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M. STUART EVANS

v.

DOCKET NO. 02-88-026-2

BERKELEY COUNTY BOARD OF EDUCATION

DECISION

Grievant, M. Stuart Evans, is employed as a teacher of the behaviorally disordered by the Berkeley County Board of Education and is presently assigned to Musselman High School. Mr. Evans filed a level one grievance on September 2, 1987 in which he alleged violations of W.Va. Code, 18A-4-8b and State Board of Education Policies 5100, 5110 and 5200. The matter was waived at level one, denied at level two and was waived to level four by the board of education. An evidentiary hearing was conducted at level four on March 30, 1988 and proposed findings and conclusions were filed by April 22.

The grievant alleges that when he was first employed by the Berkeley County Board of Education in 1984 he completed application for certification in the areas of behavioral disorders and physical education. The grievant argues that the administrative staff of the Berkeley County Board of Education was negligent in completing the necessary forms to correct the grade levels for the physical education certification and as a result of this negligence he was denied a physical education position at Musselman Middle School when he was both the most qualified and the most senior applicant. He requests reinstatement to the position of physical education teacher at Musselman Middle School.

The board of education asserts that it does not have the authority to issue teaching certificates and that it is the responsibility of the employee to insure that he is properly certified. The grievant was not properly certified to teach physical education at the time when the vacancy at the middle school was filled and therefore he could not have been awarded the position.

Evidence submitted at level four indicates that the grievant was issued a provisional teaching certificate by the W.Va. Department of Education effective July 1, 1984 through June 30, 1987.

The areas of specialization on the certificate were behavioral disorders, grades 7 through 12 and physical education, grades 7 through 12. The grievant testified that when he received the notice of certification he observed that the grade level for physical education was incorrect as it should have included grade levels K through 12. The grievant states that he made several unsuccessful attempts to have the matter corrected through the local board of education. When he became aware in 1986 that a physical education position would be available for the 1987-88 school term he renewed his efforts to correct the certification. After he directly contacted the State Department of Education which secured additional information from the Louisiana Department of Education, Assistant State Superintendent John Pisapia notified the grievant by letter dated August 31, 1987 that his certification would be corrected to reflect physical education grades K - 12.

While securing the proper certification may be the responsibility of the employee, former personnel director David McClung indicates that the Berkeley County Board of Education acts as liaison in that the certification secretary mails the application and receives the teaching license. Under such a procedure the

grievant properly returned to the county office for assistance in correcting the certification. Whether due to confusion regarding the grievant's qualifications or for other reasons it appears that he should have been originally certified in physical education, grades K through 12. Although he was not assigned to teach physical education the Berkeley County Board of Education should have been more diligent in securing the corrected certification which would have permitted the grievant to apply for any physical education position which became available. As the board has assumed the responsibility of acting as liaison in securing teacher certification it must also bear the responsibility to act in the employees' best interest which is to acquire the correct certification in all subject specializations and grade levels.

Even without the corrected certification it appears that the grievant could have been awarded the position. State Board of Education Policy 5200 established a transitional period during which county superintendents may place professional personnel in positions one grade level above or below the grade levels within the endorsement areas on their certificates. This transitional period, from 1985 through 1989, was created as part of a master plan for public education which includes certification

for middle childhood education, grades five through eight. As Musselman Middle School includes grades six through eight the grievant would have been eligible for the position under this policy.

The record indicates that the grievant has attained a Masters degree plus fifteen hours and, as of August, 1987 had earned three years of seniority. The only information provided regarding the successful candidate is that he was a 1985 graduate of Shepherd College and had been employed by the board since that time as a permanent substitute (apparently one year as of August, 1987). Based upon this information the grievant was more qualified than the successful candidate.

In addition to the foregoing narration it is appropriate to make the following specific findings of fact and conclusions of law.

Findings of Fact

1. Grievant was first employed as a teacher of the behaviorally disordered by the Berkeley County Board of Education in August, 1984.

2. At tthe time of his employment the grievant filed for a W.Va. teaching license through the administrative offices of the county board of education which acts as liaison for the State Department of Education, the licensing agency.

3. Grievant subsequently received his teaching license which included certification in the areas of behaviorally disordered, grades 7 through 12, and physical education, grades 7 through 12.

4. As the grievant had previously been certified in physical education, grades K through 12, in Louisiana and Virginia he began to inquire at the county office as to the incorrect grade level on his license. Changes in personnel and confusion regarding his qualifications which were earned outside of West Virginia contributed to the delay in correcting the grievant's certification.

5. In 1986 the grievant contacted the State Department of Education which after investigating his credentials and soliciting additional information from the Louisiana Department of Education corrected the certification to include physical education, grades K through 12.

6. Grievant was notified of the correction by letter dated August 31, 1987.

7. Earlier the grievant had applied for a position for the 1987-88 school year as physical education teacher at Musselman Middle School, grades 6 through 8, but was not considered due to a lack of proper certification.

Conclusions of Law

1. When a county board of education assumes the responsibility of liaison between its employees and the State Department of Education in securing teaching licenses it must act in the employee's best interest in obtaining complete and correct certification.

2. The board of education failed to act in an expeditious manner in the correction of the grievant's certification.

3. The grievant was certified for the position in question under State Board of Education Policy 5200 which permits a county superintendent to place professional personnel one grade level above or below the grade levels on their certificates during a transitional period of new certification patterns, said period to be effective until June 30, 1989.

4. The grievant was improperly denied consideration for the position based upon a lack of certification.

5. The grievant is more qualified and has earned more seniority than the successful applicant.

Accordingly, the grievance is **GRANTED** and the board of education is hereby Ordered to assign the grievant to the position of physical education teacher at Musselman Middle School.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Berkeley County and such appeal must be filed within thirty (30) days of receipt of this decision. (W. Va. Code, 18-29-7). Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the Court.

DATED

June 13, 1988

Sue Keller

SUE KELLER
HEARING EXAMINER