HERB MUNCY, .

Grievant, .

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v. . Docket Number: 95-29-336

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MINGO COUNTY BOARD OF EDUCATION, .

Respondent. .

D E C I S I O N

Herb Muncy (hereinafter Grievant) filed this grievance pursuant to the provisions of West Virginia Code §§18-29-1, et seq., in June 1995, against his employer, the Mingo County Board of Education (hereinafter Mingo). He challenges his non-selection for a summer school teaching position utilized during the 1995 summer school term. The claim was denied at levels one and two and bypassed at level three. Grievant made appeal to level four on August 1, 1995, requesting that a decision be based upon the evidence produced at the lower levels of the procedure. By letter dated August 2, 1995, Mingo requested that it be allowed to present evidence on the matter at a hearing; thereafter, an evidentiary hearing was held at the Grievance Board's Charleston, West Virginiaoffice on September 26, 1995. The case became mature for decision on that date.

The relevant and material facts in this matter are not in dispute and shall be set forth below as appropriately made findings deduced from the evidentiary record.

Findings of Fact

1. Grievant is employed by Mingo as a teacher and is currently assigned to teach English at Tug Valley High School.

2. Grievant is certified to teach English, Spanish and Gifted Education to students in grades seven through twelve.

3. For the 1995 summer school term, Mingo hired a teacher to teach English at its Vocational Technical School (hereinafter Vo-Tech).

4. Grievant applied for this Vo-Tech teaching position but was not chosen.

5. Grievant has previously taught summer school classes during two separate terms.

6. The teacher who was assigned to teach English at the Vo-Tech School has taught during four separate summer school terms.

Position of the Parties

Grievant contends that based upon his overall professional seniority with Mingo (thirteen years), he should have been selected for the summer teaching position in question. The Board contends that it chose the correct applicant for the position based upon the mandates of W. Va. Code §18-5-39. Upon a review of the applicablestatutory provision at issue, it is determined that Mingo is correct in its position.

Discussion

The applicable language of Code §18-5-39, which establishes summer school programs within the various counties, states as follows:

> Notwithstanding any other provision of this code to the contrary, the board shall fill professional positions established pursuant to the provisions of this section on the basis of certification and length of time the professional has been employed on the county's summer school program.

Unfortunately for Grievant, Mingo was bound by the clear requirement of this statutory provision to fill summer school teaching positions based upon a comparison of the applicants' summer school seniority or experience. As Grievant does not deny that the successful applicant for the position in question has more experience teaching summer school in Mingo County than does he, therefore, the grievance must be denied.

The foregoing discussion of the case is hereby supplemented by the following appropriately made conclusions of law.

Conclusions of Law

1. Grievant bears the burden of proving his case by a preponderance of the evidence. W. Va. Code §18-29-6.

2. Grievant has failed to establish that the Mingo County Board of Education has misinterpreted, misapplied or violated W. Va. Code §18-5-39.

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

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mingo 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 intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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ALBERT C. DUNN, JR.

Administrative Law Judge

December 21, 1995