from Physical Educator Thomas Templin and Joseph Anthrop enlarge on the compromises that some teacher/coaches make. As the teacher/coach is socialized to prioritize his primary role as the director of winning teams, he also learns that such a commitment is justifiable if one is to survive professionally. It is justifiable even if it is to the detriment of the individual's performance as a teacher which becomes, of course, a source of major criticism by one's colleagues.[27]

The pressures of winning influence teacher/coaches, especially those involved in the "major" sports, to make a larger commitment to coaching. Again the individual is placed in a delicate position. If he is expected to win, above all else, sacrifices and compromises must be made. It is here where conflict may be heightened as the individual selectively monitors and perhaps alters those attitudes and behaviors that one might normally model under different circumstances or role expectations.[28]

Locke and Massengale in their Research Quarterly article comment on the problems of coming to terms with valid evaluation of performance. Certainly the folklore of physical education and athletics contains a rich

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27 Thomas J. Templin and Joseph L. Anthrop, "A Dialogue of Teacher/Coach Role Conflict," Physical Educator 38 (December 1981):p.185.

28 Ibid.

source of stories concerning the legendary teacher/coach who with athletic teams performs outstanding feats of instruction exceeding (by process or product criteria) those found elsewhere in the school, but who, when confronted with an academic class, is ineffective or, in the case of a physical education class, "rolls out the ball" and retreats to the office to diagram plays. Significantly, stories of teacher/coaches who neglect their teams in order to prepare for other instructional tasks do not exist.[29]

Locke and Massengale also focus on a key problem of the teacher/coach. He is an expert in teaching sport skills in the varsity situation, yet often he is assigned to teach a subject where class conditions (numbers, ability and motivation of students) demand a considerably different set of abilities and interests for effective teaching.[30]

Many coaches are distressed by the feeling that their interests and abilities are not well matched to the demands of teaching. A surprising number of teacher/coaches admit concern over the feeling that the quality of their teaching performance is impaired by the additional demands of coaching.[31]

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[29] Lawrence F. Locke and John D. Massengale, "Role Conflict in Teacher/Coaches," Research Quarterly 49 (May 1978): p. 165

[30] Ibid.

[31] Ibid.

In the Journal of Physical Education, Recreation and Dance, Suzi Olcot enlarges on the eventual role the administrator must play in the situation of a problem coach. Often teacher/coaches who concentrate more on their coaching, yet who may be tenured as teachers, find themselves being asked by school administrators to either develop a more professional approach to their teaching assignment or give up their coaching so that this interference with their teaching will not be existent.[32]

Olcot further notes that the public holds the coach in high esteem, providing the best possible circumstances for success and an arena in which to display coaching talents. The coach faces the challenge of preparing the best possible team. Everyone needs achievement and community. An athletic team offers a chance to achieve and a team with which to identify.[33]

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[32]Suzi Olcot, "The Administrator's Role in Creating a Positive Direction for the Teacher/Coach," Journal of Physical Education, Recreation and Dance 52 (November - December 1981): p.21.

[33]Ibid.

Teacher/Coaching Issues

In Sports and the Courts Herb Appenzeller discusses Wright v Arkansas Activities Association[34] a case which shows how the due process may be a crucial question in resolving problems arising with the teacher/coach. In this case the Arkansas Activities Association investigated a report that a football coach had illegally conducted off-season football drills. After the investigation, the association placed the high school on probation with the stipulation that it could not compete unless it fired the head football coach.[35]

The coach sued the association because it enforced a rule that was allegedly vague and too broad, thereby violating his right of due process. He pointed out that the rule did not specify that a coach could be fired for violating the provision regarding off-season practice. The district court agreed with the coach and so ruled. The association immediately appealed the decision to a high court.[36]

The association based its argument on previous judicial decisions in which municipalities were found not to be "persons" and subsequently received immunity from lawsuits. The judge took exception to this interpretation by stating that the association was not

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[34]Wright v. Arkansas Activities Association (AAA) 501 F. 2d 25 (8th Cir. 1974).

[35]Appenzeller, Sports and the Courts, Pp. 163-164.

[36]Ibid.

created by state statutes and therefore could not claim the protection of immunity.[37]

The United States Court of Appeals supported the judge by ruling that the association, just as a person, was subject to the provisions of Section 1983 of the Civil Rights Act. It held that the association was also involved in state action which made it subject to regulations regarding violations of rights protected by federal law. It found the Arkansas Athletic Association to be guilty of arbitrary action toward the coach and urged it to warn coaches of possible penalties in the future. The court felt that it was not an unfair burden to expect the association to clarify the regulations that would state that individuals, as well as institutions, could be penalized for rule infractions.[38]

Appenzeller discusses in Physical Education and the Law Richards v. Board of Education Joint School District No. 1, City of Sheboygan[39] a case involving free speech issues. The particular case also shows the complications which result when coach-administration conflicts become a topic for public discussion.

A successful and popular coach became very unhappy when he was not named athletic director when

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[37] Idem

[38] Idem

[39] Richards v. Board of Education Joint School District No. 1, City of Sheboygan, 206 N.W. 2d 597 (Wis. 1973).

this position became available. From the time he was bypassed for the job, he reportedly refused to support the school administration. The defendant school board decided not to renew his contract, and the teacher/coach sued on the basis of "constitutionally impermissable reasons." He charged that the board refused to rehire him because he protected students under his care from faculty mistreatment, that he objected to verbal abuse from spectators against an athlete (his son) and that his right of free speech was violated.[40]

The defendants replied that an Arkansas law vested power in the school board to do whatever it considered best for the benefit of its students.[41]

The United States District Court of Arkansas did not agree with the plaintiff's arguments and commented that he was unhappy and discontented because another man was given the position he wanted. It concluded that from the time he was denied the position, he showed a lack of control and failed to cooperate with the school officials and in general "created an intolerable situation for the athletic director, the principal, the superintendent and the

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40 Herb Appenzeller, Physical Education and the Law, (Charlottesville, Virginia: The Michie Company, 1981) p. 86.

41 Ibid. p. 87

school board." The court reasoned that the plaintiff apparently decided that he would leave sooner or later but wanted the public to recognize the injustice that was put on him. As a result he was the center of turmoil. The board realized that he was a popular coach and tried to keep him until it felt that the situation had deteriorated enough that they had no choice but to dismiss him.

The Federal court upheld the school board's decision not to renew his contract when it commented:

> It is a sad story. But it is the type of problem that confronts school boards, unfortunately, on not infrequent occasions -- the type which usually involves the entire school community. This particular school community has finally resolved the problem. It cannot be said that it did so in an unfair or arbitrary manner. The matter should therefore remain at rest.[42]

The following cases are interesting and illustrative of alleged constitutional right's violations.

In Shimoyama v. Board of Education of Los Angeles Unified School District[43] the coach taught biology and physical education at Chatsworth High School in Los Angeles, California. He also coached football from 1970 until 1978 and track for the 1979 season.[44]

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[42]Ibid.

[43]Shimoyama v. Board of Education of Los Angeles Unified School District, 174 California Reporter 748 (Cal. App.)

[44]Herb Appenzeller, Physical Education and the Law, p. 87.

In June, 1978 Shimoyama met with his principal and assistant principal to discuss his unauthorized purchase of new football jerseys and the major change in team colors. The principal cited a lack of communication between the two and the fact that Shimoyama did not follow policy and procedures in ordering equipment.[45]

Shimoyama responded with a letter that denounced the principal. He sent copies of the letter to the district superintendent, booster club president, the assistant football coach and two faculty members who were active in the United Teachers of Los Angeles. He blamed the principal for low morale at the school and accused him of failing to support the athletic program.[46]

The principal replied that the letter was full of inaccurate statements that did little to improve communications between the two, and then informed Shimoyama that he could not work with him as coach. The parties agreed, however, that the coach needed to apologize and retract his adverse statements against the principal. In return the principal would permit him to coach the football team and reevaluate his performance and make a decision about his status as coach after the season was completed.[47]

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45 Ibid.

46 Ibid.

47 Ibid., pp. 87-88.

In November the principal informed Shimoyama that he would not be reassigned as football coach for the following reasons:

1. A lack of communications existed between them.
2. The coach used an ineligible player in a practice game.
3. The coach lost his temper and grabbed the face masks of players.
4. The coach used profanity.
5. The coach's conduct resulted in penalties by the officials.
6. The coach ordered materials without regard to school policy.[48]

Shimoyama contended that he was dismissed as football coach because he exercised his right of free speech guaranteed by the first amendment and charged the principal with violating his right of due process.[49]

The court in Shimoyama v. Board of Education of Los Angeles Unified School District[50] a case that considered the testimony and made an interesting observation when it said: "Although discussions among the faculty of a high school no doubt permit a greater flexibility of expression then the para-

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[48] Ibid.

[49] Ibid.

[50] Shimoyama v. Board of Education of Los Angeles Unified School District, 174 California Reporter 748 (Cal. App.).

military atmosphere of a police department, still the necessities of harmonious working relationships and employee discipline are the same." [51]

It then found that the trial court made the right decision in denying the plaintiff's petition to be reinstated as coach by concluding:

> If attacks upon a superior such as we have here were given constitutional protection, it would require a hardy administrator indeed to maintain working relationship and to risk criticizing a subordinate's performance, knowing that the subordinate was free with impunity to retaliate by broadcasting accusations implying that the administrator was a conspirator, a liar and a hypocrite. [52]

In Knapp v. Whitaker[53] we find a case that deals with the right of a teacher to speak on matters of public concern as guaranteed by the first amendment of the United States Constitution.

Terry Knapp was a high school teacher and coach who filed a lawsuit against the Peoria School District Number 150, the superintendent, principal, assistant principal and later the assistant superintendent. Knapp claimed that the defendants had "retaliated against him for exercising his first amendment rights." [54]

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[51] Ibid.

[52] Ibid.

[53] Knapp v. Whitaker, 577 F. Supp. 1265 (C.D. Ill. 1983).

[54] Ibid.

In 1980 the teachers in the Peoria School District were negotiating for collective bargaining, and a key issue was the grievance procedure. Knapp asked a member of the school board if he could discuss the grievance procedure, and she invited him to talk with several members of the board. The board was anxious to have input on the issue from teachers. Knapp discussed issues involving classroom assignments, curriculum, evaluations, liability insurance and mileage reimbursements. At no time did any administrator or board member tell Knapp that it was against policy for teachers to talk with board members.[55]

In March, 1981, Knapp filed a grievance based on unequal mileage reimbursement for coaches and lack of liability insurance for coaches who drove students to athletic events. Knapp's grievance was denied, and he tried to get a board member to sponsor him so that he could meet with the entire board to explore the denial of his grievance.[56]

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[55]Ibid.

[56]Ibid., p. 89.

In April, 1981 the superintendent pointed to a regulation in the superintendent's contract that required all communication to go to the board through him. The superintendent reprimanded Knapp, who replied that such a policy violated his right of free speech. The superintendent responded, "Your rights end where my nose begins." Knapp was then placed in "remediation category," which is one step above termination.[57]

On June 16, 1981 Knapp was unwillingly replaced as coach, allegedly because of his phlebitis condition, and in the fall his paid study hall was taken away. At the end of the year he received a second negative evaluation and was transferred from the high school to a grade school.[58]

A jury awarded Knapp over $500,000 in compensatory damages, and the defendants appealed. In Knapp v. Whitaker, (C. D. Ill. 1983)[59], the court observed that the policy of reporting to the board through the superintendent was unconstitutional. It commented that the plaintiff was never informed that his conduct violated school board

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[57] Ibid.

[58] Ibid.

[59] Knapp v. Whitaker, 577 F. Supp. 1265 (C.D. Ill. 1983).

policy. The court stated that the plaintiff's action was not compelled by personal interest alone, but a desire to discuss the issues on behalf of other teachers in the district. The court upheld the lower court's huge award by finding that the teacher's "criticism of the grievance procedure was protected speech."[60]

The case of McGee v. South Pemiscot School District R-V[61] deals with the right of a coach to speak publicly on controversial athletic issues. John McGee, a teacher and junior and senior high school track coach, received a satisfactory evaluation from his principal and public praise from three school board members a month before his contract was to be considered for renewal. A public controversy developed when a divided school board voted to discontinue the junior high school track program. The decision became the key issue in a hotly contested school board election. Three board members insisted that McGee had recommended the elimination of the junior high school track program, an allegation the coach denied. Four

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[60] Ibid.

[61] McGee v. South Pemiscot School District R-V, 712 F. 2d 339 (8th cir. 1983).

days before the election McGee wrote a letter to the town newspaper outlining his reasons for keeping the junior high school track program. His letter created considerable controversy in the community.[62]

Following the school board election, renewal of McGee's contract was denied. McGee claimed that his dismissal was a result of the letter he wrote to the newspaper and a violation of his freedom of expression guaranteed by the first amendment to the United States Constitution. McGee testified that he received a letter from the superintendent stating that the "letter was an act of disloyalty and warranted his dismissal.[63]

Three members of the school board, who voted against the coach, cited their displeasure with his ability to "work with the athletic director, keep a tidy classroom, and his having bought track uniforms without asking the proper authorities." McGee testified that he paid for the uniforms with his

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[62]Ibid.

[63]Ibid.

own money. The other board members, who voted in favor of the retention of McGee, reportedly commented that they would now vote against him because he could not follow directions. The athletic director testified that McGee could not effectively work "within the school's bureaucracy."[64]

A trial court jury found that the school board had violated the coach's rights as protected by United States Supreme Court 1983 and awarded him $10,000 in damages. The district court, however, granted the defendant's motion for a judgment non obstante veredicto (which overrules the jury's verdict). The United States Court of Appeals, Eighth Circuit, reviewed the testimony and, in McGee v. South Pemiscot School District R-V,[65] commented that the jury had the responsibility of deciding whether McGee's letter created the dissension between the coach and his immediate superiors. It also said: "The record suggests that McGee is a good teacher. He organized a popular and successful track program from scratch.

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[64] Ibid.

[65] McGee v. South Pemiscot School District R-V, 712 F 2d 339 (8th Cir. 1983).

All the parties seem to agree that he is enthusiastic and committed to the welfare of his students."[66]

The court of appeals reversed the district court's verdict of non obstante veredicto and "remanded it with instructions to enter judgment on the jury verdict, "thus reinstating the $10,000 damages award to the coach."[67]

One of the judges vigorously dissented and pointed out that firing was the best thing that could have happened to McGee. He explained that McGee accepted a position in another district for a higher salary and was also employed as a full-time minister at a local church. The dissenting judge could not support McGee's contention that he had suffered "mental anguish and loss of reputation" in light of his new employment. The dissenting judge also emphasized that McGee only sought $7,000 in damages, but the jury awarded him $10,000.[68]

Another case, Vail v. Board of Education of Paris Union School District No. 95[69] illustrates the allegation by a coach that his right of due process was violated. The coach argued that the fourteenth amendment to the United States Constitution guaranteed him his

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[66]Ibid., p. 90

[67]Ibid.

[68]Ibid.

[69]Vail v. Board of Education of Paris Union School District No. 95, 706 F. 2d 1435 (7th cir. 1983).

right of due process.[70]

A search committee for the Paris Union School Board visited a successful coach-athletic director with the intention of hiring him to build a winning program. The coach requested enough time to build a successful program at the school and discussed job security before he agreed to leave his present job. The board hired him as football coach and athletic director with the agreement that he would have two years to improve the program. After one year, however, the board terminated his position without giving him an explanation as to the reason for firing him and failed to provide a hearing for the coach. The coach challenged the board's decision, arguing that he was assured of two years in this position. The United States Court of Appeals, Seventh Curcuit, in Vail v. Board of Education of Paris Union School District No. 95, (7th Cir. 1983), upheld the judgment of the lower court and affirmed the award in damages of $19,850.99 for "unlawful termination."[71]

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[70] Ibid., p. 90.

[71] Ibid.

Another case mentioned by Appenzeller in Physical Education and the Law illustrates the questions raised by a situation in which a coach desires to be relieved of his coaching duties but to retain his teaching job. In this New Jersey case, two teachers, Richard Dombal and Donald Doolittle, requested extra pay for coaching and, when the board refused, submitted their resignations from their coaching responsibilities. The teachers complained that they were forced into involuntary servitude and sought help from the federal court. The court dismissed the case but recommended that the plaintiffs go to an advisory board for a hearing. The advisory board upheld the teachers' position but the board of education rejected the decision and a federal court, under a new complaint, upheld the school board. The court referred to a previous New Jersey case as to the basis for its decision. In Re Rutherford Education Association[72] the question of whether a teacher could refuse to work with extracurricular activities was decided in favor of the school district. The court ruled that extracurricular activities were part of the educational program of a school and one that was not negotiable.

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[72]In Re Rutherford Education Association, P.E.R.C., No. 77-17 (N.J. 1976).

In the present case, it was said that the decision in Rutherford was still valid and it did not give a teacher the right to refuse a coaching assignment. The duties must be accepted.[73]

The Supreme Court of Utah in Brown v. Board of Education of Morgan County School District[74] held in 1977 that a school district had the right to dismiss a teacher who resigned his position as coach when his contract called for both teaching and coaching duties. The court stated that the exception to the policy would be left to the school board, if for some reason it decided to divide the contract.

Since the school board refused to separate the teaching and coaching duties, the court upheld the board's decision to rule that the teacher had in effect resigned his contract to teach and coach.[75]

Teachers frequently ask what the law requires when administrators add extra duties to their regular teaching assignments. Practices and policies vary with school systems regarding financial supplements as well as reduced work loads and other administrative procedures.[76]

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[73] Herb Appenzeller, Physical Education and the Law, p. 85.

[74] Brown v. Board of Education of Morgan County School District, 560 P 2d 1129 (Utah 1977).

[75] Ibid., p. 86.

[76] Ibid., p. 83.

Another case, McCullough v. Cashmere School District 222 of Chelan County,[77] from Physical Education and the Law deals with the same problem of undesired coaching duties. Gloria McCullough and Mary Drussell were offered teaching contracts with duties in extra-curricular activities added to the ones they already were supervising. Both teachers objected to additional assignments and altered their contracts so that they were similar to the ones they had the previous year. The school district rejected the "altered" contracts and when the teachers refused to sign the original contracts within fifteen days, the district sought replacements for their positions.[78]

The plaintiffs claimed that they were protected by a continuing contract law that guaranteed them "a preferential right in curricular positions, before considering new applicants for the same positions." The court ruled that the protection of a preferential right was too far removed from the teaching function to extend to extra curricular activities. It cautioned that the job offer regarding extra duties must be reasonable "so that the law

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[77]McCullough v. Cashmere School District 222 of Chelan County, 551 P. 2d 1046 (Wash. App. 1976).

[78]Ibid., p. 83-84

does not become a sword of subterfuge in the hand of the district, defeating the intent of the legislature to create job security." It elaborated on this by pointing out that a teacher's preparation and experience must be considered before an assignment is made.[79]

In this case, the Court of Appeals of the State of Washington declared that the school district met the requirements of the preferential right when it offered to renew the plaintiff's teaching contracts for girls' physical education. McCullough received a supplement to supervise a girls' activities program and to coach track. The school board added interscholastic track and basketball to her duties. Drussell received extra pay to coach girls' gymnastics, and coaching girls' basketball for grades 7, 8 and 9 was added to her new contract.[80]

The court concluded that the plaintiffs were assigned reasonable contracts and their failure to accept them constituted an abandonment of their right of employment. It therefore supported the earlier decision of the superior court in favor of the school district.[81]

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[79] Ibid.

[80] Ibid.

[81] Ibid.

In a somewhat similar case from Tennessee, White v. Banks,[82] Larry White taught social studies, coached basketball and coached the cross-country team at Elizabethton High School. He received a supplement of $1,700 for his coaching duties. In Tennessee there is no certification for coaching, but all coaches must hold a teaching certificate. After five years as a teacher and coach, the school board relieved him of his coaching duties, but retained him as a teacher in the high school. The superintendent did not oppose the action. White taught the following year, but did not coach or receive a supplement for coaching. He went to court seeking reinstatement as coach and reimbursement of the $1,700 he lost in supplement money, claiming that the superintendent had not agreed with the decision to terminate his coaching. When the trial court dismissed his petition, he appealed to the Supreme Court of Tennessee.[83]

The court, White v. Banks, (Tenn. 1981), held that a teacher who coaches has two basic rights: "(1) His position as a teacher is protected by

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[82]White v. Banks, 614 S.W. 2d 331 (Tenn. 1981).

[83]Herb Appenzeller, Sports and the Law, p. 80.

tenure, assuming that he has acquired tenure status, and, (2) his position as a coach is protected by whatever contract he has with the board to perform coaching duties, but not by tenure.[84]

It concluded that the superintendent had agreed with the board's action in relieving him of his coaching duties, which was not a suspension or dismissal but equivalent to a transfer within the school system. It upheld the lower court's decision in favor of the school district.[85]

The following case, Smith v. Board of Education of Urbana School District No. 116 of Champaign County, Illinois,[86] raises some pertinent questions regarding coaches in dual positions who have tenure in teaching but not coaching positions. Two physical education teachers, one who also coached football for 26 years, the other who coached baseball for three years, were informed that they would be retained as physical education teachers but not as coaches. The United States Court of Appeals, Seventh Circuit, in Smith v. Board of Education of Urbana School District No. 116 of Champaign County, Illinois, (7th cir. 1983), upheld the

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[84]Ibid.

[85]Ibid.

[86]Smith v. Board of Education of Urbana School District No. 116 of Champaign County, Illinois, 708 F. 2d 258 (7th Cir. 1983).

school board's decision and commented:

> The Fourteenth Amendment due process clause does not guarantee a football or baseball coach a job at a public high school even if his teams win and his players idolize him. The ultimate decision who is the best man to coach a high school athletic team rests with state school officials, not with federal courts.

The court added:

> At most, the Fourteenth Amendment due process clause guarantees a state athletic coach the right to know why he is being dismissed and to convince school officials before they dismiss him that they are making a mistake, that their reasons for dismissing him are either not supported by facts or less compelling than they think. [87]

This case raises some pertinent questions regarding coaches in dual positions who have tenure in the teaching positions but not in coaching.[88]

The separation of coaching-teaching duties surfaces in Neal v. School District of York[89] where Dale Neal, a teacher and basketball coach in York County, Nebraska had had a teaching employment contract with the school district of York for three school years prior to 1976-77. In March, 1976, the school district

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[87] Ibid., p. 80-81

[88] Ibid.

[89] Neal v. School District of York, 205 Nebraska 558, 288 N.W. 2d 75 (1980).

notified Neal that his new contract would be amended to separate the coaching assignment from the teaching contract or his coaching contract would be terminated. Two separate contracts were presented to Neal - one for teaching and one for basketball coaching. Neal signed the teaching contract but returned the coaching contract unsigned.[90]

The school board had inserted language in Neal's coaching contract that provided:

> "The continuing contractual provision in Nebraska School Law 79-1254 shall not apply and this provision is expressly waived. This one (1) year contract in no way establishes any future expectations for coaching by Dale Neal at York High School. In this regard, due process procedures and just cause shall not be required to terminate this contract prior to the filling of the head basketball coaching position for the 1977-78 school year."[91]

Nebraska School Law 79-1254 refers only to "administrator or teacher" and does not mention "coach." The law provided in essence that the original contract between a board of education and administrator or teacher remained in effect until amended or terminated for just cause.[92]

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[90] Herb Appenzeller and C. Thomas Ross, J.D., Sports and the Courts (V.2, No. 1, Winter 1981) p. 7.

[91] Ibid.

[92] Ibid.

Neal filed suit in the United States District Court for the District of Nebraska and obtained an injunction enjoining the school district from requiring Neal to make an agreement for coaching duties in the precise words proposed by the school district. In August, 1976, the school district hired another person to be the basketball coach for the 1976-77 school year.[93]

Neal then filed suit in the Nebraska state court claiming the school district was contractualy obligated, under his prior contract of employment, to pay him the sum of $1,458.00 for his services as varsity head basketball coach for the 1976-77 school year. Neal contended that a contract to coach is subject to the requirements of Section 79-1254 and that the school district failed to comply with that law.[94]

The Nebraska Supreme Court stated that whether a particular teacher is entitled to the procedural safeguards of Section 79-1254 is a matter of state concern and that they would not be bound by a federal court's interpretation of a state question.

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93 Ibid.

94 Ibid.

The court held that nothing in the statutory language of Section 79-1254 indicates that the Nebraska legislature intended the position of coach to be within the applicable statutory definition of teacher or administrator and thus entitled to protection. They found no reference to the word "coach" in the tenure statutes nor did the Nebraska statutes listing the duties of a teacher in the school system list coaching among those recognized. The school district argued that if coaches were entitled to the protection demanded by Neal then all extracurricular assignments would be included and such a construction would interfere with the right of school authorities to make reasonable assignments of a teacher's extracurricular duties. The court held that a limitation of that magnitude is a decision for the legislature.[95]

The Nebraska Supreme Court found no applicable case law in Nebraska and relied on decisions from the courts of Minnesota, Florida and South Dakota.

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[95] Ibid., pp. 7-8.

The Nebraska Supreme Court held that the statute did not apply in this case and upheld the judgment of the lower court in favor of the school district.[96]

The Supreme Court of Arkansas reversed a lower court's decision and upheld the school board's firing of two non-probationary teachers who also coached football. The lower court had reinstated one of the coaches with back pay and awarded the other coach $900. Testimony revealed that the coaches performed their teaching duties in a satisfactory manner but the school board was less than satisfied with their coaching. During their five years of coaching, "the team won 15 games and lost 28; won 4 and lost 14 in their own class AA; won 11 and lost 14 against teams of lower classification." The principal, acting on the school board's orders, notified the coaches that they had one year to turn the football program around. The next year their record was 4 and 4 and they were retained. The following year their record was 3 wins and 7 losses and

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96 Ibid.

they were fired by the school board. The Supreme Court of Arkansas held that this was not "arbitrary, capricious or discriminating" action and supported the school board's reasons for termination that included:

> "inability to field a competitive team, inability to recruit more team members, inability to teach fundamentals of blocking and tackling, inability to create good team morale, inability to teach recognition of and reaction to various offensive and defensive schemes and losing games by very lopsided scores."[97]

One justice concurred and one dissented and their comments are noteworthy:

Justice Hickman (concurring):

> "I concur because the appellants sought employment as coaches and were hired as coaches. They were only incidently teachers."

Justice Hays (dissenting):

> "I cannot agree that someone hired as a football coach and teacher can be terminated on the basis of the team's won-loss record, even though hired primarily as a coach. Certainly the board can non-renew the contract of a coach for any reason it chooses, but if his status continues beyond probation then it is my view that under the Teacher Dismissal Act he can be discharged only for cause, and that is not determined by so variable a standard as the team's ability to win."

Lamar School District No 39 v. Kinder, Ark. 1982)[98]

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[97] Herb Appenzeller and C. Thomas Ross, J. D., Sports and the Courts (V.4, No. 4, Fall 1983) p. 8.

[98] Ibid., p. 8-9.

The decision to fire a coach with teaching tenure presents a frustrating dilemma to school administrators. If the fired coach chooses to remain at the school to teach, school officials often lack a teaching position for the coach's replacement. As a result, they often are forced to hire a less qualified coach or resort to employing a part-time and often noncertified coach.[99]

In a day when sports programs are at an unprecedented high, the need for qualified coaches is greater than ever. With increased sport-related litigation, the pressure is on the administrator to provide qualified coaches.[100]

A questionnaire was sent to 50 states and the territory of Puerto Rico to determine the status of coaches with regard to tenure and due process. Eighty-Eight percent responded to the 1984-1985 survey, and the results indicate the situation

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[99]Herb Appenzeller, Sports and the Law, p. 81.

[100]Ibid.

that confronts the typical coach. A summary of the survey is as follows:

1. Coaches can be granted tenure

   Yes 8 No 35
   (Two responded that it varies with the school district.)

2. If given tenure, 1 to 5 years must be served on a probationary status.

3. Coaches who give up coaching for teaching only can keep their teaching position.

   Yes 35 No 4
   (Several responded that it depends on the contract.)

4. Coaches can be given formal hearings when relieved of their coaching duties.

   Yes 13 No 22
   (Several responded that it depends on school district, if requested, or if the individual had tenure as a teacher.)[101]

To meet the problem of the divisible teacher-coaching contract, many school districts require the individual to sign an indivisible contract. Loss of either position results in a loss of both positions.[102]

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[101] Ibid.

[102] Ibid.

An Oregon case, George v. School District No. 8R of Umatilla County,[103] illustrates the court's attitude when a school board revoked a coach's indivisible contract in a community that had little patience or tolerance for losing seasons and even less for losing coaches.

> After two dismal seasons, in which only two victories were recorded, the coach was informed that he could stay on and teach mathematics, but could no longer coach the football team. He accepted the decision until he learned that his salary would be cut by $2,000. He contended that his contract called for a salary of $9,300. The school board was just as adamant in its determination not to pay someone to do nothing. It ignored his protest and hired another person to replace him in the classroom and on the football field.[104]

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[103]George v. School District No. 8R of Umatilla County, 490 P. 2d 1009 (Ore. App. 1971).

[104]Ibid., p. 81-82

The plaintiff was out of a job except for occasional days when he could substitute teach. In George v. School District No. 8R of Umatilla County, (Ore. App. 1971), he sued the school board for damages, and the Oregon court held that while the school board could replace him as coach it could not reduce his salary once it had contracted to pay him another amount. It awarded George $7,300 which represented his loss of wages from the time he was released to the present.[105]

When coaches are fired or transferred to other positions, they frequently seek judicial relief by complaining that their constitutional rights have been violated. Coaches most often charge school officials with violation of their freedom of expression guaranteed by the first amendment to the United States Constitution. A common allegation is the contention that school officials failed to provide due process procedures guaranteed by the fourteenth amendment.

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105 Ibid.

Munger v. Jesup Community School District[106] illustrates the role a community can play in coaching issues. A disgruntled group of booster club patrons met with the high school principal and demanded that he fire Larry Munger, the wrestling coach for allegedly failing to motivate his athletes. Munger was an assistant football coach and taught social studies. No one complained about his performance in these areas. The principal, who was Munger's good friend, told him that "you or Underwood (the superintendent) or I will have to go." Munger resigned as wrestling coach and planned to continue teaching and assisting in football. The school board, however, refused to allow Munger to choose his preference since he had signed an indivisible contract to teach and coach. The board fired him and Munger appealed to an adjudicator. The adjudicator ruled for Munger and the board appealed to the District Court which reversed the adjudicator's decision. Munger then appealed to the Supreme Court of Iowa.[107]

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[106]Munger v. Jesup Community School District, 325 N. W. 2d 377 (Ia. 1982).

[107]Herb Appenzeller and C. Thomas Ross, J. D., Sports and the Courts (V. 4, No. 2, Spring 1983) pp. 5-6.

The Supreme Court of Iowa agreed with the board's ruling that Munger had an indivisible contract and could not resign from one duty and keep another. It noted that he must give up all the services specified in his agreement. It pointed out, however, that its task was to determine if the board's action was supported by "a preponderance of competent evidence.[108]

The court surmised that the athletes and parents and booster club members never appeared in person to testify against the coach, that their charges were trivial and "couched in generalities" and that the same booster club had a history of firing coaches at the school. The Supreme Court heard favorable testimony regarding the coach and concluded that the board lacked evidence to support its decision to fire the coach. It reversed the lower court's judgment and reinstated Munger to his former teaching and coaching position.[109]

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[108] Ibid.

[109] Ibid.

While some cases deal with indivisible contracts or new extracurricular duties, a case from Sports and the Law concerns the relationship between coaching duties and tenure rights. In the case of Hood v. Alabama State Tenure Commission,[110] David Hood had been employed as a teacher and coach for 10 years when he notified the school superintendent that he wanted to remain at the high school as a teacher but that he did not plan to coach. The school board hired a new teacher to coach and teach physical education for the remainder of the year. At the end of the year, Hood was informed that the school could not afford two teachers to do the job of one teacher and that he was being transferred to an elementary school position. He discovered that the job was to teach physical education in grades one through eight. Hood contended that he was only certified to teach physical education at the secondary level.[111]

The school superintendent pointed out that it would be unsatisfactory to put the new coach in a

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[110]Hood v. Alabama State Tenure Commission, 418 So. 2d 131 (Ala. 1982).

[111]Idem, Sports and the Law, p. 80.

school other than the one he would be coaching and directed Hood to accept the transfer.[112]

Hood took his case before the school board and the Alabama Tenure Commission, and both ruled against him. He then appealed to the Alabama Court of Appeals. The court supported the school superintendent and declared that the Tenure Act did not specify that a board of education had to give preference to a tenured teacher over a non-tenured one in transfer decisions. It upheld the previous judgment in favor of the school superintendent.[113]

Another case, Hawkins v. Tyler County Board of Education,[114] deals with the separation of teaching and coaching duties. Lorraine Hawkins, a tenured physical education teacher and head coach for girls' volleyball and basketball refused her principal's request to add coaching girls' track to her duties. The following year, however, she was named the track coach. She accepted and was compensated for the extra duties. The next year she wrote to her principal and asked to be relieved of her coaching responsibilities for basketball and track but agreed to coach volleyball. Her principal immediately recommended to the school board that she be placed on the transfer list. Hawkins

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[112] Ibid.

[113] Ibid.

[114] State ex. rel. Hawkins v. Tyler County Board of Education, 275 S.E. 2d 908 (W. Va. 1981).

thereby agreed to coach all three girls' sports if she could have an assistant coach to help her. When her request was denied, she sought relief in the Circuit Court and then appealed to the Supreme Court of Appeals of West Virginia.[115]

Hawkins contended that there was a statute that prohibited a person from being a head coach in more than two sports. She argued that she was transferred because she refused to violate the statute. The Court noted that the superintendent had the authority to transfer teachers as long as the action was not arbitrary or capricious. It observed, however, that the power to transfer is not unlimited; it must not overload teachers with extra duties that hinder their teaching. In this case, Hawkins taught six hours a day and was sponsor of the junior class in addition to year-long coaching duties. In addition, the court did not feel that the school board could rely on an unofficial policy to support its action but needed to formulate a policy regarding qualifications for performing extracurricular activities and apply it uniformly

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[115] Herb Appenzeller and C. Thomas Ross, J. D., Sports and the Courts (V. 4, No. 2 Spring 1983) p. 8.

throughout the county. The court declared that such a policy should include written contracts, description of duties and amount of compensation to be paid. The court stated that:

> "The board may place teachers under separate contract to perform extra-curricular duties such as coaching for a specified period of time without making such performances a condition of continuing employment and may take action with respect to teachers who fail or refuse to perform their contractual obligations."[116]

The court concluded that the board did not act in an arbitrary manner toward Lorraine Hawkins by transferring her when she refused to coach three sports without an assistant to help her. It reversed the lower court's decision and remanded it to the trial court for further consideration.[117]

The question of alleged racial discrimination based on racial bias has been taken to court on many occasions. The following case involving racial discrimination illustrates the complexity of these cases as they relate to teacher/coaches.

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[116] Ibid., p. 9.

[117] Herb Appenzeller, Sports and the Law, p. 82.

Carroll High School had won only seven games in three years, fan support was down, the coach resigned, and the school board was considering dropping football because of a lack of revenue. The school board decided to hire an experienced coach with an outstanding record in several high schools in Alabama to attempt to build a strong football program. The board did not want to lock the new coach in by retaining the entire staff of four assistant coaches, so it voted not to renew the contract of two assistants.[118]

Anthony Lee, a black, non-tenured coach who was one of the two assistants dropped, sued the school board, alleging racial discrimination for terminating his contract. In Alabama a non-tenured teacher may be released for "any reason or no reason." The exception to such a broad statement occurs when the nonrenewal is based on race.[119]

The court, in Lee v. Ozark City Board of Education[120] found that the new coach hired two assistants, one black, the other white to replace the black and white coaches who were released. It did not find evidence of racial discrimination and thereby affirmed the decision of the lower court in favor of the school board.

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[118] Ibid.

[119] Ibid.

[120] Lee v. Ozark City Board of Education, 517 F. Supp. 686 (M.D. Ala. 1981).

Race enters a further case, Pegues v. Morehouse Parish School Board.[121] Johnnie Pegues is a black coach and a tenured teacher in the Morehouse Parish Louisiana school system. He was initially hired in 1965 as the head football coach at the then all-black school. When the school system was integrated by court order in 1969, Pegues was assigned as an assistant football coach at a formerly all-white high school which was coached by a white man. A new head football coach was hired at the school in 1972 and another in 1973, both of whom were white. Pegues was never offered the job of head football coach but continued as an assistant coach until the 1977-78 school year, at which time he was named head track coach. On March 3, 1978, Pegues instituted a suit under the Civil Rights Act asking to be named head football coach and for back pay.[122]

The trial court granted Summary Judgment for the school board on two grounds, both having to do with the passage of time.[123]

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[121]Pegues v. Morehouse Parish School Board, 632 1279 (5th Cir. 1980)

[122]Herb Appenzeller and C. Thomas Ross, J.D., Sports and the Court V. 2, No. 4 Fall 1981) pp. 6-7.

[123]Ibid.

Pegues appealed to the Fifth Circuit Court of Appeals but it upheld the district court on the first claim under the Civil Rights Act since the statute of limitations had expired. In this particular case, there was a one-year limitation period set by Louisiana state law. The court noted that Pegues filed his complaint nine years after his initial demotion, eight years after he was first passed over for promotion, and approximately five years after the last alleged discriminatory turnover of the head football coaching position. The appellate court held that the action was untimely.[124]

However, Pegues had a second claim under the case of Singleton v. Jackson Municipal Separate School District, (5th Cir. 1970). The Singleton case was decided on equitable grounds and, in essence, stated that if there was to be a reduction in the number of school employees which would result in dismissal or demotion of any staff members, the school system must select the staff person. To be dismissed or demoted on the basis of objective and reasonable non-discriminatory standards from among

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124 Ibid.

all the staff members of the school district. In addition, no staff vacancies may be filled through recruitment of a person of a race, color or national origin, different from that of the individual dismissed or demoted until each displaced staff member who is qualified has had an opportunity to fill the vacancy and has failed to accept an offer to do so.[125]

The appellate court agreed that Pegues had, in fact, been "demoted" by virtue of the consolidation of the school system and was entitled to protection under the Singleton doctrine. The trial court had held Pegues' claim to be barred by the mere "passage of time." On this point, the appellate court reversed and remanded the case for a hearing. The appellate court reasoned that Pegues was entitled to special treatment unless and until he had failed to accept an offer to fill a vacancy. The court found that he had not been offered the job and that he was entitled to the "right of first refusal." The appellate court sent the case back for a determination of whether Pegues' conduct was inequitable because he had not filed the action sooner. Pegues v. Morehouse Parish School Board, (5th Cir. 1980).[126]

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125 Ibid.

126 Ibid.

In Shenefield v. Sheridan County School District No. 1[127] sex discrimination, not racial discrimination, played a part in the case of Mary Shenefield who applied for a teaching position in Wyoming. The principal hired a man who could teach physical education and coach. Shenefield submitted her case to the Wyoming Fair Employment Commission (hereafter referred to as Commission), and it agreed that discrimination based on sex had taken place. The District Court of Sheridan County reversed the Commission's decision and the teacher appealed to the Supreme Court of Wyoming.[128]

During the trial several factors that affected the school's decision were revealed. The principal testified that the plaintiff changed jobs frequently because she followed her husband wherever he took a new position. He described her as a "pushy, demanding type of person" who could not coach interscholastic activities or intramurals. In addition

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[127]Shenefield v. Sheridan County School District No. 1, 544 P. 2d 870 (Wyo. 1976).

[128]Herb Appenzeller, Physical Education and the Law, (Charlottesville, Virginia: The Michie Company, 1981) pp. 75-76.

she would have required a substantially higher salary than the teacher they hired because of her degree and years of experience. The principal said that the teacher he hired had worked in the school system as a student teacher and was the type of person who could get along with the faculty. The school could hire him for $2,600 less per year than the plaintiff.[129]

The Supreme Court of Wyoming referred to previous cases that considered similar litigation and upheld the principle that the courts will not interfere with the judgment of a school board in the employment or re-employment of a teacher "for any reason whatever or for no reason at all." The Wyoming court then reasoned that a school board does not give up its freedom to choose the teacher it wants just because it advertises for a teacher. It then favored the school board's decision to hire the male teacher by indicating that:

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129 Ibid.

> If it turns out that for reasons of economy, one applicant can fulfill the needs of the district at a cost substantially less than another applicant, even though the rejected applicant may on paper possess the greater qualifications, a selection of the less expensive teacher cannot be said by any board or court to have been the result of discrimination on the basis of sex.[130]

It then concluded that a school board has the discretion of hiring a teacher who is able to perform additional duties such as coaching in the school's program. A school board must be able to select a teacher who is personally attractive to it without the threat of discrimination leveled against it.[131]

In another case, Burkey v. Marshall County Board of Education,[132] Linda Burkey graduated from college in 1970 after participating on four different school athletic teams. In 1976 she received a Master's Degree in physical education. From July 1, 1970, she had been employed as a teacher by the Marshall County Board of Education and had achieved tenure as a teacher after completing a three-year probationary period.[133]

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[130] Ibid., p. 75-76

[131] Ibid.

[132] Burkey v. Marshall County Board of Education, 513 F. Supp. 1084 (N.E. W. Va. 1981).

[133] Idem, Sports and the Courts (V. 3, No. 1 Winter 1982) p. 3.

From 1971 to 1976, she coached girls' basketball at Moundsville Junior High School. In 1976, she was transferred to an elementary school and was not re-appointed as a coach. Coaching appointments were made on a one-school year basis and no teacher employed by the board achieved tenure as a coach.[134]

Burkey was primarily responsible for forming inter-scholastic girls' basketball in Marshall County, West Virginia, and during the period of four school years, her teams won 31 games, lost 4 and forfeited one game. In 1975, her team won the county championship.[135]

Prior to the filing of this lawsuit on April 6, 1978, Burkey had spent five years attempting to achieve equality for women as coaches and participants in Marshall County, West Virginia. It was proven that during the early and mid-70's, the county paid women at a salary level one-half that of male coaches of comparable or identical programs. Further, there were written "Governing Policies of Marshall County Junior High Athletic Programs" which clearly discriminated against female faculty members, both in terms of pay and opportunities to coach teams of the opposite sex as well as restrictions on numbers of games that could be

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[134] Ibid.

[135] Ibid.

played and how the coaches must operate.[136]

As a part of her efforts, Burkey had totally exhausted her administrative remedies by filing complaints with the school system, through administrative agencies of the state and federal government, including the Equal Employment Opportunity Commission, the Department of Health Education and Welfare, and the West Virginia Human Rights Commission.[137]

Burkey's primary claim was that she was discriminated against on the basis of her sex, both in terms of payment and work opportunities, and that her transfer to a non-coaching position at another school was a retaliation for her efforts to achieve equality.[138]

The lawsuit was filed in the United States District Court for the Northern District of West Virginia and after a trial, the district court agreed with Burkey and ruled in her favor. The court found that the board had an unwritten policy that female teachers could not coach boys' sports, that female teachers were at a salary level one-half that of male coaches, that Burkey was qualified to coach basketball and track for both girls and boys and in fact had qualifications equal or

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[136] Ibid.

[137] Ibid.

[138] Ibid.

superior to most of the males who coached in Marshall County, West Virginia.[139]

The court found that the board's defenses, including "economy measures" and "personality conflicts" were merely pretextual and that the board indeed had retaliated against her when they transferred her. The court held that these various activities constituted illegal discrimination against Burkey on the basis of sex, operated to deny her rights and were an unlawful employment practice prohibited under Title VII. The Court awarded her back pay and ordered the board to offer her the next available vacant physical education teaching position and to offer her the head coach's position for girls' basketball at any school in the County. The court further permitted Burkey to file a motion to recover attorneys' fees, costs and expenses. Burkey v. Marshall County Board of Education, (N. D. W. Va. 1981).[140]

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[139] Ibid.

[140] Ibid., p. 4.

In Kneeland v. Bloom Tp. High School District No. 206,[141] Alexis Kneeland sued the Bloom Township High School, its principal, the superintendent of the school district, and the individual members of the school district's board of education. She alleged violation of Title IX, claiming sex discrimination when she was dismissed from her position as Women's Sports Coordinator at Bloom High School.[142]

In dismissing the plaintiff's action, the court noted that Title IX prohibited sex discrimination in connection with federally funded education programs but held that Title IX did not prohibit employment - related sex discrimination in federally funded education programs.[143]

The court noted that three circuit courts of appeals (the first, sixth and eighth circuits) had reached the conclusion that Congress did not intend Title IX to generally embrace employment-related

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[141]Kneeland v. Bloom Tp. High School District No. 206, 484 F. Supp. 1280 (N.D. Ill.).

[142]Idem, Sports and the Courts, (V. 2, No. 3 Summer 1981) p. 9.

[143]Ibid.

discrimination based on sex except in the very narrow area where an employee was doing work which was specially funded by the federal government.[144]

The court dismissed the plaintiff's claim since Title IX did not apply to the allegations of her lawsuit.[145]

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Another case involves coaches in the issue of corporal punishment. In Bowman v. Pulaski County Special School District,[146] Bob Bowman was an assistant football coach and science teacher at Jacksonville Junior High School Northside in Jacksonville, Arkansas. James Mackey was a science teacher and assistant coach in both football and basketball. Each had an excellent record as a teacher and coach. On April 29, 1982 head football

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[144]Ibid.

[145]Ibid.

[146]Bowman v. Pulaski County Special School District, 723 F. 2d 640 (8th Cir. 1983).

coach Jimmy Walker disciplined five students in his office by striking them across the buttocks and thighs with a paddle. The single lick given to each student was excessive as it raised welts and bruises on the backs of the student's thighs.[147]

The Pulaski County Special School District permitted corporal punishment, but regulated the practice. One of the regulations required a second faculty member to witness the actual punishment, to listen as the student was informed of the reason for the disciplinary action and then fill out and sign a form reporting the incident.[148]

On the day of the incident, Bowman and Mackey were in the office when the punishment started, though Mackey left the room about the time the first lick was struck. Coach Walker did not request either of them to act as a witness though he did explain to the students the reason for the punishment.[149]

Bowman and Mackey offered assistance to the students, discussed the punishment with parents,

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147 Idem, Sports and the Law, p.90.

148 Ibid.

149 Ibid.

made public statements about the unwarranted severity of the licks and expressed opinions on how Walker should be disciplined.[150]

The parents of the students were upset over the incident and made Coach Walker's method of discipline on this and other occasions a matter of public debate. The incident drew a considerable amount of press coverage, caused some turmoil in the community and was blamed for dividing a previously harmonious faculty and student body. Coach Walker, after the effects of the punishment were known, asked Bowman to complete and sign a witness form. Bowman refused to sign.[151]

Coach Walker was briefly suspended, and his authority to administer corporal punishment was curtailed. He also issued a public apology. Bowman and Mackey were involuntarily transferred to Scott Middle School, a recently reopened facility.[152]

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150 Ibid.

151 Ibid., pp. 90-91.

152 Ibid.

After exhausting available administrative remedies, Bowman and Mackey filed a lawsuit alleging violation of their civil rights. The trial court heard the case and rescinded the involuntary transfer, ordered the parties to make a good faith attempt to resolve the dispute among the coaching staff and stated that if such efforts were unavailing, then a transfer of Bowman and Mackey to a better or comparable school would be permitted. Thereafter, Coach Walker remained adamant in his refusal to work with either party.[153]

Mackey was transferred to another school where he was assigned to coach football and basketball and asked to teach social studies rather than science. His total round-trip mileage to and from work increased from less than one mile to approximately 68 miles. Bowman was transferred to another school where he assumed the position of head coach for tenth grade football and was required to teach American history rather than science. His driving distance increased to approximately 100 miles to and from work, an increase over his earlier minimal amount of travel time.[154]

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[153] Ibid.

[154] Ibid.

Bowman and Mackey remained dissatisfied with their new positions and petitioned the district court for further relief. The district court denied the motion for further relief, and Bowman and Mackey appealed. As a part of the trial court action, the district court had awarded Bowman's and Mackey's attorneys $11,268.50 in attorneys' fees.[155]

On appeal, in Bowman v. Pulaski Special School District, (8th Cir. 1983), the United States Court of Appeals for the Eighth Circuit reversed the trial court's decision and ordered that Bowman and Mackey be restored to the positions they held at Jacksonville Junior High School Northside. The Eighth Circuit also affirmed the award of $11,268.50 in attorneys' fees.[156]

The Eighth Circuit noted that a three-step analysis must be undertaken in first amendment cases. The court must determine; (1) whether the plaintiff has carried the burden of proving that he engaged in protective activity; (2) whether the protected activity was a substantial or motivating factor in the actions taken against the plaintiff; and (3) whether the defendant has defeated the plaintiff's claim by demonstrating that the same action would have been

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155 Ibid.

156 Ibid.

taken in the absence of the protected activity.[157]

In ruling in favor of Bowman and Mackey the court noted that this incident had generated substantial public interest, that the time, manner and place of their speech was reasonable in that it followed the incident closely, was on school property and was restrained and moderate and that the speech arose in the context of discipline of students. The court stated:

> While we recognize and respect the importance of harmony and cohesion in any educational institution, we must conclude that the appellant's speech was protected by the First Amendment. In our mind the public's need to know whether children are being mistreated in school outweighs the other legitimate concerns of the government.[158]

The court pointed out that involuntary transfers could be as effective as discharges in chilling the exercise of first amendment rights.[159]

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[157] Ibid.

[158] Ibid., p. 91-92.

[159] Ibid.

Bradshaw v. Board of Education of Taylor County[160] raises an interesting question with respect to the status of a teacher/coach. Carter B. Bradshaw was a classroom teacher and head football coach at Taylor High School for four years. In February, 1978, he was notified that he would no longer be the football coach after the end of the current school year. In April, 1978, he was notified by letter that his salary would be reduced because of his dismissal as head football coach. Bradshaw filed suit against the board of education and superintendent, alleging his dismissal as head football coach was improper because the school board had failed to follow Kentucky law concerning demotion of administrators and that he had not been given proper notice concerning his salary reduction. He alleged he was an administrator because he held "a position in which he evaluates or supervises board employees," meaning his assistant coaches.[161]

The trial court ruled against Bradshaw and he appealed. The Kentucky court of appeals affirmed, holding that Bradshaw was not included within the

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[160]Bradshaw v. Board of Education of Taylor County, 607 S.W. 2d 427 (Ky. App. 1980).

[161]Idem, Sports and the Courts, (V.2, No. 4 Fall 1981) p. 7-8.

definition of administrator. The law defining "administrator" required that the employee devote "the majority of his employed time to service...in which he evaluates or supervises board employees...[162]

Since the position of coach was not specifically included in the list of administrative positions and since Bradshaw did not devote a majority of his employed time to supervising his assistant coaches, the court concluded he was not an administrator. The court also held that he had received proper notice of his reduction in salary, since the only legal requirement for notice was that it be in writing, furnished to the teacher not later than May 15 of each year and set forth the reasons for such reduction. Bradshaw v. Board of Education of Taylor Cnty, (Ky. App. 1980).[163]

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[162] Ibid.

[163] Bradshaw v. Board of Education of Taylor County, 607 S.W. 2d 427 (Ky. App. 1980).

Assignments, Non-Classroom

The question of whether or not a teacher may legally refuse to perform extra duties depends on the reasonablenesss of the requirement.

For determining the reasonableness of extra duty assignments the following guide rules should be considered:

Guide Rules

1. A teacher may be required to take over a study hall.
2. A teacher may be required to supervise student organizations in the area of his or her teaching field.
3. English and social science teachers may be requested to coach or supervise plays.
4. Physical education teachers may be expected to coach intramurals.
5. Teachers may be required to supervise field trips.

Even in considering the above suggested guide rules, legal issues may still arise.

1. Is an excessive number of hours involved in the assignments?
2. Are the students benefited?

3. Are the extra assignments distributed evenly among the teachers, i.e., is DISCRIMINATION involved?
4. Are the assignments professional in nature?
5. Do the assignments relate to the teacher's field of CERTIFICATION and interests?[164]

A few cases may help to point out how the courts look at challenges to schools' extra assignments based upon the above questions. For example, question 4 asks if the assignment is professional in nature. This is important because teachers may not be required to perform menial tasks, such as janitorial services or police (traffic) service. Following this reasoning, one court held that a teacher could not be forced to collect tickets at a football game because collecting tickets was a task that any adult could perform and was not professional in nature. The court added that the administration's requirement that teachers collect tickets was not intended to benefit the students. Rather, the court found that the admin-

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164 Richard D. Gatti and Daniel J. Gatti, New Encyclopedic Dictionary of School Law (West Nyack, New York: Parker Publishing Company, 1983) pp.53-54.

istration was motivated primarily by a desire to cut expenses.[165]

It is important to remember, however, that classroom duties are not the only duties a teacher may be required to perform. The following cases show that extracurricular assignments will be upheld by the courts when they are "fair and reasonable and related to school programs."[166]

In a 1975 case, a teacher challenged the validity of a school policy that required teachers to attend or supervise certain nonacademic school activities. These activities, which included football and basketball games, pep rallies and music programs, were held on weekday evenings and Saturdays. The court found that such assignments were reasonably related to the teachers' teaching duties. Therefore, even though the teachers' CONTRACT did not mention such extracurricular assignments, the teachers could be required to attend and supervise such activities.

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[165] Ibid.

[166] Ibid.

Moreover, the court held that teachers could be compensated at a lower than contract rate of pay for these activities.[167]

Another case involved a school board that sought to fill a coaching position for a girls' high school basketball team. The North Dakota Supreme Court held in this case that the teacher who turned down the position, although she was well qualified, could be terminated.[168]

Similarly, a Washington state court decided that teachers may be required to assume reasonable extracurricular duties as a condition precedent to their reemployment as long as the extracurricular duties are within the educational and professional preparation and experience of the teacher.[169]

The court reasoned in this case that programs aimed at expanding women's physical education were reasonably related to a legitimate educational purpose. Therefore, teachers may be required to participate in these programs.[170]

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[167] Ibid., pp. 54-55.

[168] Ibid.

[169] Ibid.

[170] Ibid.

Other courts have decided that refusing to perform extracurricular duties constitutes a strike. In so doing, a New Jersey court reasoned that: "Extracurricular activities are a fundamental part of a child's education, making the supervision of such activities an integral part of a teacher's duty toward his or her students."[171]

Guide Rule

It is advisable to consult state statutes because they often dictate the scope and nature of the allowable extracurricular duties. Such statutes may also indicate whether compensation will be made for the performance of these duties.[172]

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[171] Ibid.

[172] Ibid.

EMPLOYMENT AND JOB SECURITY

Contracts

Simply stated, a contract is an agreement between two or more parties (not merely a unilateral expectation) which is enforceable by law. Generally, employees in public school systems look to the written document (sometimes taking the form of a simple salary letter) they receive from their school board, sign, and return by a specified date as the complete embodiment of their employment contract with the school board. Given the complexities of contract law, this may or may not be so. In reality, such a determination can be made only after careful examination of appropriate state law, school board policies, and the specific document inself. Whether or not an agreement (oral or written) has ripened into an enforceable contract is a question to be determined on a case-by-case basis. As a general rule, however, once a contract exists, it is enforceable by either party and it shall not be significantly modified or breached unilaterally by either party.[173]

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[173] H. C. Hudgins, Jr. and Richard S. Vacca, Law and Education; Contemporary Issues and Court Decisions (Charlottesville, Virginia: The Michie Company, 1985) p 164.

Generally, a valid contract is enforceable whether made orally or in writing. Early in their studies, law students encounter the statute of frauds. Simply stated the statute of frauds requires that certain types of contracts must be in writing. The intent of such statues where they exist (and one must look to the appropriate state code to discover such provisions) is to prevent fraudulent claims.[174]

Teachers' Tenure as Job Security

To protect themselves from excessive exercises of school board authority and to establish job security, teachers have over the years relied on the existence of tenure statutes. Tenure (or continuing contract as it is called in some states) is conferred by state law and can be changed or repealed by legislative enactment only. Thus, to discover how tenure status and its specific guarantees are attained, one must examine the specific statutes of a given state. Under Texas law, for example, the decision is that of the local school board as to whether or not to adopt continuing contract provisions or to offer exployees fixed term contracts.[175]

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[174] Ibid., p. 165.

[175] Ibid., p. 171.

In Law and Education; Contempory Issues and Court Decisions, Hudgins and Vacca indicate that tenure in public education systems is not a guarantee of permanent employment. Tenure laws were meant in their inception and are meant now "to give job security to unified employees who meet the necessary qualifications and who satisfactorily have served the probationary period..." Thompson v. Modesto City High School, (Cal. 1977). As such, tenure restricts the legal authority of a local school board to terminate the employment of an employee (who has been awarded tenure) absent a showing of cause...Simmons v. Drew, (7th Cir. 1983). Once attained, therefore, tenure exists to protect competent teachers from unlawful, arbitrary, and capricious board actions and to provide orderly procedures (enumerated in state statutes) to be followed if and when cause for a teacher's dismissal is established.[176]

It must be remembered that tenure generally is obtained in a particular school system within a given state and may or may not be honored by another school system or other educational organization within that same state. Moreover, tenure accrues to types of

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[176] Ibid., pp. 171-172.

positions in a system (e.g., teacher, principal, supervisor) and not to specific assignments and positions (e.g., first grade teacher at Hill Elementary School). In a previously mentioned case, Smith v. Board of Education (1983), the Seventh Circuit made it clear that under the statutes of Illinois two physical education teachers had tenure as teachers but not as coaches.[177]

Regarding assignments of teachers to extracurricular duties, courts have granted discretion to local boards of education. In a recent New Jersey case, Board of Education v. Asbury Park Education Association (N. J. 1976), it was held that a local board need show only that the extracurricular assignments are reasonable, nondiscriminatory, are related to a teacher's interests and expertise, and do not require excessive hours. And, a teacher need not be compensated for such assignments.[178]

Compensation for extra assignments was one issue in a recent case decided by the Fifth Circuit Court of Appeals, Western District of Louisiana. In this case, however, a female associate professor at a state university claimed that her heavier than

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[177]Ibid.

[178]Ibid., p. 180.

normal course load kept her from the opportunity to teach extra courses for pay - something which her male counterparts could do because of their normal course loads, Berry v. Board of Supervisors, L. S. U. (5th Cir. 1983). Claiming, among other things, a violation of the Equal Pay Act, the plaintiff alleged that her faculty position had actually replaced two full-time professors and, as a result, she had a workload totalling eighteen to twenty-one hours per semester, while her male counterparts carried nine hours per semester. Thus, since her extra-heavy course load precluded her from working for extra pay as did male faculty, she had been placed in a position wherein she received "less money for equal work."[179]

The United States District Court, Western District of Louisiana, dismissed her complaint and the Fifth Circuit Court of Appeals affirmed that decision. In the court's opinion, "workload discrimination per se is not actionable under the Equal Pay Act..."[180]

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[179] Ibid., p. 180.

[180] Ibid., pp. 180-181.

SUMMARY

The literature indicates that most teacher/coaches have difficulty giving their best effort to both teaching and coaching responsibilities. Because of the pressures brought on by coaching, exceptional performance in both roles may not occur. Studies indicate that these pressures often cause many teacher/coaches tó retreat into the coaching role.

Coaching is really teaching. The most successful coaches are also very good teachers. Usually when teacher/coaches experience difficulties with employers over inadequate performance in one or both areas, a close examination will reveal a less than adequate performance in one or both areas. Too many coaches neglect one or the other and the price is usually job termination.

This, of course, would appear to lead to more teacher/coaches suing school boards when their contracts are terminated. This trend seems to have begun in the mid to late sixties and has picked up momentum as we move to the late eighties. More and more cases involve some issue that is related to employment.

CHAPTER III

MAJOR LEGAL AND EDUCATIONAL ISSUES RELATED TO THE DISMISSAL OF A TEACHER/COACH FROM HIS COACHING POSITION ONLY

Introduction

With the completion of the Texas-Texas A & M football game recently, the 1986 college football season came to its end. When that game ended, with A & M winning 16-3, the Texas coach, Fred Akers, under fire all season, found himself relieved of his coaching position. Texas alumni were openly dissatisfied with his performance and had made sure he knew of their desire for a coaching change.

Coach Akers, 48, was well aware of the attitude towards him. Before the season began, Akers said, "We're going to do the best we can with what we've got, and if that isn't good enough for'em, the _ _ _ _ with'em."[1]

Despite winning nearly 75% of his games during 9 years as Texas' head coach, he did not win enough of the games against A & M and Oklahoma, considered big games by the Texas alumni. In other words, he

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[1]Alexander Wolff, "The Eyes of Texas...," Sports Illustrated, December 8, 1986, p. 43.

did not win Texas-style or Texas-big.

The Akers story is indicative of the situation all too often present at the collegiate level. However, this degree of occupational security, or more accurately, insecurity is also very evident at the secondary school level. Many coaches often become the victims of a community and school that get caught up in an atmosphere of sports mania. This mania can generate so much pressure to win that when the win-ethic is not met the coach has to go.

The inherent challenge to the teacher/coach is maintaining a commitment to quality performance in both jobs. It is an ethical challenge -- a challenge of conscience. It involves effectively dealing with the feelings of frustration and guilt that are generated as one job begins to consume the other.[2]

By law, school boards are given the legal right to employ teachers of their choice by using various

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[2]James A Rog, "Teaching and Coaching the Ultimate Challenge," Journal of Physical Education Recreation and Dance, 55 (August, 1984):p48.

criteria such as ability and salary. Teachers are employed to perform particular duties and as long as these duties are within reason teachers may be assigned extracurricular duties. A teacher's contract to teach and coach may be divided if the board agrees, but if not, the teacher who prefers to do only one assignment is subject to dismissal.

The Victims

Although instructional positions are secure for those who have received tenure status as teachers, the "scapegoat" phenomenon has destroyed many coaches. Non-tenured teacher/coaches are generally also dismissed from teaching, Abell, even though their classroom performance may have been exemplary.[3] Within Indiana, for example, nearly 25% of approximately 400 male basketball coaches left their positions due to retirement, promotion, or dismissal in each of the last three years. Approximately 20% were dismissed by school officials for failure to win or to meet other role expectations, Mannies, 1981. In one area encompassing 26 high

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[3]Abell v. Nash County Board of Education, 321 S.E. 2d 502 (1984).

schools, 54 men have coached basketball in the last six years -- an average of two coaches per school, Washburn, 1980.[4] One school has hired and fired four coaches in the last five years. Within the same state, Washburn reports that over the past 25 years the average tenure of a varsity basketball coach at a school has been only three years. Coaches have often had little time to produce a winner.[5]

Influences of Professional Sports and Television

Clearly, sports are very much big business, and corporate managers care not a whit for "educating" their followers into the traditional joys of sports.[6]

Television is an especially harmful influence. Television's shallow beam focuses mostly on a few thousand professional athletes. It is an unreasonable and unrealistic focus. Millions of kids are playing organized amateur sports; only a few men and women

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[4]Templin and Washburn, "Winning Isn't Everything...Unless You're the Coach," pp. 16-17.

[5]Ibid.

[6]Karl Lindholm, "Coaching As Teaching: Seeking Balance," Phi Delta Kappan, 60 (January, 1979):p.734.

are capable enough to play as a career. Yet these youngsters naturally draw the substance and style of their athletic aspirations from their favorite pro star as seen on television. The relationship between the young player and the pro star is increasingly unfortunate. The values and motivation in the pro game (or major college game) are hardly akin to the sportsmanship, fair play, and simple enjoyment that we claim to place at the core of the scholastic athletic experience. Will not a young tennis player adopt Jimmy Conner's "half a peace sign" as well as his two-handed backhand?"[7]

Coaches of young athletes, too, are affected by those pro and major college coaches who are celebrated in the media and who teams appear on television. Many coaches of young athletes fail to realize the immense difference between their roles and those of big-time mentors. A high school football coach who aspires to be like the late Woody Hayes or a baseball coach who emulates Billy Martin is failing in his

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[7] Ibid.

responsibilities to his youngsters. The big time game is a cutthroat world in which coaches are not evaluated on their treatment of players, their interest in teaching, or their humane approach. Winning --no, not even winning -- coming in <u>first</u> is the only criterion of success. This kind of obsessiveness has no place in school sports, in which winning is a suitable goal but not an end in itself.[8]

The corruption of the pro game is a discussion for another time. It is relevant here only in its potential for displaying models -- inappropriate models -- to kids and their coaches. The words of Vince Lombardi's son are worth considering:

> He [the senior Lombardi] has been a great influence on a lot of coaches, not just in the pros but on lower levels, down to pre-high school football coaches. And from what I've seen and heard, I'm not convinced that younger kids are prepared for the strain that some well-meaning coaches place on them. Maybe you can't overstress striving for excellence, but I think you can over-emphasize striving for victory.[9]

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[8] Ibid.

[9] Ibid., pp 735-736.

School teacher/coaches function within a very different environment and should have a very different purpose from the Vince Lombardis. To fulfill themselves as teachers, coaches must offset the powerful pro model, withstand unreasonable outside pressures, and understand that their players are not full-time athletes. They must reinforce on a daily basis the long-standing, uncommercial rewards of sports.[10]

Coaches' Employment Issues/ Sports Litigation

State and federal courts over the years have been reluctant to usurp the discretionary powers of local boards as they relate to personnel matters. As a result, local school boards have considerable freedom in matters that pertain to the employment, assignment, nonrenewal, suspension, transfer and dismissal of coaches. Courts basically require only that school boards exert reasonableness in dealing with their personnel.[11]

The typical coach signs a divisible contract which requires the coach to teach and assume responsibility to coach one or more sports. The coaching assignment is separate and apart from teaching and

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[10] Ibid.

[11] Herb Appenzeller, Sports and Law, p. 98.

can be terminated for little or no reason. If a coach acquires tenure for teaching, he may be able to keep the teaching position although the coaching assignment has been terminated.[12]

Some school districts throughout the nation favor indivisible contracts which mean that individuals are hired on one contract to teach and coach. Termination of either duty leads to loss of both positions.[13]

The courts favor coaches who can prove that school districts have discriminated against them on the basis of sex or race. When coaches can prove that their rights of due process or freedom of expression have been denied them, the courts consistently rule in their behalf. The recent cases of Knapp, McGee and Bowman (referred to in Chapter II) point out the attitude of the courts regarding violation of rights. The rulings in these cases favoring the coaches offer a warning to school officials that the rights of coaches must be upheld.[14]

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[12] Ibid.

[13] Ibid.

[14] Ibid.

It seems clear that employment issues involving coaches will continue to be a problem that will go to the courts for judicial redress in the years to come. If enough judicial decisions are resolved, guidelines for coaches and school officials may finally help school officials in their role as decision makers.[15]

A 1984-85 survey of the 50 states, the District of Columbia, and the territory of Puerto Rico revealed that only seven states grant coaches tenure for coaching while 22 states refuse them due process when they are fired from their coaching duties. A majority of the 88% of the states responding reported that tenured teachers who are dismissed from coaching responsibilities can keep their teaching jobs. (See Tables I, II, III).[16]

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15 Ibid.

16 Ibid.

TABLE I

STATES GRANTING TENURE
FOR COACHING

State	Yes	No
Alabama		X
Alaska	X (not mandatory but permissive)	
Arizona		X
Arkansas		X no difference between coaches and teachers
California		X
Colorado		X
Connecticut		X
Delaware		X
Dist. of Columbia	--	--
Florida	--	--
Georgia		X
Hawaii	X	
Idaho		X
Illinois		X
Indiana	X	
Iowa	--	--
Kansas		X
Kentucky		X
Louisiana	X	
Maine		X
Maryland		X
Massachusetts	--	--
Michigan		X
Minnesota	X	
Mississippi		X
Missouri		X
Montana		X
Nebraska	Varies with local school districts	
Nevada		X
New Hampshire		X
New Jersey	--	--
New Mexico		X
New York		X
North Carolina	Both - either/or	
North Dakota	--	--
Ohio		X
Oklahoma		X
Oregon	X w/teaching pos.	
Pennsylvania		X
Puerto Rico		X
Rhode Island		X
South Carolina		X
South Dacota	X	
Tennessee		X
Texas		X
Utah		X
Vermont		X
Virginia		X
Washington	X	
West Virginia		X
Wisconsin	--	--
Wyoming		X

TABLE II

STATES REFUSING COACHES
DUE PROCESS

State	Yes	No
Alabama	If requested	
Alaska	Not requested by state	
Arizona		X
Arkansas	--	--
California	X (if also a teacher)	
Colorado		X
Connecticut	Possibly	
Delaware	Individual Basis	
Dist. of Columbia	--	--
Florida	--	--
Georgia	If requested	
Hawaii	X	
Idaho		X
Illinois	X	
Indiana	X	
Iowa	--	--
Kansas		X
Kentucky	Depends on local policy	
Louisiana		X
Maine	X	
Maryland	X	
Massachusetts	--	--
Michigan		X
Minnesota	If requested	
Mississippi	X (as teachers)	
Missouri	NA	
Montana		X
Nebraska	--	--
Nevada		X
New Hampshire		X
New Jersey	--	--
New Mexico		X
New York	Vary w/contracts	
North Carolina	X	
North Dakota	--	--
Ohio		X
Oklahoma		X
Oregon	X	
Pennsylvania		X
Puerto Rico	NA	
Rhode Island	--	--
South Carolina		X
South Dacota	X	
Tennessee		X
Texas	X	
Utah	X	
Vermont	If requested	
Virginia		X
Washington		X
West Virginia	X	
Wisconsin	--	--
Wyoming		X

TABLE III

STATES ALLOWING COACHES TO GIVE UP COACHING
AND STILL TEACH

State	Yes	No
Alabama	X	
Alaska	X	
Arizona		X (unless tenured as teacher)
Arkansas	--	--
California	X	
Colorado	X	
Connecticut	X	
Delaware	X	
Dist. of Columbia	--	--
Florida	--	--
Georgia	X	
Hawaii	X	
Idaho	X	
Illinois	X	
Indiana	X	
Iowa	--	--
Kansas	X	
Kentucky	X	
Louisiana	X	
Maine	X	
Maryland	X	
Massachusetts	--	--
Michigan	X	
Minnesota	X	
Mississippi	--	--
Missouri	NA	
Montana	X	
Nebraska	--	--
Nevada	X	
New Hampshire	X	
New Jersey	--	--
New Mexico		X
New York	Vary w/contracts	
North Carolina	X	
North Dakota	--	--
Ohio	X	
Oklahoma	Depends on contract	
Oregon	Depends on contract	
Pennsylvania	X	
Puerto Rico	X	
Rhode Island	X	
South Carolina	X	
South Dacota	X	
Tennessee		X
Texas	X	
Utah	X	
Vermont	X	
Virginia	X	
Washington	X	
West Virginia	X	
Wisconsin	--	--
Wyoming	X	

A review of the literature in Chapter II reveals that when coaches lose their jobs, it is almost certain that an allegation will be made regarding a lack of due process. In that regard their cases are no different from that of many non-coaching teachers who lose their jobs. Most of the time when due process is an issue, the protections and guarantees of the Fourteenth Amendment are cited by the coach.

Discrimination is another frequent area of litigation. Coaches usually carry their cases to court when they believe that they have been the victim of racial or sexual discrimination.

Typically, coaches are in an exceptional position in today's society. They are highly visible and, probably more than most professionals, subjected to either excessive praise or criticism. For years they had little to fear from the courts since most people did not sue coaches, and coaches did not sue others. Times have changed and issues dealing with coaches' employment continually surface in the courts and appear to be one of the most frequent intersections

of the law and sports. The majority of litigation involving coaches has to do with some aspect of employment.

If our American society continues to be sports crazy, and currently there is very little to indicate any significant change, coaches most likely will remain under pressure from people who feel qualified to supervise the staffing and operation of high school sports programs. The typical practice of intervention into high school sports of parental, community, and administrative groups has allowed significant people to be in position to confront, berate, and eventually work for the dismissal of coaches not meeting particular expectations.

Those persons in responsible positions who have control of the coach's future need to be more understanding with regard to key issues. Why hold the coach responsible to people with little or no background in the mechanics or understanding of coaching? Is it fair to criticize a coach for either playing or not playing a certain player or lineup? When a coach who has enjoyed success and has been a positive

figure in a school for a number of years has a losing season, should he be dismissed? Attention must be given to these and other questions if coaches are to be treated fairly.

Dismissals

The United States Supreme Court has interpreted the broad language of the Fourteenth Amendment to mean that nearly all of the individual freedoms and rights guaranteed to the people by the Bill of Rights are protected against improper action by state or federal actions.[17]

The state has the responsibility of establishing and maintaining the public schools. Even though local school boards do the actual hiring, the state is the employer of public school teachers and administrators. The school board acts as an agent of the state, as do the school district employees when they are performing their governmental duties. As the Supreme Court has said, the state may not enact any laws or engage in any activities which are in violation of an individual's constitutional rights. It follows, therefore, that local school boards and school officials are also pro-

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[17]Richard D. Gatti and Daniel J. Gatti, New Encyclopedic Dictionary of School Law, (West Nyack, New York: Parker Publishing Company, 1983), p. 96.

hibited from enacting any rules or regulations which substantially infringe on an individual's constitutional rights. This means that teachers and administrators have certain constitutional protections assuring them of such liberties as:

> .protection from arbitrary, capricious or discriminatory actions or dismissals on the part of the local board and due process. [18]

These protections are substantial. Nevertheless, it must be stressed that these rights are not absolute. Reasonable restrictions may be placed upon one's constitutional rights because the courts must weigh constitutional rights against the need for effective school management and operation. Therefore, certain restrictions may incidentially curtail the teacher's or administrator's constitutional rights. That is, they may do so if these restrictions are necessary to promote the efficient operation of the school. When that is the case, such restrictions will be upheld.[19]

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[18] Ibid., pp. 98-99.

[19] Ibid.

Essentially, due process is a course of proceedings following established rules which protect and enforce the rights of individuals. The most important element of due process is fundamental fairness. Teacher/coaches have a right to due process of law. The due process rights of non-tenured teacher/coaches may at times be different from those of tenured teachers.

Tenured Teacher/Coaches

Due process procedures are necessary to assure teacher/coaches that the reasons for their dismissal, transfer, nonrenewal, or demotion do, in fact, exist and they are not based on rumors, false facts or reasons which are in violation of their constitutional rights. The chilling effect on substantive rights without such procedures is clear.[20]

Tenured teachers have a right to a statement of the reasons for the proposed action and a fair hearing. A tenured teacher cannot be lawfully dismissed unless both of these requirements are met.[21]

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[20]Ibid., p. 153.

[21]Ibid., p. 154.

Non-Tenured Teacher/Coaches

Specifically, a non-tenured position does not give a teacher "expectancy of reemployment," requiring procedural due process in order to dismiss.[22]

The requirements of procedural due process apply only where an individual is being deprived of his or her protected interests of liberty or property. When the teacher/coach is being deprived of one of these interests, he or she must be granted some kind of prior hearing. The key question is, whether or not a non-tenured teacher/coach can establish liberty or property rights.

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[22]Ibid., p. 154.

AN ANALYSIS OF MAJOR COURT DECISIONS IN THE AREA OF THE REMOVAL OF A TEACHER/COACH FROM HIS COACHING POSITION ONLY

Introduction

Because teacher/coaches are in such an extraordinary position in today's society, they find themselves extremely visible and, perhaps more than most professionals, subject to considerable praise or criticism. For years, most coaches have placed little emphasis on lawsuits. They have had little to fear from the courts since people simply did not sue coaches, nor did coaches sue others. This investigator did not find a large number of cases related to teacher/coaching issues. However, this situation has changed, especially during the last ten to twenty years. The majority of lawsuits now appearing involving coaches deal with some area of employment. Coaches often go to court when discrimination is associated with sexual or racial bias. Also, they look for judicial relief in cases related to tenure, dismissal, divisible contracts, defamation of character and due process.

Cases chosen for review in this chapter will consider court cases of coaches on the secondary school level. They will review the issues placed before the court and the court's decision. It is important to examine the issues through actual case studies so that decision makers can obtain appropriate guidelines to facilitate decisions and policies that are legally as well as educationally sound. What follows is a categorized list of cases reviewed.

Cases Relating To Due Process

1. Genco v. Bristol Borough School District, 423 A 2d 36 (1980).
2. Tate v. Livingston Parish School Board, 444 So. 2d 219 (1983).
3. Abell v. Nash County Board of Education, 321 S.E. 2d 502 (1984).

Case Relating To Race Discrimination

1. Harris v. Birmingham Board of Education, 712 F. 2d 1377 (1983).

Cases Relating To Sex Discrimination

1. Walter v. Independent School District No. 457, 323 N.W. 2d 37 (1982).

2. Grebin v. Sioux Falls Independent School District, 779 F. 2d 18 (1985).

Cases Relating To Continuing Tenure Contracts/ Separate Contracts For Extracurricular Activities

1. Kirk v. Miller, 522 P. 2d 843 (1974).

2. Chiodo v. Board of Education Of Special School District No. 1, 215 N.W. 2d 806 (1974).

3. Leone v. Kimmell, 335 A. 2d 290 (1975).

4. School Directors of District U-46 v. Kossoff, 419 N.E. 2d 658 (1981).

5. Slockett v. Iowa Valley Community School District, 359 N.W. 2d 446 (1984).

6. Hosaflook v. Nestor, 346 S.E. 2d 798 (1986).

CASES RELATING TO DUE PROCESS

Genco v. Bristol Borough School District
423 A 2d 36 (1980).

Facts

Joseph D. Genco, who formerly held a school district position of "Assistant to the Principal, Coordinator of Physical Education, Athletics K-12 and Student Affairs," here appeals from the Court of Common Pleas of Bucks County, which dismissed his appeal

from the decision of the board of the Bristol Borough School District which purported to abolish that position, and reassign him to the position of classroom teacher.[1]

The parties agree that Genco's status as occupant of the abolished position was that of a non-professional employee of the district, and that Section 514 of the Public School Code of 1949, Act of March 10, 1949, P. L. 30, as amended, 24 P.S, 5-514, is the statute governing the present controversy. The Supreme Court has stated, in Coleman v. Board of Education of the School District of Philadelphia that "section 514 establishes rights in a School District employee not to be dismissed without specific cause and not to be dismissed without due notice and a statement of reasons, and it establishes corresponding duties in the School District. It also establishes a right to a hearing."[2]

The district afforded Genco a hearing, on his demand, as the district solicitor had recommended at the time the board originally eliminated the position. However, after the hearing, a majority of

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[1]Genco v. Bristol Borough School District, 423 A 2d 36 (1980).

[2]Ibid., p. 37.

the board concluded that the position had been abolished for budgetary and economic reasons; we note that the board's special counsel for the proceeding had recommended that the board rescind its action eliminating the position and reinstate Genco, on the ground that the evidence demonstrated that action not to have been based on financial considerations, but, rather, to have been an arbitrary and capricious action.[3]

Genco appealed to the lower court under the Local Agency Law, alleging that the position's elimination, and his consequent reassignment, were abuses of the board's discretion because they were actually undertaken solely in response to public pressure unrelated to the existence of the position, but directed at Genco as its occupant.[4]

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[3]Ibid.

[4]Ibid.

The trial court accepted the district's argument that financial considerations caused the board to eliminate the position; the court found the applicable law to be that:

> Where, however, a non-professional employee is removed from his position for reasons of economy the protections of that section (Section 514) do not apply and the action is not an adjudication as such is defined in the Local Agency Law. Therefore, he has no right to a hearing nor to an appeal to this court under the Local Agency Law. See Sergi v. Pitttsburgh School District, 368 A 2d 1359 (1977) and Pefferman v. School District of Pittsburgh, 387 A 2d 157 (1978).[5]

The court agreed but adds only that the converse of that principle must be equally true, i.e., if the employee's removal or the elimination of the position was for reasons other than economy, the protections of Section 514 do apply and the action is an adjudication under the Local Agency Law.[6]

The issue here, as in the trial court, is precisely as Judge Garb there stated: "In view of the foregoing, the only question remaining for disposition

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[5]Ibid.

[6]Ibid., pp. 37-38.

is whether appellant's termination from his position as assistant to the principal, coordinator of physical education, athletics K-12 and student affairs was for reasons of economy.[7]

Decision

The court said,"Because the record does not provide any support for the abolition of the position, whether for economic reasons or any other legitimate impersonal management reason, we find it to be an arbitrary action which cannot be cured by the label of "economic reasons" ascribed to it by the board majority."[8]

We, the court, find that action to have been arbitrary, Genco's removal from the position can only be considered a disguised personnel action, and therefore an adjudication taken without regard to the protections afforded employees by Section 514.[9]

As such, that personnel action must be considered a nullity. As in Coleman, supra, because

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[7]Ibid.

[8]Ibid., p. 41.

[9]Ibid.

"the School District provided (him) with no reasons for (his removal), (he) has established a clear legal right to reinstatement.[10]

> Accordingly, we will reverse the order of the trial court, and order that Joseph D. Genco be reinstated to the position of "Assistant to the Principal, Coordinator of Physical Education, Athletics K-12 and Student Affairs," with back pay and benefits from the date of the ineffectual action of the board abolishing the position, with due allowance for sums earned by alternate employment in the period.[11]

Discussion

The major importance of this case is that it laid down an analytical approach to addressing disguised personnel action taken by a school district.

A statute which establishes rights of a school district employee not to be dismissed without specific cause, due notice and statement of reasons, does not

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[10] Ibid.

[11] Ibid.

apply to non-professional employees who are removed from their positions for reasons of economy, but the statute does apply if the employee's removal or the elimination of his position is for reasons other than economy.[12]

Creation and abolition of positions is within the power of school boards; the only limitation which should be imposed on exercise of such power is that a board must act intelligently, impartially and with sound discretion.[13]

Tate v. Livingston Parish School Board
444 So. 2d 219 (1983)

Facts

This matter was previously before the court on appeal by the school board from a judgment in favor of plaintiff, David A. Tate, ordering the school board to "grant unto the plaintiff a due process hearing prior to the termination of, or failure to renew, plaintiff's contract as coach at Live Oak High School." The school board was further ordered

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[12]Ibid., p. 36.

[13]Ibid.

to restore to plaintiff all benefits of employment as coach, including salary, from June 2, 1977, until such time as the hearing was held. The judgment further specified that the school board was not compelled to hire Tate as a coach pending the hearing. The court reversed and set aside the judgment in favor of the plaintiff remanding the case to the trial court for a new trial.[14]

The new trial was held on May 10, 1982, and judgment was rendered and signed on September 9, 1982, against David A. Tate "to the extent that he is found to be not tenured as a coach and judgment to that extent in favor of the Livingston Parish School Board." Tate has devolutively appealed the judgment. We affirm.[15]

On appeal, the appellant specified as error that the trial court erred in determining that Tate did not enjoy tenure rights as a "coach

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[14] Tate v. Livingston Parish School Board, 444 So. 2d 219 (1983).

[15] Ibid.

of interscholastic sports" at the particular high school where he had coached.[16]

David A. Tate was employed as a teacher and a coach of basketball and baseball at Live Oak High School in Livingston Parish, where he had served in both capacities for over six years. For the school year of 1977-78, plaintiff was given a teaching contract, but was not given a coaching contract. Admittedly, plaintiff has not been denied his position as teacher; he has been denied his position as coach. Thus, the primary issue before this court is whether the position of "coach" is tenured under LSA-R.S. 17:441 et seq.[17]

LSA-R.S. 17:441 defines "teacher" as follows:

(1) Any employee of any parish or city school board who holds a teacher's certificate and whose legal employment requires such teacher's certificate.

(2) Any school lunch supervisor employed by a parish or city school board who holds a special parish school lunch supervisor's certificate issued by the department of education of the State of Louisiana and whose employment requires such certificate.[18]

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[16]Ibid.

[17]Ibid.

[18]Ibid., pp. 220-221.

It is clear from a reading of LSA-R.S. 17:441 et seq. that the Teacher Tenure Act was designed to protect classroom teachers and administrators and supervisors in the teaching profession. Further protection was expressly extended to such supervisory personnel holding special certificates. No specific inclusion of coaches of interscholastic extracurricular sports is made in the protective statute.[19]

Decision

Action was brought seeking due process hearing in connection with nonrenewal of high school teacher's coaching contract. On remand, the 21st Judicial District Court, Livingston Parish, Gordon E. Causey, Jr., rendered judgment against teacher and he devolutively appealed. The Court of Appeal, Covington, J., held that a high school athletic coach is not a "teacher" within the meaning of Teacher Tenure Act.[20]

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[19]Ibid.

[20]Ibid., pp. 219-220.

There is no merit to appellant's argument that he was "wrongfully terminated in violation of due process." Tate was not terminated or discharged from his position as coach. The term of his contract expired. His contract was not renewed. Hence it was not necessary for the school board to provide a due process hearing under the circumstances of this case.

Accordingly, the court affirmed the judgment of the trial court at appellant's costs.

AFFIRMED.[21]

Discussion

While athletic coaches must be certified teachers of substantive school courses at the several instructional levels, they are not required by law to be certified as "coaches." As the court sees it, a teacher who is also employed as a coach by a school board has two sets of rights,

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[21]Ibid., p. 221.

e.g., (1) his position as a "teacher" is protected by tenure (if he has acquired tenure status); and, (2) his position as "coach" is protected by the contract he has to perform coaching duties, but not by tenure. Coaching duties are separate and distinct from regular teaching or instructional duties.[22]

The Teacher Tenure Act was designed to protect classroom teachers and administrators and supervisors in the teaching profession.[23]

In areas which have been established for certification, a teacher can only teach in the area in which he has been certified.[24]

A high school athletic coach is not a "teacher" within the meaning of the Teacher Tenure Act, and hence, where teacher's coaching contract was not renewed the act, per se, did not require the school board to provide a due process hearing.[25]

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[22]Ibid.

[23]Ibid., p. 220.

[24]Ibid.

[25]Ibid.

Abell v. Nash County Board of Education
321 S.E. 2d 502 (1984).

Facts

Plaintiffs Reams and Abell were probationary teachers and assistant football coaches at Northern Nash High School (NNHS). Neither had ever received any criticism from their supervisors, and both consistently earned "satisfactory" evaluations during their two years at NNHS. At the end of the 1981-82 school year, both received letters informing them that the defendant Board of Education had decided not to renew their contracts for the 1982-83 school year. No reason was given in the letters. Plaintiffs inquired of their principal, but received no explanation why their contracts were not renewed. Having learned of nothing which would justify the Board's action, and otherwise believing that their performance as teachers had been more than adequate, plaintiffs filed suit for reinstatement, back pay, and actual and punitive damages. The Board moved for and obtained summary judgment, and plaintiffs appealed.[26]

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[26]Abell v. Nash County Board of Education, 321 S. E. 2d 502 (1984). p. 504.

Teachers in North Carolina are hired by local boards of education, upon the recommendation of their school superintendents. N. D. Gen. Stat. 115C-299 (1983); see N. C. Gen Stat. 115C-35 to -48 (1983) (duties of boards); N. C. Gen Stat. 115C-271 to -278 (1983) (Superintendents). Non-renewal of contracts of probationary teachers is governed by N. C. Gen. Stat. 115C-325 (m) (2) (1983), which provides:

> The board, upon recommendation of the superintendent, may refuse to renew the contract of any probationary teacher or to reemploy any teacher who is not under contract for any cause it deems sufficient; Provided, however, that the cause may not be arbitrary, capricious, discriminatory or for personal or political reasons.[27]

No statutory right of appeal exists. Probationary teachers who contend nonrenewal was for a prohibited reason therefore must sue in the appropriate court. Plaintiffs did so, alleging that the Board's action was arbitrary and capricious; summary judgment was rendered against them.[28]

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[27] Ibid.

[28] Ibid.

A party moving for summary judgment may prevail if it meets the burden of proving an essential element of the opposing party's claim is nonexistent or by conclusively establishing a complete defense. If the moving party forecasts evidence which would entitle it to judgment as a matter of law, the non-moving party then must come forward with a forecast of evidence showing that a genuine issue of material fact exists for trial. The nonmovant may not rely on conclusory allegations unsupported by facts. The evidence must be considered in the light most favorable to the non-movant with all reasonable inferences therefrom.[29]

The Board's position was that it established a complete defense as a matter of law. It relies on the court's opinion in Hasty v. Bellamy, 260 S.E. 2d 135 (1979). There a probationary teacher's principal tried to get him to sign a letter which appeared to waive certain employment rights. When the teacher refused, the principal and the school superintendent recommended that the board not renew his contract.

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[29]Ibid.

After nonrenewal, the teacher sued and his complaint was dismissed; on appeal, the court reversed.[30]

From plaintiff's complaint, two possibilities appear: (1) the board failed to renew plaintiff's contract because he refused to sign the letter of condition, or (2) the board failed to renew plaintiff's contract because the principal and superintendent recommended that he not be rehired. If the latter were proved to be the case, no violation of ... (G.S. 115C-325 (m) (2)) would be established, since the superintendent is entitled to make such recommendations. If the plaintiff were able to prove (1) above, however, there would be a different result.[31]

Hasty v. Bellamy, supra, (emphasis added). The court held that the plaintiff could pursue his claim that the failure to renew, if based solely on his refusal to sign the letter, was arbitrary and capricious.[32]

Relying on the emphasized language, defendant board argues steadfastly that the superintendent and

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[30]Ibid., p. 505.

[31]Ibid.

[32]Ibid.

principal recommended that the plaintiffs' contracts not be renewed, and that its action therefore was not arbitrary and capricious as a matter of law. The board introduced minutes of the meeting at which the recommendation was made, with an attached list of teachers not offered renewal contracts. Plaintiffs were the only two teachers named thereon. The board also introduced an uncontradicted affidavit from the superintendent that he had recommended plaintiffs not be reemployed. Defendant contends that applying Hasty literally, this evidence sufficed to establish a complete defense to plaintiff's action.[33]

Decision

Recent decisions of the United States Supreme Court support the court's decision. In the landmark case of Citizens to Preserve Overton Park v. Volpe, that court, as in the present case, was asked to review an informal administrative decision with no hearing record or other required formal presentation of facts. The court held that ultimately the ques-

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[33] Ibid.

tion before it was a narrow one, i.e., whether the decision of the administrative agency was arbitrary. capricious, an abuse of discretion, or not in accordance with law. To enable a reviewing court to make such a determination, the court ruled, the administrative record must disclose what factors the administrator considered in reaching the decision. See also Bowman Transportation v. Arkansas-Best Freight.[34]

As noted above, the court does not require that a formal order be prepared each time a board of education decides not to renew a probationary teacher's contract, but the board's records should reflect the specific substantive reason for the nonrenewal of his contract. See Department of Correction v. Gibson, 301 S.E. 2d 78 (1983) (racial discrimination case) (burden to produce explanation on employer).[35]

With foregoing principles in mind, the court concludes that the present record does not justify summary judgment in favor of the defendant board. As noted above, the board, as movant, bore the burden of es-

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[34]Ibid., p. 507.

[35]Ibid.

tablishing a rational reason for its action. The board offered only documents indicating that plaintiffs were recommended for cuts by the principal and the superintendent. One document, entitled "Worksheet" (author unknown), makes the following reference to plaintiff Reams: "Was tenured in Edgecombe County please keep him here!" Affidavits of the superintendent and plaintiffs' principal stated that neither had recommended plaintiffs for renewal, for reasons which "were substantial and were related to the educational process of the Nash County public schools." Plaintiffs submitted counter-affidavits to the effect that they had talked repeatedly to the principal, who had told them he had recommended that their contracts be renewed. The evidence regarding the recommendation of the principal, plaintiffs' direct supervisor, thus conflicted sharply, and the substantive reasons advanced by the two administrators are too vague and conclusory to justify summary judgment.[36]

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[36]Ibid.

Some substantive evidence in the record indicates that positions at NNHS needed to be reduced by three from 52 to 49. No conclusive evidence was introduced to explain why only these two teachers were not renewed, out of seven originally recommended for nonrenewal. On the present record, the court must conclude that summary judgment was improperly granted to defendant board.[37]

The court does not believe, as the board contends, that our decision will result in a wave of litigation by disappointed teachers. Rather, it requires boards of education to be forthright about their actions. If a probationary teacher is not renewed, those who have made that decision simply must have a valid basis. On the present record, however, no such rational reason appears conclusively, and this court accordingly does reverse.[38]

Discussion

Probationary teachers who contend their nonrenewal was for a prohibited reason must sue in the appropriate court, since no statutory right of appeal exists.[39]

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[37] Ibid.

[38] Ibid.

[39] Ibid., p. 502.

Discretion of school boards with respect to dismissal of probationary teachers remains very broad after passage of statutes providing tenure for career teachers and listing allowable reasons for their dismissal or demotion, but decision not to renew probationary teacher's contract must have some non-arbitrary basis.[40]

A school board may refuse to renew a probationary teacher's contract upon recommendation of the superintendent: that recommendation is only advisory, however, and ultimate responsibility rests with the board.[41]

Statute providing tenure for career teachers imposes a duty on boards of education to determine substantive basis for recommendations of nonrenewal of probationary teachers and to assure that nonrenewal of probationary teachers is not for a prohibited reason.[42]

Arbitrary or capricious reasons for failing to rehire non-tenured teachers are those without any rational basis in the record, such that a decision made thereon amounts to an abuse of discretion.[43]

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[40]Ibid., p. 503

[41]Ibid.

[42]Ibid.

[43]Ibid.

The advisory nature of a superintendent's recommendation to a school board not to rehire a non-tenured teacher places responsibility on the board to ascertain the rational basis for the recommendation before acting upon it.[44]

By statute and under traditional common-law principles, superintendent and principal are agents of the board of education.[45]

A board of education cannot escape responsibility for its actions, based on recommendations of its agents, including superintendent and principal, by simply refusing to inquire into their agents' reasons for recommending dismissal of various teachers.[46]

A board of education must accept responsibility if it decides to not renew a probationary teacher's contract on recommendations of its superintendent or principal which were made on improper grounds does not mean that the board must make exhaustive inquiries or formal findings of fact, but only that the administrative record, be it the personnel file, board minutes or recommendation memoranda should disclose basis for the board's actions.[47]

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[44]Ibid.

[45]Ibid.

[46]Ibid.

[47]Ibid.

CASE RELATING TO RACE DISCRIMINATION

Harris v. Birmingham Board of Education, 712 F. 2d 1377 (1983).

Facts

The black plaintiffs, who were or had been coaches with the city board of education, brought Title VII employment discrimination suit.[48]

Rufus Harris, George Moore, and Bobby Minard, are black teacher/coaches in the Birmingham, Alabama school system. Each has served as an assistant football coach. Moore has also served as a head basketball coach. They claim that the Birmingham board of education (BOE) discriminated against them, and other black coaches, by hiring them to head coach and assistant coach positions only in black schools.[49]

In 1971, Bill Harris, white athletic director, selected Rufus Harris to transfer to Ramsey High School to become the school's first black assistant coach. Harris, unhappy with the decision, orally requested a return to historically black Carver High School at the end of the school year. His request

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[48]Harris v. Birmingham Board of Education, 712 F. 2d 1377 (1983).

[49]Ibid., p. 1374

was granted. Upon his return to Carver, Harris served as an assistant football coach. In 1972, when the head football coach position became vacant, James Lowe, the black principal, told Harris that he would be recommended to fill the vacancy. Instead, the principal selected Willie Peake, a black coach. Harris was later replaced as assistant coach by another black coach. Harris claims his transfer to Carver and subsequent discharge were racially motivated. The court finds nothing in the record to support such a finding.[50]

In the spring of 1973, E. E. Thompson, the black principal of Parker High School, began searching for a head football coach. Minard was an assistant football coach at Parker High during the 1972-73 school year. Minard, however, never formally expressed an interest in the head coach position to Thompson. Subsequently, Cecil Leonard a black, was chosen for the job. Minard, assuming that he had been excluded from the staff, did not participate in spring training. He was replaced by Wendell Jones and Alvin Griffin, black assistant

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[50]Ibid.

coaches. Minard later requested a transfer to Glenn, Carver, or Jackson-Olin High Schools to teach driver education. Board director, Dr. Goodson, a black, offered Minard the choice of four elementary schools. Minard selected Lewis Elementary, where he taught physical education. Later, he transferred to Glenn High School. During Minard's tenure at Glenn High he never applied for any of several coaching positions. Minard claims that his assignment and discharge from Parker High was racially motivated. Examination of the record reveals no support for these charges.[51]

In 1973, the head football coach position at Jones Valley High School became vacant. The duty to find a replacement fell to Simpson Pepper, the white principal of Jones Valley High School. Pepper turned to Bill Harris, the board's athletic director, to assist him in the search for a head football coach. During their search, however, they did not consider Moore for the position. Pepper indicated that he assumed that Moore was happy as head basketball coach and therefore did not consider Moore. Pepper

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[51]Ibid.

stated the board had a long-standing policy against an individual holding head football and head basketball coaching positions. Bill Harris recommended Herbert Bruce, the disenchanted white head football coach at Phillips High School to fill the Jones Valley vacancy.[52]

Phillips High is a predominantly black high school. During his term as coach at Phillips, Bruce experienced problems maintaining and building its football program. Billy T. Marsh, the white principal of Phillips High, wanted Bruce replaced by a black head football coach. Bruce wanted the head coach position at prediminantly white Jones Valley. Pepper, principal at Jones Valley, hired Bruce. This created a head football coaching vacancy at Phillips. When Marsh turned to Bill Harris for advice, Harris suggested Moore.[53]

After an interview, Marsh offered the head football coach job to Moore. Moore requested Harris and Minard as his assistants. Marsh denied the request. Moore later rejected Marsh's offer. Moore

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[52]Ibid.

[53]Ibid.

spent the 1973-74 school year at Jones Valley High as an assistant football coach and head basketball coach. A year later, at Bruce's request, Moore resigned as assistant football coach. By 1975, historically white Jones Valley High had enrolled a large number of black students. Bruce, again dissatisfied, left Jones Valley High after two years as head football coach. He transferred to predominantly white Gardendale High School in the Jefferson County school system. John Galloway, one of Bruce's white assistant coaches, replaced him at Jones Valley. Pepper, in reaching his decision to hire Galloway again assumed Moore's lack of interest in a head football coach position. Pepper based this assumption on Moore's refusal to serve as head football coach at Phillips. Moore claims the decision not to consider him was racially motivated.[54]

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[54]Ibid., pp. 1379-1380.

Decision

The Court of Appeals, Hatchett, Circuit Judge, held that in this Title VII discrimination in employment case, this court must determine whether the trial court erred in finding that appellants were not victims of hiring or promotion discrimination because of their race. Finding that the trial court, 537 F. Supp. 716, was clearly erroneous in its findings as to one appellant, this court affirms in part, and reverses in part.[55]

The court holds that the trial court's finding on the ultimate issue of discrimination is clearly erroneous and that the case was decided under an erroneous view of the controlling law regarding the weight to be given to past history of discrimination, lack of standards, and lack of objective criteria for hiring and promotion. Having so concluded, the court does reverse the district court's dismissal under rule 41 (b), Fed. R. Civ. P.[56]

Discusssion

The record did not support claim that transfer and subsequent discharge of black teacher/coaches was racially motivated.[57]

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[55]Ibid., pp. 1378-1379.

[56]Ibid., p. 1384.

[57]Ibid., p. 1377.

In Title VII employment discrimination suit, the plaintiff has the burden of proving by preponderance of evidence a prima facie case of discrimination, and if he succeeds in proving such case, burden shifts to the defendant to articulate a legitimate, nondiscriminatory reason for employee's rejection, should defendant carry such a burden, plaintiff must have the opportunity to prove by the preponderance of evidence that reasons offered by defendant were not its true reasons, but were pretext for discrimination. Civil Rights Act of 1964.[58]

"Factual inquiry" in Title VII case is whether defendant intentionally discriminated against plaintiff. Civil Rights Act of 1964.[59]

In an employment discrimination suit brought by black teacher/coach, failure of board of education to promulgate objective standards or policies regarding hiring of head coaches within school system contributed to establishment of prima facie Title VII case. Civil Rights Case of 1964.[60]

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[58] Ibid.

[59] Ibid., p. 1378.

[60] Ibid.

In Title VII employment discrimination suit against school board, proof of immediate past history of racial discrimination may be established by showing an existence of various desegregation orders. Civil Rights Acts of 1964.[61]

In a black coach-teacher's Title VII employment discrimination suit, statistical evidence, showing of only subjective hiring standards and history of past racial discrimination was enough to compel finding of employment discrimination. Civil Rights Act of 1964.[62]

To rebut presumption arising from prima facie case established by black teacher/coach in Title VII employment discrimination suit, defendant board of education had to clearly set forth, through introduction of admissable evidence, reasons for teacher/coach's rejection; board had to produce evidence that teacher/coach was rejected or that someone else was preferred for a legitimate nondiscriminatory reason. Civil Rights Act of 1964.[63]

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[61] Ibid.

[62] Ibid.

[63] Ibid.

Defendant board of education in a black teacher/coach's Title VII employment discrimination suit failed to rebut presumption that teacher/coach was victim of employment discrimination where board gave as reason for rejection a false assumption by one of its agents that teacher/coach was not interested in head football coaching position and where situation in which board placed itself was caused by subjective selection process utilized; under such procedure, no legitimate reason for rejection could be shown. Civil Rights Act of 1964.[64]

As a general rule, court could not grant defendant's motion for involuntary dismissal at close of plaintiff's case, but should allow defendant to introduce evidence before entering final judgment; only in instances where plaintiff has not met his burden should such dismissal be granted.[65]

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[64] Ibid.

[65] Ibid.

CASES RELATING TO SEX DISCRIMINATION

Walter v. Independent School District No. 457, 323 N.W. 2d 37 (1982).

Facts

This is an appeal by Independent School District No. 457 from an order of the Martin County District Court declaring that the School District violated Minn. Stat. 125:12 Subd. 6b (1980) by failing to offer respondent Rolf Walter, a teacher who had been placed on unrequested leave of absence, a two-fifths teaching position that had become available.[66]

Walter brought this action under the Uniform Declaratory Judgments Act, Minn. Stat. 555.01-.16 (1980). He sought monetary damages, reinstatement to a full-time position, and declaration that the School District had violated Minn. Stat. 125.12 Subd. 6b (1980), which provides for the reinstatement of teachers on unrequested leave. The school district contended that Walter did not have a valid teaching license when the two-fifths position became available, that the coaching position that was part of the two-fifths offer conflicted with the coaching position to which he was already assigned, and it was necessary

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[66]Walter v. Independent School District No. 457, 323 N.W. 2d 37 (1982)., p. 38.

to hire a female applicant to comply with affirmative action requirements. A court trial was held on May 6, 1980. In its order dated August 30, 1980, the court found that Walter was on unrequested leave of absence with respect to two-fifths of a full-time position at the time that a two-fifths vacancy occurred, and that the school district has violated both the statute and Walter's teaching contract by failing to offer him the two-fifths teaching position.[67]

Rolf Walter has been employed by appellant, a small school district in Southern Minnesota, since the beginning of the 1969-70 school year. He has taught German, ninth-grade mathematics, and both boys' and girls' health and physical education in the Trimont school system. He has also coached boys' basketball and football.[68]

The Trimont school district discovered the educational advantages of having at least one woman physical education instructor with its first such teacher, Garla Anderson's CETA-funded predecessor, Barbara Schutt. The district wanted to continue to

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[67] Ibid.

[68] Ibid.

make that educational opportunity available to its female students. Superintendent Harold Remme, in recommending to the school board at its August 29, 1979 meeting that Garla Anderson be offered the two-fifths position, gave the following reasons: (1) that it is important that female students have a woman teacher in physical education and health so that they can ask questions and be counseled in very personal matters; (2) that the girls' locker room can be more adequately supervised by a female physical education teacher; and (3) that it is important to have a female coach for girls' sports, both to serve as role model and to supervise the locker room. Experienced as Mr. Walter may be as a physical education instructor, he does not possess these qualifications. Much as he needs and should have a full-time teaching position within the district, he should not have that position at the educational expense of the girls in the Trimont junior and senior high school. The administrative decision of the Trimont school district in this regard, being neither arbitrary nor unreasonable, should be upheld.[69]

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[69]Ibid., p. 44.

Decision

The court took the position that the legislature intended to give school boards the discretion to conclude, independently, that a teacher should not be reinstated because he or she lacks certain "special qualifications" beyond those required by the licensing authority. Both the Department of Education and, at one time, the Trimont School District, considered Rolf Walter to be sufficiently qualified to teach girls' physical education. If certain exceptions must be made to ensure the availability of female teachers for positions of the type in question, the legislature may amend the statute accordingly. As it is now written, however, section 125.12 contains no such exceptions. Walter possesses all of the qualifications that the statute requires for full reinstatement; a license and seniority. It is evident that, but for the fact that he is male, he would have been awarded the position. Subdivision 6b(d) requires that teachers be reinstated to the same positions they held or "to other available positions in the school district in fields in which they are

licensed." Pursuant to subdivision 6b(d), Walter must be awarded the two-fifths girls' physical education position. To permit the school board to require additional qualifications would deprive him and other tenured, experienced teachers of the protection that section 125.12 was intended to provide.[70]

Discussion

A school district may exercise its own discretion in hiring the most qualified teachers.[71]

A school district could reasonably conclude that a woman might be a better girls' physical education instructor than a man would be; such a determination, made as part of a hiring decision, generally would be an administrative decision not subject to review unless found to be arbitrary or unreasonable.[72]

Whether a formerly full-time teacher may be considered fully reinstated upon being given a part-time position is a question of law reviewable on appeal.[73]

A full-time teacher who had been placed on unrequested leave of absence pursuant to statute providing for reinstatement of teachers on unrequested

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[70]Ibid., p. 43.

[71]Ibid., p. 37.

[72]Ibid.

[73]Ibid.

leave and who then accepted a part-time position remained on unrequested leave to the extent of the remainder of full-time position and had to be offered any part-time position, for which he was licensed, sufficient to restore him to full-time status.[74]

A full-time teacher who has been placed on unrequested leave of absence pursuant to Minn. Stat. 125.12 subd. 6b (1980) and who then accepts a part-time position remains on unrequested leave to the extent of the remainder of the full-time position and must be offered any part-time position, for which he is licensed, sufficient to restore him to full-time status.[75]

Grebin v. Sioux Falls Independent School District, 779 F. 2d 18 (1985).

Facts

A 43 year old female applicant for English teaching position at school brought age and sex discrimination actions following the hiring of a 27 year old male applicant. The District Court, John B. Jones, J., entered an adverse verdict in the

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[74]Ibid., pp. 37-38.

[75]Ibid.

sex discrimination claim, and entered judgment on adverse jury verdict in age discrimination claim, and applicant appealed.[76]

Janet Grebin appealed from an adverse court verdict in her claim under Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. 2000e, for sex discrimination and from an adverse jury verdict in her claim under 29 U.S.C. 626 for age discrimination.[77]

Grebin was 43 years old when she was considered for the ninth-grade English teaching position at Axtell Park Junior High School for the 1983-84 school year. Grebin's prior teaching experience consisted of one semester as an English teacher in Chester, South Dakota, and three years as a substitute with the defendant Sioux Falls School District (Sioux Falls). For one semester of that three-year period, she taught civics at Axtell Park. Her application for full-time teaching employment had been on file with Sioux Falls since March, 1980. The job was not given to Grebin, but instead to 27 year old Jeff Herbert. Herbert had three years experience as a full-time

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[76]Grebin v. Sioux Falls Independent School District, 779 F 2d 18 (1985).

[77]Ibid., pp. 18-19.

teacher and coach. During two of those three years, he taught English.[78]

Grebin commenced this action in February, 1984, alleging that she was not hired for the English position at Axtell Park because of her age and her sex. A jury returned a verdict for the defendant on the age discrimination count, and the court dismissed her sex discrimination claim.[79]

Grebin's attack on the trial court's rejection of her sex discrimination claim is two-fold. First, she claims the court erred by failing to address certain "admissions" the defendant made at the trial. Second, that the content of these "admissions" renders the court's decision "clearly erroneous." For reversal of the jury's determination of her age discrimination claim, Grebin alleges several procedural errors on the part of the trial court: (1) it improperly granted defendant's motion in limine; (2) it improperly instructed the jury on the burden of proof and inferences it could make; and (3) it refused to instruct the jury on the "willfulness" element of a discrimination action.[80]

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[78] Ibid.

[79] Ibid.

[80] Ibid.

The trial court determined that Grebin established a prima facie case in accordance with McDonnel Douglas Corp. v. Green, 411 L. Ed. 2d 668 (1973). It found that Grebin is a member of a protected minority, she applied and was qualified for the job in question, she was not hired, and defendant continued to seek applicants with similar qualifications. In response, the defendants asserted that they hired Jeff Herbert because he was the best qualified candidate for the position. Grebin attempted to prove that this reason was a pretext for discrimination, but the trial court concluded that she did not meet this burden.[81]

Grebin claimed this conclusion was erroneous because the court did not refer, in its memorandum, to certain admissions by the defendants. The importance of the alleged admissions is that Jeff Herbert's football coaching ability was a factor in the district's decision to hire him.[82]

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[81] Ibid.

[82] Ibid.

Grebin claimed the trial court erred by granting defendants' motion in limine which prevented her from introducing any evidence of alleged discriminatory conduct which occurred 180 days or more before she filed charges with the EEOC. The evidence she points to concerns that selection process for several teaching positions which opened up during the period in which she had her application on file with the district.[83]

This court will not disturb evidentiary rulings absent a showing that prejudice resulted. Here, the consideration does not include whether the alleged evidence of prior discrimination was improperly excluded because Grebin was not prejudiced by its exclusion. In at least two of those openings the person hired was over 40, and in a third opening, Grebin conceded that the selection was "fair." This evidence, had it been admitted, would not have furthered Grebin's action for age discrimination. Therefore, the ruling was prejudicial and must not be disturbed.[84]

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[83]Ibid., p. 20.

[84]Ibid.

Decision

The Court of Appeals, Heaney Circuit Judge, held that: (1) finding that school district had a legitimate, nondiscriminatory reason for not hiring applicant was sufficiently supported to support judgment on sex discrimination claim; (2) any error in evidentiary ruling on other alleged discriminatory conduct was not prejudicial; and (3) any error in failure to give instructions concerning existence of "willful" age discrimination was harmless in light of the jury's finding that there was no discrimination.[85]

The trial court determined that Grebin had not presented sufficient evidence of willful discrimination to warrant such an instruction. The court need not determine the propriety of this ruling. If the court erred in not instructing the jury on willfulness, that error could not have been prejudicial in this case because the jury found the defendants not liable. The jury determined that the defendants did not discriminate against Grebin. Thus, they never would have reached the question of whether defendants "willfully" discriminated against her. Fed. R. Civ. P. 61 pro-

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[85]Ibid., p. 18.

vides that errors which do not affect the substantial rights of parties shall be disregarded. The court finds that Grebin's substantial rights could not possibly have been affected by the absence of "willfulness" instruction since the jury had no cause to consider this question.[86]

The school district established sufficient legitimate, nondiscriminatory reasons for not hiring female applicant for ninth grade English teaching position to support finding of no sex discrimination in light of female applicant's limited experience of one semester as a regular teacher and three years as a substitute, and male applicant's three years of regular teaching experience, including outstanding recommendations, although an additional factor in employment decision was his ability to coach football. Civil Rights Act of 1964.[87]

The reviewing court was not required to consider whether alleged evidence of prior age discrimination was improperly excluded since claimant was not prejudiced by exclusion where evidence would not have furthered claim for age discrimination.[88]

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[86]Ibid., p. 21

[87]Ibid., p. 18

[88]Ibid.

Any error in trial court's ruling in age discrimination action that teaching applicant had not presented sufficient evidence of willful discrimination by school board to warrant an instruction was not prejudicial where jury found that school did not discriminate against applicant, and thus did not reach question of willfulness.[89]

CASES RELATING TO CONTINUING (TENURE) CONTRACTS/ SEPARATE CONTRACTS FOR EXTRACURRICULAR ACTIVITIES

Kirk v. Miller, 522 P. 2d 843 (1974).

Facts

Two school teachers sought declaratory judgment or writ of mandamus to either compel school board to issue contracts identical to those they had received in prior years or to declare that two form contracts, one for curricular activities and one for extracurricular activities, impinged upon their rights under the continuing contract law. The Superior Court, Pierce County, Horace G. Geer, J., dismissed and the teachers appealed.[90]

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[89]Ibid.

[90]Kirk v. Miller, 522 P. 2d 843 (1974).

Until the end of the 1972 school year, the defendants, directors of White River School District No. 416, offered to the plaintiffs, certified teachers of the district, a single form contract that contained provisions for curricular activities and extracurricular activities ("special assignments"), with the extracurricular activities segregated both by description and salary.

In April, 1972, the defendants proposed to offer plaintiffs two contracts, one encompassing curricular work and pay, and the other for extracurricular work and pay. The defendants intended that the curricular contract be subject to the continuing contract law, and that the supplementary contract not be so subject under RCW 28A.67.074, which specifically provides for and exempts supplemental contracts from the continuing contract law. The school board does now employ all plaintiffs; there is no question here of wrongful termination or refusal to renew a contract of a particular teacher.[91]

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[91]Ibid., p. 844.

Plaintiffs sought an alternate writ of mandate or declaratory judgment to either compel the school board to issue them contracts identical to those they had received prior to 1972 (single form), or to declare that the two-form contract impinged upon their rights as teachers under the continuing contract law. The trial court initially issued the alternate writ, but following hearing and presentation of defendants' case, dismissed the plaintiffs' cause of action. The court held that: (1) the continuing contract law was intended to apply only to curricular activities, and (2) the defendant school board was able, under RCW 28A.67.074, to issue supplemental contracts providing for extracurricular activities that were not covered by the continuing contract law.[92]

This case then raises initially a question of statutory construction of the continuing contract law, RCW 28A.67.070, and secondly, a question of statutory interpretation, which is one of first impression, of

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[92]Ibid.

the interface between the continuing contract law and RCW 28a. 67.074.[93]

That interface is clarified by the following statements: no certified employee shall be required to perform duties not described in the contract unless a new or supplemental contract is made, except that in an unexpected emergency the board of directors or school district administration may require the employee to perform other reasonable duties on a temporary basis.[94]

No supplemental contract shall be subject to the continuing contract provisions of Titles 28A or 28B.[95]

Decision

From a reading of the statutes, it appears that the legislature felt a distinction between certified or curricular duties and extracurricular duties. It recognized this distinction by authorizing a school district to utilize a supplemental contract as a means of contracting for the performance of any extracurricular duty or special assignment. Before this time it appears that school districts were authorized only to issue a single-form contract which was to include

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[93] Ibid., pp. 844-845

[94] Ibid.

[95] Ibid.

both curricular and extracurricular duties. Since the court has held that special assignments are not in any event covered under the continuing contract law, and because of the express disclaimer contained in RCW 28A.67.074, the court holds that such a supplemental contract covering these assignments will not be governed by the continuing contract provisions of RCW 28A.67.074. Since there is involved here no question of nonrenewal or wrongful termination of a special assignment, the court does not feel it appropriate to entertain any question concerning a termination following the execution of such a supplemental contract.[96]

The Supreme Court, Hamilton, J., held that continuing contract provisions did not relate to contracts for extracurricular activities; and that school district had the power to offer separate contracts for special assignments.[97]

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[96]Ibid., p. 846.

[97]Ibid., p. 843.

Discussion

Reference in continuing contract statute to "holding a position as such" means a teaching or administrative position, and does not refer to extracurricular responsibilities.[98]

Teacher's right to hold a special assignment, such as coaching or advising a special interest club, is in no way vested and special assignments held by teachers are not covered by continuing contract law.[99]

Special assignments for teacher and stipends therefore constitute a severable portion of teacher's contract which is not subject to continuing contract provisions.[100]

School board may legally execute a separate contract with teacher covering special assignments in years subsequent to those in which special assignments were included in contract which provided for curricular responsibilities and such a severed, supplemental contract is not governed by continuing contract statute.[101]

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[98] Ibid.

[99] Ibid., p. 844.

[100] Ibid.

[101] Ibid.

Chiodo v. Board of Education
Of Special School District No. 1,
215 B,W, 2d 806 (1974)

Facts

A coach brought an action for declaratory judgment that he had acquired tenure as a basketball coach pursuant to statute. From a judgment of the District Court, Hennepin County, Crane Winton, J., denying the coach's motion for summary judgment and granting a motion by the defendants for summary judgment, the coach appealed.[102]

Plaintiff brought an action for a declaratory judgment that he had acquired tenure as a basketball coach under the provision of Minn. St. 125.17. This appeal is from a judgment entered pursuant to an order granting defendant's motion for summary judgment and denying plaintiff's motion for summary judgment.[103]

Plaintiff is a certified teacher who has been employed by defendant Minneapolis school board as a social studies teacher since 1954. His position as

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[102]Chiodo v. Board of Education of Special School District No. 1, 215 N.W. 2d 806 (1974).

[103]Ibid., p. 807.

a tenured teacher of social studies is not involved in this action. In addition to these teaching duties, plaintiff has served in various coaching positions, including that of head basketball coach from 1962 until June, 1972. Plaintiff is certified as a head basketball coach pursuant to Minnesota State Board of Education regulations.[104]

In the spring of 1972, plaintiff was informed that he would not be reappointed as head basketball coach for the 1972-73 school year. This decision was made by the school principal under authority delegated to him to appoint each year from the teachers at that school those who would coach each sport.[105]

Plaintiff requested a written statement of the reasons why he was not being reappointed and a hearing on the matter. Both requests were denied. The sole issue before this court is whether plaintiff has acquired tenure as basketball coach so as to be entitled to the protections of the teacher tenure act as to that position.[106]

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[104] Ibid.

[105] Ibid.

[106] Ibid.

The teacher tenure act for cities of the first class is Minn. St. 125.17. It applies to the teachers of Special School District No. 1 since the district's boundaries are coterminous with the boundaries of the City of Minneapolis. Minn. St. 125.17, subd. 3, provides in pertinent part that after the completion of a 3-year probationary period without discharge,[107] "***such teachers as are thereupon re-employed shall continue in service and hold their respective position during good behavior and efficient and competent service and shall not be discharged or demoted except for cause after a hearing."[108]

Minn. St. 125.17, subd. 1 (a), defines the key word "teacher' as follows:

"The term 'teacher' includes every person regularly employed as a principal, or to give instruction in a classroom, or to superintend or supervise classroom instruction, or as placement teacher and visiting teacher. Persons regularly employed as counselors and school librarians shall be covered by these sections as teachers if certificated as teachers or as school librarians."[110]

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[107] Ibid.

[108] Ibid.

[109] Ibid

[110] Ibid.

Plaintiff contends (1) that his certification as head basketball coach pursuant to state board of education regulations establishes him as a "teacher"; (2) that an analysis of coaching functions brings a coach within the statutory definition of a teacher as anyone "regularly employed*** to give instruction in a classroom, or to superintend or supervise classroom instruction;" and (3) that the evidence is not sufficient to sustain the trial court's decision because the court's reasoning, incorporated by memorandum into the order, included assumptions of fact neither supported by affidavit not stipulated.[111]

Defendants argue that the statutory definition of "teacher" is exclusive and should be strictly interpreted to include only basic teaching positions, not extracurricular duties or assignments.[112]

Decision

This court has held that the enumeration in the statute of those entitled to the benefits of the teacher tenure act is exclusive. Board of Education

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[111] Ibid., pp. 807-808.

[112] Ibid.

v. Sand, 227 Minn. 202, 34 N.W. 2d 689 (1948). Since the position of coach is not expressly included, it is not subject to tenure rights unless a person holding that position is a person regularly employed to give instruction in a classroom within the meaning of the act.[113]

Also rebutting the argument for a broad definition of classroom teacher is the fact that the statute specifies several types of teachers, for example, counselors and librarians, in addition to the classroom teacher. The legislature could have specifically included coaches within the definition of teacher if it had intended that they be covered by the tenure act.[114]

This court is not impressed by the contention that certification as a coach confers tenure upon the coaching position. Certification as a criterion of tenure was rejected by this court in Eelkema v. Board of Education, 215 Minn. 590, 11 N.W. 2d 76 (1943).[115]

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[113] Ibid.

[114] Ibid.

[115] Ibid.

There is no case in Minnesota governing the issue presented by the appeal but several decisions from other state courts are brought to the court's attention by defendants and by amicus curiae. While all these decisions can be distinguished on their facts, or on differences in the tenure acts or certification requirements, they are significant in their unanimity in denying tenure to coaches and other similar positions.[116]

The court has considered plaintiff's assertion that the trial court's decisior in part was based on an assumption of unsupported facts. The decision of the trial court was based on several reasons, only one of which involved the challenged assumption. This court need not sustain a correct decision for the same reason or for all the reasons relied upon the trial court. The court does not think that particular portion of the trial court's memorandum is essential to an affirmation in this case.[117]

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[116] Ibid.

[117] Ibid.

Discussion

Under the statute defining "teacher," for tenure purposes, as every person regularly employed as principal, or to give instruction in a classroom, or to superintend or supervise classroom instruction or as placement teacher and visiting teacher, and persons regularly employed as counselors and school librarians if certificated as teachers or as school librarians, a coach, though certified as such, was not a "teacher" and did not acquire tenure.[118]

Words of the statute are to be viewed in their setting, not isolated from context.[119]

Likewise, the common meaning of the word "classroom" might include a gymnasium where basketball is taught. But words of a statute are to be viewed in their setting, not isolated from their context. If "classroom" were intended to include every location where instruction takes place, its presence in the language of the statute would be superfluous.[120]

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[118] Ibid., pp. 806-807.

[119] Ibid., p. 806.

[120] Ibid., p. 808.

The Supreme Court held that under a statute defining "teacher," for tenure purposes, as every person regularly employed, as a principal, or to give instruction in a classroom, or to superintend or supervise classroom instruction or as a placement teacher and visiting teacher, and persons regularly employed as counselors and school librarians if certificated as teachers or as school librarians, the coach, though certified as such, was not a "teacher" and did not acquire tenure.[121]

Leone v. Kimmel
335 A. 2d 290 (1975).

Facts

Suit was brought by an assistant football coach seeking to nullify action of board of education in not awarding a contract to coach for football season. On cross motions for summary judgment, the Supreme Court, Kent County, Christie, J., held that failure

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[121]Ibid., p. 806.

to grant a new contract was not a matter within the coverage of professional negotiations agreement which provides that, interalia, no teacher shall be reduced in rank or compensation or deprived of any professional advantage without just cause and that any such alleged action by board shall be subject to grievance procedures set forth in agreement.[122]

This suit arises upon plaintiff's petition for declaratory judgment, writ of certiorari and/or appeal seeking to nullify certain actions of the defendants, who constitute the Milford School Board. Both the defendants and the plaintiff have moved for summary judgment.[123]

Plaintiff, John A. Leone, is a teacher in the Milford School District. For five years before this case arose, he served as a teacher and also as assistant coach of the Milford High School football team. The duties that he undertood as assistant coach were in addition to his responsibilities in the class-

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[122]Leone v. Kimmel, 335 A. 2d 290 (1975).

[123]Ibid., p. 291.

room and were performed outside of normal school hours under a special separate contract. For these additional services, he received compensation in the amount of five hundred dollars at the end of each football season.[124]

Each year a new supplemental contract was executed between the plaintiff and the School Board. So each year the Board decided again to appoint the plaintiff as assistant coach and specified the compensation. The last such contract was entered into on August 15, 1972. Upon completion of the 1972 football season the plaintiff was paid for his services in accordance with the contract.[125]

Plaintiff also had a "Professional Employee Contract." This contract was dated June 1, 1972, and covered those services rendered by the plaintiff as a regular certified teacher during school sessions. This contract is not involved in the dispute before the court.[126]

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[124] Ibid.

[125] Ibid.

[126] Ibid.

The defendant school board held an informal meeting December 5, 1972, at which time it voted not to offer new coaching contracts for 1973 to the coach and assistant coach, the plaintiff herein. The next day, the coaches were informed of the board's decision and were urged to resign. Each of them refused to do so.[127]

Thereafter, a formal meeting of the board was held December 11, 1972. Although no written notice of the meeting was given the coaches, they requested the right to be present. That right was granted and they were present. Upon conclusion of the regular board meeting, the school board went into executive session for the purpose of discussing personnel matters. The board then discussed the coaching situation, and the coaches were given a chance to make a presentation to the board. Thereafter, a vote was taken by secret ballot, and the board formally decided not to award contracts to the coaches for the 1973 football season.[128]

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[127] Ibid.

[128] Ibid.

Both coaches brought suit in this court seeking to nullify the board's action.[129]

In a separate action in the Delaware Court of Chancery, the coaches filed suit seeking an injunction prohibiting the defendants from hiring any persons other than themselves to coach the Milford High football team during the 1973 season. Vice-Chancellor William Marvel, in a decision dated April 5, 1973, denied injunctive relief. The court held that the provisions of 14 Del. C. 1401 et seq., which sets out procedural and hearing requirements which must be met to terminate properly the employment of a public school teacher, were not applicable to the separate contracts for coaching athletic teams.[130]

Decision

The failure to grant a new contract for coaching to the plaintiff is not a matter within the coverage of the Professional Negotiation Agreement. The conclusion here reached under the terms of the

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[129] Ibid.

[130] Ibid.

Professional Negotiation Agreement seems to be in accord with long established custom which traditionally allows much more flexibility in the selection of coaches than would be allowed in the hiring and firing of teachers. If coaches could not be relieved of their duties at the end of their contract period without specific charges and a formal public hearing or other special formalities usually afforded in connection with teaching contracts, a new and very interesting field of contract law might develop. However, it is the court's opinion that the Professional Negotiation Agreement was not designed to open up this new field and that it imposed no restrictions on the selection of extracurricular athletic coaches for a new season after existing contracts had been completed.[131]

Summary judgment for the defendants is entered. It is so ordered.[132]

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[131] Ibid., p. 293.

[132] Ibid.

Discussion

The board of education in connection with awarding of contracts, for extracurricular coaching, is not required by statute or constitution to hold hearings.[133]

"Teacher," as defined in statute setting out procedural and hearing requirements which must be met to properly terminate employment of a public school teacher, and which does not include football coach while acting as such, parallels the meaning of "classroom teacher" as used in Professional Negotiation Agreement entered into between the board of education and the bargaining unit representing teachers of the school district and which provides for certain grievance procedures for alleged reduction in rank of teacher and thus additional duties undertaken by athletic coaches are not an integral part of classroom instruction as to which

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[133]Ibid., p. 290.

teacher has special and unique procedural rights under such agreement.[134]

The board of education's failure to grant a new contract for coaching to assistant athletic coach was not a matter within coverage of professional negotiations agreement, which was entered into between the board and bargaining unit representing teachers of school district and which provided, inter alia, that alleged reduction in rank or compensation or deprivation of any professional advantage without just cause of teacher by board of education shall be subject to grievance procedures set forth in agreement, and thus coach was not entitled to such grievance procedures upon board's consideration of coaching contract.[135]

School Directors of District U-46 v. Kossoff
419 N.E. 2d 658 (1981).

Facts

Improperly suspended physical education instructors, who were also football, baseball, and track coaches under separate contracts, appealed

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[134]Ibid.

[135]Ibid.

from judgment entered by the Circuit Court, Kane County, John A. Krause, J., affirming hearing officer's decision to reinstate instructors with back pay to their tenured teaching positions but declining to compel school district to reassign them to their coaching positions or direct reimbursement for lost coaching salaries.[136]

In this appeal the court will consider whether section 24-12 of the School Code of 1961 (Ill. Rev. Stat. 1979, ch. 122, par. 24-12) requires a school teacher who is reinstated to his tenured teaching position following review of his dismissal or suspension must also be reassigned to a second, extracurricular position which had also been held by him pursuant to a separate contract.[137]

In July 1979, charges of immoral conduct were brought by plaintiff, School Directors of District U-46, Counties of Kane, Dupage and Cook and State of Illinois, against defendants, Eric M. Anderson,

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[136]School Directors of District U-46 v. Kossoff, 419 N.E. 2d 658 (1981).

[137]Ibid., p. 659.

Rodney Bixby and John Newcomb. Defendants were suspended without pay from their high school teaching positions and extracurricular assignments by the school board, and it also sought dismissal of defendants and requested appointment of an independent hearing officer as required by statute. (Ill. Rev. Stat. 1979, ch. 122, par. 24-12.) By agreement of the parties, the cases were consolidated for hearing before the hearing officer, defendant Sinclair Kossoff. Defendant Anderson had been hired as a physical education instructor at Elgin Larkin High School and was assistant varsity football coach and head varsity baseball coach there at the time these charges were filed. Defendants Bixby and Newcomb had been employed as physical education instructors at Streamwood High School since 1977 and 1968 respectively. At the time they were suspended, Newcomb was head football coach and Bixby assistant varsity football coach and a track coach at the school.[138]

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[138]Ibid.

The hearing officer rendered a decision for defendants, stating the school district had failed to prove defendants guilty of the charges against them by a preponderance of the evidence. He ordered defendants "restored to the same positions as, or to positions substantially similar to, the ones held by them prior to their suspension" and "made whole for all monies and other employment benefits lost as a result of their suspension."[139]

Plaintiff thereafter filed a complaint in the circuit court of Kane County seeking administrative review of the hearing officer's order. (Ill. Rev. Stat. 1979, ch. 122, pars. 24-12, 24-16.) The circuit court affirmed the hearing officer's decision to reinstate defendants and directed that they each be reinstated with back pay to their tenured teaching positions. However, the trial judge determined that defendants' extracurricular coaching activities were not protected by the school code and that any remedy they may have had regarding

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[139]Ibid.

their coaching positions was thus outside the scope of administrative review. The court accordingly declined to compel the school district to reassign defendants to their coaching positions or direct reimbursement for lost coaching salaries.[140]

Defendants contend the tenure provisions of the school code require that upon being reinstated to their teaching positions the school board also was required to assign them to their former coaching positions or substantially similar ones. They suggest first that they were tenured as coaches and should have been reinstated to these tenured positions. Defendants also argue they were specifically hired as coaches and only incidentally as teachers and that therefore they were entitled to reassignment to teaching and coaching positions substantially similar to the ones they held prior to their suspension. Plaintiff maintains that defendants were not tenured as coaches. Plaintiff also contends the statute providing for reinstatement of previously suspended

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[140] Ibid.

teachers requires the board to reassign each only to a substantially similar "position," but that the term "position" only includes "primary curricular" job descriptions and does not include extracurricular assignments such as coaching.[141]

Decision

It appears defendants can prevail only if the amendatory language added effective September 9, 1979, requiring each of them to be reassigned "to a position substantially similar to the one which that teacher held prior to that teacher's suspension or dismissal" means defendants must now also be reassigned to those non-tenured extracurricular positions they held under separate contracts. We conclude the General Assembly did not intend the construction advocated by defendants. Had the legislature intended to grant teachers the right to reassignment in their extracurricular positions, it could easily have chosen more specific language, not framed in singular terms of a position similar to the one which a teacher previously held. To hold

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[141]Ibid., pp. 659-660.

otherwise would require an overly expansive reading of the statute in question. The teacher tenure provisions have been held to be in derogation of common law and must be strictly construed in favor of the school district.[142]

The court concludes the "position substantially similar" language of the statute does not compel plaintiff to reassign defendants to the athletic coaching duties held by them under separate employment contracts. These contracts and any right to recovery of damages under them were not before the trial court on administrative review and we will not consider them further in this case.[143]

The Appellate Court, Nash, J., held that: (1) instructors were not tenured under school code as coaches and therefore they were only tenured physical education "teachers" as such term was used in section of code governing rights of tenured teachers to reinstatement following improper suspension, and (2) amendatory language to such section of code, requiring improperly suspended teacher to be reassigned "to a position substantially similar to the one which that teacher held

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[142]Ibid., p. 661.

[143]Ibid.

prior to that teacher's suspension or dismissal" did not compel reassignment of instructors to athletic coaching duties held by them under separate employment contracts.[144]

Discussion

Football, baseball, and track coaches, who were suspended without pay from their high school teaching positions and extracurricular assignments for allegedly immoral conduct, were not tenured under school code as coaches and therefore were only tenured physical education "teachers" as such term was used in section of school code governing rights of tenured "teachers" to reinstatement following improper suspension, where athletic coaches were not required to be certified by law as coaches, and code defined "teacher" as school district employees regularly required to be certified.[145]

The General Assembly's intent in amendatory language to statute governing rights of tenured teachers to reinstatement following improper suspension, requiring that improperly suspended teachers be

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[144]Ibid., p. 658.

[145]Ibid.

reassigned "to a position substantially similar to the one which that teacher held prior to that teacher's suspension or dismissal," was not that physical education instructors, who were also football, baseball, and track coaches, had to be reassigned to athletic coaching duties held by them under separate employment contracts upon determination that school district had failed to prove them guilty of allegedly immoral conduct by preponderance of evidence.[146]

Slockett v. Iowa Valley
Community School District
359 N.W. 2d 446 (1984)

Facts

Following termination of teacher's coaching job but not her teaching position, she brought a declaratory judgment action asserting contractual rights to the coaching position.[147]

The question here is whether a coaching contract created a tenured teaching position. The trial court held the position was an extra-duty assignment, unpro-

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[146]Ibid., pp. 658-659.

[147]Slockett V. Iowa Valley Community School District, 359 N.W. 2d 446 (1984).

tected by Iowa's teacher tenure statutes.[148]

Plaintiff was first employed by defendant district as a teacher for the 1973-74 school year in September, 1973. According to the contract, plaintiff was hired both as a physical education instructor and junior high basketball coach. A similar contract was entered for the succeeding year. The agreement was different for the 1975-76 school year when two documents were executed. One, entitled "agreement to modify teacher's continuing contract," provided:

> Duties, Elementary Physical Education Instructor; Duty is 4/5 of full-time position; schedule to be arranged by principal. Activity or additional assignments to be made by administration as needed. Salary adjustments, assignments, or activity to be made according to extra-duty pay schedule. (Emphasis added.)[149]

Under the other document, called a "coaching contract," plaintiff undertook a varsity coaching assignment. It provided:

> Witnesseth: That party of the second part [the district] hereby appoints the party of the first part [plaintiff] to the position of head girls' varsity basketball coach and assistant girls' varsity track coach for the 1976-77 school year. (Emphasis added.)[150]

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[148] Ibid. p. 447.

[149] Ibid.

[150] Ibid.

Plaintiff continued her employment under this same arrangement for the 1976-77 and 1977-78 school years. Each time two separate documents were again signed.[151]

In February of 1979, the defendant school board voted not to offer plaintiff the head girls' varsity basketball coaching position for the 1979-80 school year. There was no attempt to terminate her other duties and plaintiff has continued as a physical education teacher and junior high girls' track coach. It was stipulated that plaintiff's varsity coaching position was terminated without affording her the procedural protections provided for termination of teacher contracts.[152]

For the entire period plaintiff's compensation for the teaching position has been determined by a salary schedule contained in the district's master agreement with the teachers. Her compensation for the coaching position was determined by an extra-

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[151] Ibid.

[152] Ibid.

duty pay schedule, which is a part of the same agreement.[153]

Plaintiff brought this declaratory judgment action asserting contractual rights to the head coaching position. She claims the district, having failed to terminate her coaching position in accordance with the statutory procedures, was without power to do so unilaterally. The trial court, ruling on the district's motion for summary judgment, determined that the head coaching position was a mere extra-duty assignment and did not qualify as a tenured teaching position. Hence, it ruled the district was not obligated to comply with the statutory requirements for terminating tenured positions.[154]

Decision

The administrative requirement that coaches must be certified does not carry teachers' tenure rights into coaching assignments. Teacher coaches, under the statute here involved, were tenured as teachers but there was nothing that prohibited them from

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[153] Ibid.

[154] Ibid., pp. 447-448.

agreeing to serve as coaches as an extra-duty assignment. The statutory definition of a teacher within section 279.13, in extending the definition to "all certified employees of a school district" included this plaintiff. But, as a teacher, she was free to contract as she did to enter upon coaching duties by way of the separate extra-duty assignment.[155]

The trial court was correct in determining the coaching position involved here was, by agreement of the parties, a mere extra-duty assignment. As such, it was not a tenured teaching position. Summary judgment was properly entered against the plaintiff.[156]

The Supreme Court, Harris, J., held that school district was not obligated to comply with the statutory requirements for terminating tenured positions, since the coaching position was, by agreement of the parties, a mere extra-duty assignment.[157]

Discussion

Statutory amendment providing that coaching positions are to be provided by a contract which is

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[155]Ibid., p. 450.

[156]Ibid.

[157]Ibid.

separate from any teaching contract and that such an extracurricular contract may be terminated at end of a school year pursuant to specified statutory provisions served to alter the law, rather than being a legislative explanation of the prior law.[158]

Legislature intended for tenure to attach to teaching position, not coaching assignment.[159]

Administrative requirement that coaches must be certified does not carry teachers' tenure rights into coaching assignments.[160]

Where coaching position was, by agreement of teacher and school district, a mere extra-duty assignment, it was not a tenured teaching position; thus, school district was not obligated to comply with the statutory requirements for terminating tenured positions when it terminated teacher's position as coach.[161]

When law is amended as to minor details and some disputed question is made clear by amendment, the amendment can be said to cast light on legislature's earlier intent.[162]

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[158]Ibid., pp. 446-447.

[159]Ibid.

[160]Ibid.

[161]Ibid.

[162]Ibid., p. 446.

It is fundamental prerogative of a legislature to declare what law shall be, but of courts to declare what it is.[163]

Hosaflook v. Nestor,
346 S.E. 2d 798 (1986).

Facts

A coach was transferred to a teaching position. The Upshur County Circuit Court reinstated transfer following school superintendent's determination that transfer had violated coach's rights/[164]

This is an appeal by Danny Hosaflook from a final order entered in the Circuit Court of Upshur County. The circuit court granted a writ of certiorari and reversed a ruling of the State Superintendent of Schools who had found that the Board of Education of Upshur County denied Hosaflook certain procedural rights when it voted to transfer him from the position of teacher/head football coach/head physical conditioning coach to the position of teacher. The circuit court reinstated the board's decision to transfer Hosaflook.[165]

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[163] Ibid.

[164] Hosaflook v. Nestor, 346 S.E. 2d 798 (1986).

[165] Ibid.

The appellant, Danny Hosaflook, is a tenured teacher at Buckhannon-Upshur High School in Upshur County. He has taught driver education at the high school since 1977. He previously taught at Buckhannon-Upshur Junior High School. Beginning in 1981, Hosaflook took on extracurricular duties as head football coach and head physical conditioning coach. In accordance with W. Va. Code, 18A-4-16 (1982), he entered into an employment contract separate from the contract for his regular teaching assignment.[166]

By letter, dated December 18, 1984, the Superintendent of Schools of Upshur County, Edwin M. Nestor, informed Hosaflook that Nestor intended to recommend to the Board of Education that he be transferred from his position of teacher/head football coach/head physical conditioning coach at Buckhannon-Upshur High School to the position of teacher, at the same school, for the 1985-86 academic year. The county superintendent also informed

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[166] Ibid.

[167] Ibid., pp. 799-800.

Hosaflook that a hearing on the proposed transfer would be scheduled and that Hosaflook had the option of having the hearing open to the public or held in executive session. A statement of reasons was appended to the letter. The action of the county superintendent followed a series of five board of education meetings held after the end of the 1984 football season.[167]

A two-day hearing was held in January, 1985. At the request of the appellant, it was closed to the public. After hearing the testimony, the board voted 4 to 1 to approve the superintendent's recommendation not to renew the appellant's coaching contract.[168]

On Hosaflook's appeal, the state superintendent specifically found that no written evaluations, in accordance with State School Board Policy 5300 (6) (a), were made. The state superintendent determined that the requirements of W. Va. Code, 18-A-2-7 (1977) and Policy 5300 (6) (a) must be met prior to the termination of a coaching assignment. Without deciding

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[167] Ibid., pp. 799-800.

[168] Ibid.

whether the procedural requirements of Code, 18-A-2-7 had been satisfied, the state superintendent tackled the substance of the hearing and concluded that the reasons given for nonrenewal of the appellant's coaching contract were not adequately proved. Consequently, the state superintendent ruled that the appellant was entitled to reinstatement.[169]

The county superintendent petitioned the Circuit Court of Upshur County for a writ of certiorari. Upon review of the record, the court reversed the state superintendent's decision, concluding that neither Code, 18A-2-7 nor Policy 5300 (6) (a) is applicable in a case involving nonrenewal of a contract for extracurricular duties.[170]

Decision

Failure by any board of education to follow the evaluation procedure in West Virginia Board of Education Policy No. 5300 (6) (a) prohibits such board from discharging, demoting or transferring an employee for reasons having to do with prior misconduct

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[169] Ibid.

[170] Ibid.

or incompetency that has not been called to the attention of the employee through evaluation, and which is correctable.[171]

Even if the procedures followed in this case arguably complied in many respects with the notice and hearing requirements of W. Va. Code, 18A-2-7 (1977), the failure to evaluate the appellant and to afford him an opportunity to improve, according to the mandate of Policy 5300 (6) (a), entitles the appellant to reinstatement to his position of football coach at Buckhannon-Upshur High School.[172]

It is unnecessary for the court to determine whether evidence adduced at the hearing sufficiently proved the charges against the appellant. See Smith v. Board of Education of County of Logan, supra, 341 S.E. 2d at 690. The evaluation process, pursuant to Policy 5300 (6) (a) is a critical part of any disciplinary transfer procedure under W. Va. Code, 18A-2-7 (1977). See Holland v. Board of Education of Raleigh County, --W. Va.--, 327 S.E. 2d 155 (1985). Failure to follow the evaluation process is a fatal one.[173]

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[171] Ibid., p. 801.

[172] Ibid., p. 802

[173] Ibid.

On appeal, the Supreme Court of Appeals held that: (1) statutory procedural protections applied to nonrenewal of contract for extracurricular duties, and (2) coach was entitled to reinstatement because he had not been afforded evaluation and opportunity to improve.[174]

For the foregoing reasons, the order of the Circuit Court of Upshur County was reversed, and this case is remanded for entry of an order affirming the decision of the state superintendent.[175]

Discussion

The coach who was transferred to teaching position based on alleged incompetency without evaluation or opportunity to improve in violation of state educational policy was entitled to reinstatement, notwithstanding the district's substantial compliance with statutory procedural requirements.[176]

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[174] Ibid., p. 798.

[175] Ibid., p. 802.

[176] Ibid., p. 798.

The school board could not terminate the teacher's extracurricular coaching contract without granting him protections afforded by statute and state educational policy.[177]

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[177] Ibid.

SUMMARY

An analysis of the major court decisions related to the removal of a teacher/coach from his coaching position indicates that most are related to dismissal, tenure, divisible contracts and defamation of character. Coaches will also go to court to resolve discrimination issues associated with racial or sexual bias.

In this study, many of these new forces in American society have been discussed as they relate to teacher/coaches and their dismissal. The questioning attitude of the public, court decisions, legislative actions, and the increasing awareness of the constitutional rights of individuals have led to more and more discussion and concern regarding dismissal issues.

The issue of due process appears in the courts more than any other. The important legal point to be remembered is whether or not due process is required by law and whether it is provided.

CHAPTER V
SUMMARY AND CONCLUSIONS

This study was designed to identify and to analyze historical and legal aspects of the dismissal of a teacher/coach from only his interscholastic coaching responsibilities. In order to place into perspective the position that most teacher/coaches occupy in today's society a review of related literature was conducted. An analysis of the literature revealed that most teacher/coaches are constantly scrutinized by members of the community who feel qualified to approach, criticize and ultimately request the dismissal of a coach not meeting their expectations. Therefore, decision makers at public schools should have information of a historical and legal nature to gain insight for future directions in teacher/coach issues which impact on potential dismissal. Also, teacher/coaches should have a source of information which delineates individual rights and the employer's compelling interest in education.

Prior to the seventies and eighties, comparatively speaking, there was not a great deal of judicial activity

related to teacher/coach dismissal. The review of literature on teacher/coach dismissal revealed several cases decided by state courts but made no mention of any litigation by the United States Supreme Court regarding the issue.

SUMMARY

In this study, the many forces currently affecting teacher/coaches and their dismissal which previously have not been present in American society were discussed. The questioning attitude of the public, court decisions, legislative actions, and the increasing awareness of the constitutional rights of individuals have led to more and more discussion and concern regarding dismissal issues. As the issues increase, relative to what constitutes valid qualifications to teach and coach and who determines whether or not an individual has the appropriate qualifications, the agencies and entities charged with the responsibility of teacher/coach employment - dismissal must be aware of the legal implications.

Because of the highly visible position teacher/coaches occupy, they are very likely to receive more praise or criticism than the regular classroom teacher. Some teacher/coaches are very effective in the dual role while others have difficulty managing the conflicts often caused by trying to be successful in both.

A review of the literature revealed that most teacher/coaches are employed on two separate contracts, one for the teaching position and another for coaching. This allows the school system to void the coaching contract at the end of the school year for little or no reason.

With the increase in litigation in the United States more and more cases associated with athletics have made their way into the courts. Most of them deal with employment issues. Teacher/coaches now go to court seeking decisions related to such issues as: tenure, divisible and indivisible contracts, defamation of character, and various forms of discrimination.

In the course of reviewing the literature, it also became apparent how important proper due process is with regard to the professional evaluation and ultimate possible dismissal of a teacher/coach.

Descriptive terms related to teacher/coach employment, such as secondary school teacher/coach, teaching contract, divisible contract, indivisible

contract, extracurricular assignment, teacher tenure, due process, racial discrimination, and sex discrimination vary little in meaning from state to state. All of the above terms have important implications for teacher/coach employment - dismissal issues.

In the introductory material to Chapter I, some very basic questions relating to the topic of this dissertation were proposed. Discussion developed around those six questions will provide insight concerning teacher/coach dismissal from the coaching position only.

1. What are the major legal issues regarding teacher/coaching assignments?

The major legal issues regarding teacher/coaching assignments are those questions raised by divisible contracts, teacher tenure laws, evaluation, and reasonableness of the requirement of assignment.

In most instances coaches in the public schools are employed on contracts that are separate from their teaching contracts. Usually, when these types of contracts exist, the school system can void a coaching contract at the end of a school year for little or no reason. Today, the important legal point becomes whether or not due process is required by law and whether it was afforded.

Many coaches argue that as teacher/coaches teacher tenure laws should protect them in both capacities. More and more when they are dismissed from their coaching duties, they challenge the school officials' power to terminate the contract, and quite often the court is asked to decide the issue.

Many coaches have difficulty in performing in an outstanding manner with all of the pressures they face, and excellent dual role performance is often unrealistic for them. Often when this occurs many coaches receive less than favorable performance evaluations either as a teacher or coach. Again, the question of due process is significant.

The question of non-classroom assignments often comes up in the court room. Whether or not a teacher may legally refuse to perform extra duties usually depends on the reasonableness of the requirement. In most cases extracurricular assignments will be upheld by the courts when they are fair and reasonable and are related to school programs.

2. Which of these issues are most often included in court cases related to the dismissal of a teacher/coach from his coaching responsibilities?

Certainly the issue of due process tends to appear in court often. It is reasonable to assume that Tate and Genco are examples of coaches seeking to be heard

and requesting the opportunity to not be dismissed without due notice and a specific cause.

In Tate the court pointed out that a high school athletic coach is not a teacher within the meaning of the Teacher Tenure Act, and where the teacher's divisible coaching contract was not renewed, the act did not require the school board to provide a due process hearing. The Genco case illustrates that the creation and abolition of positions is recognized as a power of school boards; however, the board must act intelligently, impartially and with sound discretion.

The question of discrimination has also appeared in the court room too. In Grebin the court was asked to decide whether her sex discrimination charges against the board of education were valid. The court ruled that Grebin was unable to present sufficient evidence of willful discrimination. In Harris, a race discrimination case, the court determined that the appellant was not a victim of hiring or promotion discrimination because of race. An important point

in this case was that the board of education had to produce evidence that the teacher/coach was rejected or someone else was preferred for legitimate nondiscriminatory reasons.

Coaches tenured as teachers often claim tenure in the athletic position as well. In Chiodo, the court found that the legislature, in defining teacher tenure, did not include coaches within the definition of teacher; consequently a tenured teacher does not automatically establish tenure as a coach also.

3. Which of the legal principles established by the "Landmark" decisions regarding teacher dismissal are applicable to legal issues involving dismissal from coaching responsibilities?

Questions of individual freedoms are answered as each relates to the First Amendment. The Fourteenth Amendment extends to citizens of the states all protections and rights of the Constitution and its Amendments.

The basic questions of federal constitutionality

must apply equally to state courts and legislatures as statutes and legal issues are developed and litigated.

The vast majority of lawsuits in which coaches are involved focus on some area of employment. Legal principles that receive most of the attention are due process, discrimination, and defamation of character.

4. Based on the results of recent court cases, what specific issues related to teacher dismissal from coaching assignments are being litigated?

The issue of due process appears to be litigated more than any other. There continue to be coaches who feel that their dismissal has caused them to have been defamed or that their employer has been unreasonable in his treatment of them.

Coaches without teacher tenure are also appearing in the courts. When they are dismissed as a teacher and coach without due process, they want to know why. In Abell two probationary teachers and assistant football coaches who were terminated by the Board of Education without being given any

reasons brought action for reinstatement, back pay, and actual and punitive damages. Though the court found for the board it established a significant position about the dismissal of probationary teachers when it decided that boards of education must be forthright about their actions. If a probationary teacher is not renewed, those who have made that decision simply must have a valid basis.

More and more coaches contend that tenure as a teacher should also provide similar protection for their coaching position. Generally, unless the contract provides the same protection for coaching that it provides for the teaching contract, the position provides no real property right.

5. Can any specific trends be determined from an analysis of the court cases?

Although there have not been any decisions regarding the dismissal of a teacher/coach from the United States Supreme Court, an analysis of other court decisions establishes a pattern of behavior. The pattern is one of support for appropriate due process. To date, no one has challenged the de-

cisions of state and federal district courts, when they have found for the employer.

The Constitution of the United States requires that the general welfare of the population be a continuing concern of government. The First and Fourteenth Amendments are ever present reminders of the rights and protections due our American citizens and Federal and State courts are established to make certain those freedoms remain secure.

Divisible contracts appear to remain predominant. Most boards of education simply wish to make the coaching duties independent of the teaching responsibilities. This allows the responsibilities to be addressed independently.

It is clear that when a teacher/coach challenges his dismissal in a court room and the court finds that the board and school administrators have provided satisfactory due process, the court will find for the employer.

6. Based on the established legal precedents what are the legally acceptable criteria for the dismissal of a teacher/coach from his coaching responsibilities?

Based on review of the literature and court cases, the legally acceptable criteria for the dismissal of a teacher/coach from his coaching position are those measures established by the courts which address contracts and due process. It should be emphasized that appropriate due process is the key issue and decisions of the future will continue to hinge on how adequately it has been afforded.

The Fourteenth amendment due process clause guarantees a coach the right to know why he is being dismissed and the opportunity to convince school officials before they dismiss him that they are making a mistake, that their reasons for dismissing him are either not supported by facts or less compelling than they think.

CONCLUSIONS

The legality of the dismissal of a teacher/coach from his coaching position has become a more litigous question in recent years. During the sixties, seventies, and now into the eighties the courts have handed down more teacher/coach dismissal

decisions than in the previous decades of the twentieth century. The level of legal action now appearing in the courts is indicative of the times and reflects the urgency of the need for appropriate professional activity between boards of education and teacher/coaches.

After an extensive study of the historical and legal aspects of teacher/coach dismissal, the writer has drawn the following conclusions:

1. All indications lead one to believe that there will be continuous legal activity concerning the employment of teacher/coaches and their dismissal.

2. The nature of the educational function does not lend itself to new areas of legal questioning; therefore, it is predictable that the same attempts to challenge due process will continue to appear.

3. Forces such as the questioning attitude of the public and an increased awareness of individual constitutional rights are affecting teacher rights and working conditions in America today as never before.

4. Litigation of teacher/coach dismissal issues in North Carolina has been infrequent. To date, there are less than five on record.

5. In nineteen states teacher/coaches do not have due process as coaches.

6. As of 1985 thirty-four states do not grant teacher/coaches tenure as a coach.

7. Intentional discrimination must be proved when a disparate racial or sexual impact is achieved when hiring, promoting, transferring, or firing employees.

8. Most states have basically followed the same pattern in utilizing divisible contracts for teacher/coaches. That is, separate contracts are signed for the teaching and coaching responsibilities.

9. Due process must be adhered to in teacher/coach dismissal proceedings.

Recommendations For Future Studies

It is important for decision makers to obtain appropriate information that will facilitate decisions and policies as they formulate appropriate personnel employment -- dismissal guidelines. The important thing to remember is that these guidelines must be educationally sound.

These guidelines must address the frequently litigated issues, i.e., tenure, character defamation, discrimination, divisible contract and due process.

It is recommended to future researchers that attention be given to the issue of due process and how it is administered within different school districts in and around the United States.

As times continue to change decision makers must be aware of employment issues. They must make every effort to be informed on issues that are addressed by others, especially those in the courts. This researcher strongly recommends decision makers to remain informed by continued study and attention to employee-employer issues.

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