SUSAN CRAWFORD

Grievant,

v. DOCKET NO. 94-27-958

MERCER COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

On August 30, 1994, the grievant, Susan Crawford, a teacher employed by the Mercer County Board of Education (hereinafter BOE), appealed to Level Four, alleging she had been improperly assigned to teach Computer Literacy classes during the 1994-1995 school year. The grievant requested as relief that she not be required to teach those classes. (See footnote 1) At the lower levels of the grievance procedure, the grievant alleged that teaching Computer Literacy was outside her certification area and that her principal abused his discretion in scheduling her to teach such classes.

The salient facts are not in dispute and will be presented in narrative form. The grievant is employed as a mathematics teacher by the BOE and is certified in math (5-12), english (7-12), and special education with endorsements in mental retardation (K-12) and gifted 7-12. Level Two Tr. at 35.

In January 1994, the BOE posted a position for Mathematics Teacher at Bluefield High School (BHS). The notice of position openings consisted of an Administrative Bulletin listing thirty-five position openings for the 1994-95 school year. For the position in question, the posting listed Mathematics Teacher at BHS and specified the minimum qualifications as a valid West Virginia teaching certificate with endorsement in Mathematics, grades 7-12 or 5-12. (See footnote 2) Gr. Exh. 3.

The grievant applied for the position, and upon her selection was transferred to the BHS position. A meeting was held with all mathematics teachers at BHS prior to the start of the 1994-95

instructional year to discuss teaching assignments. Each mathematics teacher at this meeting was asked to pick from a list the four math courses they would most like to teach. They were also advised at this meeting that four Computer Literacy classes would have to be taught by mathematics teachers that school year. Level Two Tr. at 36.

Thereafter, the principal of BHS, Mr. John Disibbio, made the teaching assignments for the mathematics teachers. For the firstsemester of the school year he assigned the grievant two classes of Transitional Math I and one class of Computer Literacy each day. During the second semester, she was assigned one Transitional Math I class and two Computer Literacy classes each day. During each semester she was also assigned one planning period per day. For the 1994-95 school year, BHS is utilizing what is referred to as "4 by 4" scheduling, which is a departure from the traditional six or seven class period schedule frequently encountered at the secondary level. Students and teachers are scheduled around four class periods for the entire day, resulting in considerably longer class periods than under more traditional scheduling.

Computer Literacy is an introductory class designed to familiarize students with the basic use of computers, basic programming, and program applications involving word processing, databases and spreadsheets. The course is not a part of the state basic curriculum and students are not given a credit in mathematics counting towards the state requirements in math for graduation. A computer math course, which is a part of the state-required curriculum, is offered by the BOE. Students who enroll in that class are expected to be computer literate and to have programming skills. The Computer Literacy course is not a prerequisite for the computer math course, but it is the only course offered by the BOE that would help a student meet these expectations. Further, the number of classes offered was apparently in direct response to pre-registration selections made by the students.

The only factual dispute concerns whether Computer Literacy isa part of the county mathematics curriculum. At the Level Two hearing, Mr. Garry Taylor, a Math Curriculum Supervisor for the BOE, testified that he considered the course to be a part of the county math curriculum, explaining that for the last ten or twelve years the course had been taught almost exclusively by math teachers and that he supervises the teachers assigned to teach the course. Mr. Taylor also testified that because Computer Literacy is not a part of the state math curriculum there is no state certification for this course. He also conceded that the course was not listed in the BOE's Secondary Math Courses for

the 1992-93 school year. Gr. Exh. 1. He also acknowledged that under state guidelines a teacher need not be certified in math to teach the course. It is not necessary to resolve this factual dispute in order to resolve the legal issues in this case. (See footnote 3)

The grievant testified she had been certified to teach math for four years and had taught a computer programming course at Bluefield Junior High School five or six years earlier, before she had attained her certification in math. She also testified that she was originally assigned four Computer Literacy classes but after she filed the grievance one of those classes was removed from her teaching schedule. This was not disputed by the BOE.

The grievant asserts that because the posting simply required a valid teaching certificate with endorsement in mathematics, grades 7-12 or 5-12, and did not list any other qualifications, itwas reasonable for her to expect a mathematics teaching position. The grievant proposes as conclusions of law that, (1) W. Va. Code § 18A-4-7a, provides that "standards for a job should be listed on the posting, including any specialized training that may be required"; (2) in order for an applicant to be basically qualified for a classroom teaching position vacancy in West Virginia, that person must hold the appropriate certification, Peters v. Putnam County Bd. of Educ., Docket No. 90-40-247 (Aug. 16, 1991); and (3) for the board to post the position and not identify the other teaching area was improper. Kaplan v. Cabell County Bd. of Educ., Docket No. 89-06-445 (Oct. 22, 1990).

The BOE cites to the following language relating to the authority of a school principal contained in W. Va. Code § 18A-2-9: "the principal shall assume administrative and instructional supervisory responsibility for the planning, management, operation and evaluation of the total educational program of the school or schools to which he is assigned." The BOE argues that the principal in this case assigned the grievant a teaching schedule for this school year that consists, in equal parts, of math courses recognized by the state as meeting requirements for math credits towards graduation, and math courses which are part of the county math curriculum and which are given elective credit toward graduation. The BOE argues that the school principal did not abuse his discretion in determining that a certain number of Computer Literacy classes should be offered, and did not abuse his discretion by assigning a certain number of those classes to amath-certified teacher, consistent with the past practice of the BOE.

Discussion

Since this is a nondisciplinary matter, the grievant has the burden of proving that the BOE committed an error of law or abused its discretion in order to obtain any relief. The grievant's arguments concerning the adequacy of the posting will be addressed first. At Level Four, the grievant contends that the BOE's posting violated W. Va. Code § 18A-4-7a (Section 7a), because it did not contain the "standards for the job, including any specialized training that may be required." The undersigned understands this proposed conclusion of law to be a claim that the BOE violated the following portion of Section 7a: "The notice shall be posted within twenty working days of such position openings and shall include the job description. Any special criteria or skills that are required by the position shall be specifically stated in the job description and directly related to the performance of the job."

Upon an examination of the documents in the record, however, it is apparent that the grievant did not allege a Section 7a violation at the lower levels of the grievance procedure. At Level I, the grievant alleged a violation of the BOE Secondary Math Curriculum, and her complaint and request for relief, paraphrased slightly, is as follows:

> I bid on and was employed for a position as Mathematics Teacher at BHS. I have been assigned to teach four Computer Literacy classes instead, that are not in BOE's Mathematics Curriculum. These electives are not in mycertification qualifications. I am not prepared to teach these classes and am not willing to teach outside my area of expertise and training. I request that I be assigned to teach the math classes I was hired to teach.

The parties did not address the adequacy of the posting at the Level Two hearing either. The focus of that hearing and the testimony related to whether the Computer Literacy course was a part of the BOE's math curriculum. It is thus not surprising that the grievance evaluator at Level Two did not address the validity of the posting.

The issue of whether the posting was sufficiently detailed to satisfy the statute was first raised in the Level Four appeal form, which states in part: "Posting did not include any special criteria or skills. Principal assigned me to teach 'Computer Literacy' classes. I am not qualified to teach said classes." (See footnote 4) The parties submitted the case for decision at Level Four on the record developed below and filed simultaneous proposed findings and conclusions. In its proposals the BOE, again not unexpectedly, did not respond to the grievant's alleged posting violation.

In these circumstances, the undersigned administrative law judge believes the posting issue

cannot properly be addressed for the first time at Level Four. It would be improper for the Grievance Board to rule on a claim that was not presented to orruled upon by the grievance evaluator (See footnote 5) at Level Two or at Level Three. See W. Va. Code § 18-29-3(j); W. Va. Dept. of Health and Human Serv. v. Hess, 432 S.E.2d 27 (W. Va. 1993). (See footnote 6)

The grievant's second proposed conclusion of law is that she is not properly certified to teach Computer Literacy. The grievant is certainly correct in citing Peters for the proposition that a county board of education cannot ordinarily select an applicant for a professional position who is not certified to hold such position, and that special permits cannot properly be awarded unless no qualified person applies for a position. See W. Va. Code §§ 18A-3-1, 18A-3-2, 18A-3-2a. The uncontradicted testimony of Mr. Taylor, however, is that no particular certification or endorsement is required by the State Department of Education to teach Computer Literary, as that course in not a part of the State's mathematics curriculum. The grievant has therefore failed to establish she cannot legally teach Computer Literacy with her certification(s). Furthermore, the grievant has not demonstrated the principal abused his discretion in assigning her three Computer Literacy classes upon her transfer to BHS. Although it was certainlyreasonable for the grievant to expect to be assigned only mathematics courses at BHS, the principal's act of assigning her Computer Literacy classes does not rise to the level of an abuse of discretion.

The grievant's final argument based upon Kaplan, supra, is another claim attacking the posting. That claim was also not properly raised below and therefore cannot be considered here. Moreover, Kaplan does not support the grievant's contention that the BOE erred in not stating in the posting that the successful applicant would be required to teach Computer Literacy classes. In that case the county board of education was found to have violated W. Va. Code § 18A-4-16(4), by combining a regular teaching position and an extracurricular assignment in the same job announcement. Obviously, the statutory prohibition against conditioning a regular employee's contract of employment on the acceptance or continuance of an extracurricular assignment is not in question here.

The undersigned administrative law judge therefore reaches the following conclusions of law.

Conclusions of Law

1. It is incumbent upon a grievant seeking relief to prove all of the allegations constituting the grievance by a preponderance of the evidence. Butler v. McDowell County Bd. of Educ., Docket No.

33-88-208 (Mar. 31, 1989).

2. It would not be proper for an administrative law judge of the Grievance Board to rule on a legal claim that was neither presented to nor ruled upon by the grievance evaluator at Level Twoor Level Three. See W. Va. Code § 18-29-3(j); W. Va. Dept. of Health and Human Serv., 432 S.E.2d 27 (W. Va. 1993)

3. The grievant has not established by the preponderance of the evidence that she cannot legally teach Computer Literacy with the certifications she possesses.

4. Under W. Va. Code § 18A-2-9, a school principal's responsibilities include the assignment of teaching duties. 5. The grievant has not demonstrated that the principal of BHS abused his discretion in assigning her three Computer Literacy classes during the 1994-95 school year.

Accordingly, this grievance is hereby **DENIED** .

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mercer 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 not 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 intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

RONALD WRIGHT

Administrative Law Judge

Dated: April 13, 1995

Footnote: 1 The grievance was denied by a Level Two decision dated August 22, 1994, and the grievant appealed to Level Three. On September 27, 1994, pursuant to W. Va. Code § 18-29-4(c) of the grievance procedure statute for educational employees, the BOE reviewed the case based upon the record and by a 3-2 vote concurred in the findings of fact and conclusions of law in the Level Two decision. The grievant appealed to Level Four and eventually agreed to submit the case for decision on the record made at the lower levels of the grievance procedure. This case became mature for decision on January 11, 1995, upon receipt of proposed findings of fact and conclusions of law filed on behalf of both parties.

Footnote: 2 None of the teaching positions listed in the notice of position openings specified what courses the successful applicant would teach.

Footnote: 3 Furthermore, the undersigned does not believe this dispute involves an issue of material fact in the case.

Footnote: 4 It is noted that the grievant had a different representative at Level Four than she had at the Level Two hearing.

Footnote: 5 The term "[g]rievance evaluator" is defined in W. Va. Code § 18-29-2(j), to mean that "individual or governing board authorized to issue a decision on a grievance." "Governing board" is defined to include county boards of education. W. Va. Code § 18-29-2(i).

Footnote: 6 Even if the posting violated the requirements of Section 7a, the most appropriate remedy to cure such a violation might well be to repost the position at the end of the first semester, which has already passed, not to relieve the grievant of teaching Computer Literacy classes. Furthermore, the undersigned does not believe it would be either fair or equitable to the grievant to impose a remedy she never requested and perhaps does not desire.