

IOWA STATE DEPARTMENT
OF PUBLIC INSTRUCTION

(Cite as 1 D.P.I. App. Dec. 219)

In re Reed Roberts

Patricia Roberts
Appellant

v.

DECISION

Waterloo Community
School District
Appellee

[Admin. Doc. 428]

The above entitled matter was heard on April 28, 1978, before a hearing panel consisting of Dr. Robert Benton, state superintendent and presiding officer; Dr. LeRoy Jensen, associate superintendent, administration; and Gayle Obrecht, director, administration and finance. Patricia Roberts was present and represented by Attorney Alfredo G. Parrish, and the Waterloo Community School District (hereinafter District) was represented by Attorney Wallace B. Reed. At their request at the conclusion of the hearing, the attorneys were given additional time to prepare a stipulation to additional information to be placed in the record. The allotted time passed without additional material being presented.

This appeal centers around the District Board of Directors' (hereinafter Board) decision to uphold a decision of the Waterloo West High School basketball coach to cut a student from the basketball squad. The matter had been appealed to the Board through the District grievance procedure. The Appellant's contentions as they appear in the affidavit of appeal are as follows:

1. That Reed Roberts was eliminated as a Varsity basketball player from the West High School team in Waterloo, Iowa.
2. That the reasons for his elimination as done by and approved by West High principal and Waterloo Community School District were arbitrary and illegal, in that: [sic]
 - a. That the elimination of Reed Roberts was done solely on basis of race;
 - b. That no criteria exists at West High School for elimination of high school players from the Varsity Squad; and
 - c. Black players have to conform to a different level of achievement than white players prior to the time they are selected for the team.

3. That the decision reached by the Waterloo School Board was arbitrary and capricious for the following reasons:
 - a. The attorney for the school board Wallace Reed inadvertently assumed the role of hearing officer during the hearing;
 - b. The school board officers did not assume and perform their legal required function during the hearing before them;
 - c. The school board did not consider past actions by the West High Coach as factors for reaching their decision.
4. Past selection actions of the West High coach should have served as a basis for a decision due to the following:
 - a. Height being the only criteria for selection;
 - b. Selecting only blacks with "superstar" ability;
 - c. Using a pre-season conditioning program that was irrelevant to the school's requirement for participating in the Varsity program;
 - d. Failure to utilize black players in games after they have been selected on the team;
 - e. Eliminating Reed Roberts after he had played a total of five years;
 - f. Using whether or not his parents participated in a "pep" group as a criteria.

I. Findings of Fact

The Hearing Panel finds that it and the State Board of Public Instruction have jurisdiction over the parties and subject matter.

On November 11, 1977, Reed Roberts was informed by Coach Mike Hurn that he was not selected to play on the West Waterloo High School basketball squad. Reed and his mother, Patricia Roberts, appealed Coach Hurn's decision through the District's grievance procedure. Coach Hurn's decision was upheld at each level through the third level of appeal, and the Roberts appealed under the fourth level of grievance provisions to the District Board. At its regular meeting on December 19, 1977, the District Board went into executive session to discuss the matter. In the absence of the Board president, Wallace Reed, the Board Attorney conducted the hearing on behalf of the Board. His participation primarily involved establishing the procedure to be followed and asking questions of some participants. There is no indication from the record that Mr. Reed was an advocate in the proceeding or that he participated in the Board deliberation. In fact, he left the building where the meeting was held and was not present when the Board discussed the matter. Immediately following the discussion, the Board adjourned, and inadvertently failed to take official action in the matter.

The Roberts' family was notified a few days later, however, that the Board had voted to affirm the level three grievance decision, and Mrs. Roberts appealed to the State Board of Public Instruction. When the Department received the record in the appeal, it was noted that the District Board had, in fact, failed to make a decision in the record, and the appeal was dismissed for lack of jurisdiction on the part of the State Board.

Without further hearing, the District Board officially voted on February 13, 1978, to affirm the level three grievance decision. Mrs. Roberts made a timely appeal of that decision to the State Board.

Due to the nature of the allegations involved in this appeal, we will set down the relevant facts in more detail than we normally would.

Reed Roberts is a six foot tall, 18-year-old senior. He has played basketball on organized school squads for at least five years. During his sophomore year he played in 16 of 18 sophomore team games. He was first on the sophomore team in rebounding, second in "assists" and fourth in scoring. That year the sophomore team was winless in 18 games. During his junior year he played in 40 of 56 quarters on the junior varsity team. He was the seventh best player in rebounding, eighth in scoring and 10th in assists. He dressed for one varsity game but participated in no varsity games. His junior playing season was interrupted due to a collapsed lung early in the season and an ankle injury near the end of the season.

Coach Hurn testified that he was very familiar with Reed Robert's qualifications as an athlete. He had watched his progress closely through the sophomore and junior years and through pre-season practice his senior year. Pre-season practice included an average of about two hours and fifteen minutes a day from October 31 through November 11. Coach Hurn and Assistant Coach Tim Lofgren testified that each student trying out for the squad was discussed after practice each day and ranked against the other students trying out for the squad. Student names and rankings were placed on a blackboard in the Coaches' office for discussion purposes and then erased. The criteria which Coach Hurn used to evaluate the prospective players were ability, such as passing, defense and dribbling; attitude, such as following coaches suggestions for improvement; potential help for the varsity team, present or future; and practice help, whether the student could benefit the squad through his practice even though not one of the top players. Previous experience on non-varsity squads, need for college athletic financial assistance and skin color were not criteria considered by the coaches. Coach Hurn testified that when a junior and senior student of equal ability try out for a position on the squad, he would award the position to the junior, because the junior had more time for improvement.

At the conclusion of the pre-season practice season, using the above criteria, Coach Hurn ranked Reed at number 22 of the 33 students trying out for the squad. Reed felt he should have been ranked in the top 10. Those students ranked below 20 were cut from the squad. Six of the 22 white students trying out were cut from the squad this year, and seven of the 11 black students were cut. Of the three seniors cut

from the squad this year, two were black and one was white. Two black students tried out for the forward position, one made the cut of 20, though not the varsity team, and the other was Reed Roberts. For the 1976-77 season, 26 students, including six black students, tried out for the squad. The squad size was limited that season to 22 including five black students. Reed was ranked 20th at the time of the cut. Of the top six players, three were black, and of the top 10 players, four were black. Among the top six players during the 1976-77 season, blacks ranked first, fourth and sixth in game playing time and whites ranked second, third and fifth. Two of the four returning lettermen on next year's squad are black.

Assistant Coach Lofgren, who was new to the school this year, testified that after watching Reed in pre-season practice, he was unimpressed with Reed's fundamentals of basketball such as shooting, passing and dribbling. Coach Hurn testified that it was his opinion that compared to other seniors, Reed had not improved much from his sophomore year. He also felt that Reed did not readily accept coaches' suggestions.

In addition to his other duties, Coach Hurn was in charge of the fall physical conditioning program at the school. Students not involved in fall athletic activities but who planned to try out for winter sports were encouraged to participate in the conditioning program to keep in shape. Coach Hurn testified that he had announced the availability of the program at the end of the previous year's basketball season and suggested that it was a vital part of the athletic program. The conditioning program was also announced in the school bulletin and through announcements posted in the school. Coach Hurn denied ever making participation in the program a requirement for basketball participation. In response to the Appellant's question at the hearing as to whether he held it against boys who did not participate in the conditioning program, Coach Hurn replied, "Absolutely not."

Reed did not participate in the fall conditioning program. He testified that he did not know about the program, and that he helped his parents around the home and attempted to keep in good physical condition on his own.

Eleven of the 13 students not selected for the basketball squad had participated in the conditioning program or had been out for football. Fourteen of the 24 students participating in the conditioning program were selected for the basketball squad. Four of the top six players had participated in the conditioning program or had been out for football. Of the 11 black students trying out for the squad, eight had participated in the conditioning program, and of those 11, four made the squad. Twenty-two of the 33 students who tried out for the basketball squad had participated in the conditioning program, and nine of the 11 who had not participated had been out for football. Two students, including Reed Roberts, were not out for football. Two students, including Reed Roberts, were not out for football and did not participate in the conditioning program. Both (one black and one white) were cut from the squad. Two of the nine students trying out for basketball who had been out for football were black. Fourteen of the 22 students participating in the

conditioning program were white and eight were black. Nine (four white and five black) of the 13 students cut from the basketball squad had participated in the fall conditioning program, two (one black and one white) had been out for football, and two had participated in neither. Three seniors (one white and two black) trying out did not make this year's squad. One of the black seniors cut from the squad had participated in the conditioning program.

Neither the District, nor West High School, have official written rules of criteria or guidelines for selection of members of athletic squads. Selection of members of athletic squads and development of criteria for selection are left to the head coach of the squad. Selection of the members of the basketball squad has been traditionally the responsibility of the head coach.

Coach Hurn testified that while he generally supports the activities of the school's adult pep club, he does not feel that it is appropriate for coaches to become too friendly with club members. He testified that while he does attend some pep club activities, he does not personally know many of the members. He testified that membership of parents in the pep club is not a criteria for the selection of students to his basketball team.

Several incidents with alleged racial overtones were related by the Appellant. The Appellant's allegation that black players were not allowed much playing time is largely refuted by the record of playing time for the top six players in the 1976-77 season, and the fact that half of next year's returning letterman are black. The Appellant's allegation that two white students made the squad without going to pre-season practice is also explained on the record. Both had been ill or injured at the time of pre-season practice. One is a senior with the most playing time on the previous year's junior varsity team and the other is a 6'7" junior with potential for development. Another allegation was that Reed was left alone outside school late at night in the cold weather after returning from an out-of-town basketball game during the 1976-77 season. Coach Hurn denied knowing about the incident and indicated that the players usually returned much earlier than the time the alleged incident took place. The Appellant also stated that during one game Coach Hurn went onto the basketball floor and physically grabbed one of his black players. The Coach testified that he was frustrated with the boy's play and lack of following directions. There was no evidence in the record that any of these incidents were racially motivated.

II.

Conclusions of Law

The Appellant first contends that the action of the District Board in this matter was "arbitrary and illegal" in that Reed Roberts was cut from the West High School basketball squad "solely on the basis of race," that no criteria exists for selecting players and that black players must conform to a different level of achievement than white players in order to make the squad. We do not agree.

The record shows us clearly that Reed Roberts was not cut from the basketball squad "solely on the basis of race." Four out of the 20 players who survived the cut from 1977-78 squad were black, and two of the four returning lettermen for next year are black. In the 1976-77 season, when Reed Roberts was not cut from the squad, three of the top six players were black. There were a number of incidents in the record alleged to be racially motivated. While there is factual basis to the incidents themselves, the allegation of racial prejudice being involved in those incidents is bare and without supporting evidence.

The record shows that the head basketball coach did have criteria against which he measured the students trying out for the West High squad and that he and the assistant coach spent a great deal of time selecting the players who they thought were the best 20 players for the squad. We are aware of no legal requirement that such criteria be in writing.

We have been shown no evidence that black players must conform to a different level of achievement than white players in order to be placed on the basketball squad. The fact that both black and white players of varying ability levels have made the squad the last two years speaks to the inaccuracy of the allegation.

The Appellant also contends that the District Board was "arbitrary and capricious" because the Board attorney "inadvertently assumed the role of hearing officer during the hearing," the Board members "did not assume and perform their legal required function during the hearing before them," and the school Board did not consider past actions of Coach Hum as factors in reaching its decision. Again, we do not agree.

We know of no requirement under law or District policy that the Board's attorney cannot be designated to preside over grievance hearings. While we feel that it might be improper for a school board attorney to "prosecute" a matter before the board and at the same time sit as hearing officer and make evidentiary rulings and then later advise the board during its deliberations, see, e.g., *English v. Northeast Board of Education*, 348 A.2d 494 (Pa. 1975), such does not appear to be the case here. To the extent that the grievance involved in this matter was adversarial, it was a contest between the Appellant and the School Administration. The Board sat as the finder of fact, and we see nothing improper in a board appointing its attorney as a presiding officer in matters such as was involved here, as long as the attorney is not also an advocate. We have been shown no evidence that Mr. Reed's role at the grievance hearing was anything more than to conduct the hearing and ask questions of some witnesses. We have been shown no evidence that he acted as an adversary or played an improper role in the proceedings or during the Board deliberations.

As with the previous allegations of the Appellant, we also have not been shown proof of the allegation that the school Board members and officers did not "assume and perform their legal required function during the hearing." The Board sat, heard and ruled on a grievance filed under its own policy. What else was it to do?

Looking at the last of these allegations, the record is not clear on the specific facts before the District Board regarding past actions of Coach Hurn. However, if they do not amount to more than we have been shown, lack of such consideration is of little consequence. We certainly have not been shown acts or omissions on the part of Coach Hurn which indicate that he has engaged in improper or illegal conduct which is relevant here. The Appellant alleges six specific past actions of the Coach which the Board should have used as a basis for its decision; a) height being the only criteria for selection, b) selecting only blacks with "superstar" ability, c) using participation in a conditioning program as a criteria for selection, d) failure to utilize black players in games after they have been selected on the squad, e) eliminating Reed Roberts after he had played a total of five years, and f) using parental participation in a "pep" group as a criteria. The Appellant has not established the accuracy of any of these allegations.

There is insufficient evidence in the record to show that height is the only criteria for selection of players. The record shows clearly the inaccuracy of the allegation that only blacks with "superstar" ability are selected for the squad. On last year's squad, blacks were ranked first, fourth and sixth in actual playing time. Why would a black "superstar" only be sixth in playing time? Another black player trying out for the same position as Reed for this season was not cut, but neither was he placed on the varsity team. Last year Reed made the cut in squad and ranked 20th, hardly "superstar" status. Two of the four black students on this year's squad earned letters, which could be interpreted to mean that at least two of the four blacks who were not cut from this year's squad were not "superstars."

The allegation that participation in the pre-season conditioning program was a criteria for selection was not proven. While both of the only two students who did not participate in fall sports or the conditioning program were not selected for the squad, neither were nine students who had participated.

The allegation that black players selected to the squad are not utilized is not supported by the record. Two of the four returning lettermen are black and three of the first six players from last year's squad were black.

It is unfortunate that a student would be precluded from participation in a sport activity after participating for five years. However, in the absence of a showing of impropriety or illegality on the part of those making that decision, we do not feel inclined to overrule such a decision. The Coaches used reasonable criteria and observations in making their decision. We have been shown no reason to place ourselves in their stead.

It has not been shown to us that the status of Reed Roberts' parents in a "pep" group had any relationship to his being cut from the squad. The record does not disclose whether Coach Hurn knew whether or not the Roberts were members of the "pep" group.

The Appellant's attorney attempted to call the Appellee's attorney, Mr. Reed, as a witness at the hearing before the Hearing Panel. Mr. Reed's objection was sustained. Mr. Reed was not given advance notice that he might be called as a witness and was, therefore, unable to secure alternate counsel for the Appellee Board at this hearing. The Appellant had ample opportunity to notify Mr. Reed of the desire to call him as a witness, yet neglected to do so. The Appellant also had ample opportunity to show through the testimony of other witnesses present at the hearing who were also present at the District Board meeting, that Mr. Reed played an inappropriate role at the grievance hearing. The few witnesses who were asked questions regarding Mr. Reed's role gave no response which causes us to believe that his role was not proper.

Prior to the hearing, the Appellee filed a "Motion to Quash the Appeal" partially on the ground that the appeal was, in part, from a decision of Coach Hurn. That defect was corrected through amendment. The other alleged defect was that the document of appeal was not in appropriate affidavit form. The State Board of Public Instruction, in In re Lee Creveling, et al., 1 D.P.I. App. Dec. 132, ruled that in the absence of a definition of the "affidavit" required in Chapter 290 appeals, that substantial compliance with what normally is considered an affidavit was sufficient to give the State Board jurisdiction under Chapter 290. We find that the appeal document filed in this appeal was in substantial compliance, and the "Motion to Quash Appeal" is hereby overruled.

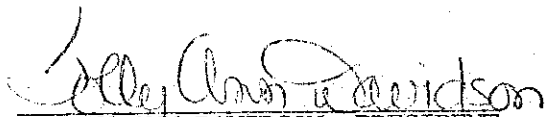
All other motions and objections not previously ruled upon are hereby overruled.

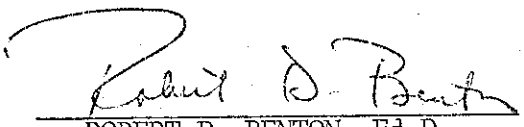
III.
Decision

The decision of the Waterloo Community School District Board of Directors in this matter is hereby affirmed. Appropriate costs under Chapter 290, if any, are assigned to the Appellant.

July 13, 1978
DATE

July 3, 1978
DATE


JOLLY ANN DAVIDSON, PRESIDENT
STATE BOARD OF PUBLIC
INSTRUCTION


ROBERT D. BENTON, Ed.D.
STATE SUPERINTENDENT AND
PRESIDING OFFICER