SHARON ANDERSON

v. Docket No. 93-11-385

GILMER COUNTY BOARD OF EDUCATION and

JUNE NONNENBERG, Intervenor

D E C I S I O N

Grievant Sharon Anderson, employed as a remedial reading teacher by Respondent Gilmer County Board of Education (GCBE), filed a grievance following her unsuccessful bid for an extra curricular position as Federal Programs Coordinator (FPC). Basically, she alleged that the position "was not filled accord ing to the qualifications specified in the job posting" and that the successful applicant, Intervenor June Nonnenberg, was not educationally or otherwise professionally qualified to hold the position. Grievant seeks instatement to the position and an award of back wages. (See footnote 1)

Findings of Fact

1. During the 1992-93 school term, Grievant, who began her tenure with GCBE in 1986, held certifications in Elementary Education 1-8, Social Studies 1-9, Language Arts 4-8, Remedial Reading K-12, and Developmental Reading 7-8. At that time, she had a masters degree in reading (plus fifty-eight hours) and had also completed the requirements for certification as a Reading Specialist.

2. Ms. Nonnenberg, employed by GCBE for approximately nineteen years, is currently serving as a remedial reading teacher and has also taught remedial math in the past. She is certified in Elementary Education, 1-8, Early Childhood Educa tion, Remedial Reading K-12, and Developmental Reading 7-8. She holds a masters degree in elementary education and developmental reading. Her salary classification is "MA+30."

3. In January 1989, during William Kinzer's tenure as GCBE's superintendent of schools, Ms. Nonnenberg was assigned to perform the "supplemental" duties of FPC. In June 1989 Ms. Nonnenberg was placed under an extracurricular contract for the position, therein described as "Director of Federal Programs," and held the post continuously until 1993.

4. At some point prior to his resignation in Summer 1993, Mr. Kinzer posted the position of FPC for "Chapter I, Chapter II, Title II." Chapter I refers to remedial reading and remedi al math, Chapter II involves mini grants for teachers in various subject areas and Title II relates to math and

science teaching programs. 5. The listed "minimal qualifications" for the FPC position were masters in reading or equivalency, at least three years teaching experience in a related area and demonstrated leadership and organizational abilities.

6. The listed job duties for FPC included maintaining accurate records of on-the-job time and efforts, keeping abreast of Federal legislation affecting educational programs, preparing budgetary recommendations, coordinating in-service programs, assisting with project evaluations, purchasing and maintaining materials and equipment, serving as a leader and resource person for staff and the public and evaluating the activities, materi als, and personnel of the educational programs and projects associated with "Chapter I" funding. School officials clarified that the FPC position did not perform formal performance evalua tions of any teachers or Chapter I personnel for any purposes.

7. Both Grievant and Ms. Nonnenberg applied for the posted FPC position.

8. Mr. Kinzer declined to interview the candidates but instead appointed a committee of four principals to conduct interviews and make a recommendation.

9. Following its review of the candidates' qualifications and interview performances, the committee reported to Mr. Kinzer that Ms. Nonnenberg was their choice for the FPC position. In the committee's view, Ms. Nonnenberg exceeded the qualifications for the position.

10. Mr. Kinzer never appeared before GCBE to formally nominate either candidate for the FPC job. However, accordingto Grievant, see level two transcript at 4, on or near Mr. Kinzer's last day in office, Mr. Kinzer issued a letter to Grievant in which he recommended her for the position.

11. After Mr. Kinzer's departure, GCBE appointed Tom Minney, a member of the selection committee, as Interim Superin tendent.

12. At GCBE's August 9, 1993 board meeting, Interim Superintendent Minney recommended the employment of Ms. Nonnenberg for the FPC position. GCBE acted upon the nomination and employed Ms. Nonnenberg as FPC.

Grievant rests her claim at level four upon a section of West Virginia State Board of Education Policy No. 5201 which states that

a reading specialist works with those students who are classified as remedial status, grades K-12, and delivers reading elective grades K-12, including developmental reading at the adolescent level. The reading specialist works with pupils, teachers and administrators to improve and coordinate the total reading program of the school and/or county.

She argues that the policy requires personnel who coordinate a "reading program" such as that contemplated by the FPC position to hold licensure as a "fully certified" Reading Specialist, a qualification Ms. Nonnenberg lacks.

GCBE and Ms. Nonnenberg argue that the job posting for FPC did not require the successful applicant to hold certification as a Reading Specialist and that, in fact, the FPC does not coordinate GCBE's "total reading program." They further argue that absent any showing of wrongdoing in the selection process or an abuse of discretion on GCBE's part with respect to Ms.Nonnenberg's employment, GCBE's placement of Ms. Nonnenberg as FPC should not be disturbed.

Grievant's claim in this matter cannot be sustained. First, the quoted section of Policy No. 5201 makes absolutely no mention of licensing requirements for a FPC, a position which involves "various subject areas" and programs, in one way or another, and coordinates remedial programs in mathematics as well as reading. Moreover, Grievant offered no other law, regulation or policy which requires a FPC to hold certification as a Reading Specialist. In addition, while Grievant argued that GCBE's "Reading" program is "subsumed" in its "Chapter I" program, she offered no proof whatsoever of this assertion. Finally, the FPC posting did not require Reading Specialist certification, nor did it even hint that the position even remotely involved GCBE's **total** reading program.

In addition to the foregoing, the following formal conclu sions of law are made.

Conclusions of Law

1. A grievant must prove all the allegations constituting the grievance by a preponderance of the evidence. Rupich v. Ohio County Bd. of Educ., Docket No. 89-35-719 (June 29, 1990); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988).

2. Grievant failed to prove that GCBE violated any policy or regulation when it filled the Federal Programs Coordinator (FPC) position with a candidate other than her, that a certified Reading Specialist is required for the extracurricular FPCposition she seeks, or that she is entitled to the FPC position.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Gilmer County and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code §18-29-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any

appealing party must advise this office of the appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate Court.

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NEDRA KOVAL

Administrative Law Judge

Date: March 29, 1994

Footnote: 1 A level two hearing was conducted September 2, 1993, and a decision was issued September 7, 1993. After Grievant appealed to level four, Ms. Nonnenberg requested intervenor status on or about October 18, 1993. A level four hearing was held November 16, 1993; the parties completed post-hearing submissions of fact/law proposals in early December 1993.