LILLIAN SHEWBRIDGE,

Grievant,

v. DOCKET NO. 94-27-094

MERCER COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Lillian Shewbridge, contends that the Mercer County Board of Education (Board) violated W. Va. Code § 18A-4-7a in selecting another applicant over her for an Assistant Principal position at Bluefield Junior High School. She contends that she should have been awarded the Assistant Principal position because the successful applicant, Ben G. Disibbio, did not "meet the qualifications for the job postings."

Ms. Shewbridge appealed adverse decisions at the lower grievance levels to Level IV on March 21, 1994. This grievance was initially scheduled for hearing at Level IV, but the parties agreed to submit the case on the record developed below, which consists of the transcript, exhibits and decision entered at Level II, as wellas a letter dated September 13, 1994, submitted by Respondent's counsel at the undersigned's request. (See footnote 1)

The facts are not in dispute. The Board posted Administrative Memo No. 15 on October 5, 1993, announcing several job openings, including the following:

Assistant Principal - Bluefield Jr. High School

Minimum
Qualifications: A valid West Virginia teaching certificate.
Must have West Virginia Administrative
Certification and Administrative experience.

Grievant's Exhibit 1.

Eight applicants, including Ms. Shewbridge and Mr. Disibbio, applied and were interviewed for the Assistant Principal position. Tr., p. 8.

At the time of the interviews, Ms. Shewbridge was fully certified to be an administrator, K-12, and had five years administrative experience with the Mercer County Schools. Tr., p. 4. Mr. Disibbio had an Internship License-Administrative (Grievant's Exhibit 2) and was working as an Assistant Principal at Bluefield Jr. High School during the first period. Tr., p. 19.

Mr. Disibbio was recommended for the Assistant Principal position. Ms. Shewbridge was ranked second. Tr., p. 8.

The Board of Education approved Mr. Disibbio for the Assistant Principal position on October 26, 1993, and he assumed his duties on October 27, 1993. (See footnote 2)

Discussion

W. Va. Code § 18A-4-7a (1992) states, in pertinent part:

> A county board of education shall make decisions affecting the hiring of professional personnel other than classroom teachers on the basis of the applicant with the highest qualifications. . . . In judging qualifications, consideration shall be given to each of the following: Appropriate certification and/or licensure; amount of experience relevant to the position, . . .; the amount of course work and/or degree level in the relevant field and degree level generally; academic achievement; relevant specialized training; past performance evaluations conducted pursuant to section twelve [§ 18A-2-12], article two of this chapter; and other measures or indicators upon which the relative qualifications of the applicant may fairly be judged. . . .

Ms. Shewbridge contends that Mr. Disibbio did not possess the "appropriate certification and/or licensure" required by Code § 18A-4-7a, and therefore was not qualified for the position of Assistant Principal at Bluefield Junior High School. Specifically, Ms. Shewbridge relies on a previous Grievance Board decision, Andrews v. Putnam County Bd. of Educ., Docket No. 91-40-048 (Jan. 31, 1992), to support her contention that an Internship License-Administrative is not the equivalent of a Professional Administrative Certificate and that Mr. Disibbio, therefore, did not meet the qualifications required by the posting.

This Board held in Andrews that an Internship License-Administrative was not the equivalent of a

Professional Administrative Certificate due to the licensure and certification requirements listed in West Virginia Board of Education Policy 5202 (Policy 5202)(amended 1993).

West Virginia Code § 18A-3-2 permits school boards to employ teachers in good faith who are anticipated to, but have not yet, received their certification. That Code section provides as follows:

> Any professional educator, as defined in article one [§ 18A-1-1 et seq.] of this chapter, who is employed within the public school system of the state shall hold a valid teaching certificate licensing him or her to teach in the specializations and grade levels as shown on the certificate for the period of his or her employment. If a teacher is employed in good faith on the anticipation that he or she is eligible for a certificate and it is later determined that the teacher was not eligible, the state superintendent of schools may authorize payment by the county board of education to the teacher for a time not exceeding three school months or the date of notification of his or her ineligibility, whichever shall occur first. All certificates shall expire on the thirtieth day of June of the last year of their validity irrespective of the date of issuance.

Implicit in that language is the understanding that the individual has completed all the requirements for the certificate, but has not yet received the paperwork from the State.

This Board's decision in Andrews suggested, in dicta, that the provisions of W. Va. Code § 18A-3-2 do not apply to administrative positions, citing Pockl v. Ohio County Bd. of Educ., 406 S.E.2d 687 (W. Va. 1991). Pockl held that W. Va. Code § 18A-4-8b (replaced by § 18A-4-7a) did not apply to principal positions because thelanguage in the statute clearly referred to "classroom teachers." That Code section stated:

> A county board of education shall make decisions affecting promotion and filling of any classroom teacher's position occurring on the basis of qualifications.

The Court looked at the definition of "classroom teacher" in W. Va. Code § 18A-1-1(c)(1) which defines classroom teacher as:

> The professional educator who has direct instructional or counseling relationshp with pupils, spending the majority of his time in this capacity,

and found that a principal or assistant principal did not fall into that category. A "principal" is defined as:

> The professional educator who as agent of the board has responsibility for the

> supervision, management and control of a school or schools within the guidelines established by said board. The major area of responsibility shall be the general supervision of all the school and all school activities involving pupils, teachers, and other school personnel.

The Court held that in the absence of any specific statutory language encompassing principals or assistant principals within the definition of classroom teachers, they could not be accorded the benefit of the statute which limited application to "classroom teachers." Pockl, 406 S.E.2d at 690.

This Board erred in suggesting that Code § 18A-3-2 was inapplicable to administrative certification as the language itself clearly encompasses administrative as well as classroom teacher certification. W. Va. Code § 18A-3-2 begins as follows:

> Any professional educator, as defined in article one [18A-1-1, et seq.] of this chapter, . . .(emphasis added).

Code § 18A-1-1(c) includes within the term "professional educator", classroom teacher (18A-1-1(c)(1)), principals (18A-1-1(c)(2)), supervisors (18A-1-1(c)(3)), and central office administrators (18A-1-1(c)(4)). It also provides that the term "professional educator" shall be synonomous with and shall have the same meaning as "teacher" as defined in Code § 18-1-1, which states:

> "Teacher" shall mean teacher, supervisor, principal, superintendent, public school librarian, ...

Thus, Code § 18A-3-2 clearly applies to principals, and as such, assistant principals. Cf. Pockl, 406 S.E.2d at 690.

Consequently, had Mr. Disibbio completed all of the requirements necessary to obtain his Provisional Professional Administrative certificate in October, 1993, under Code § 18A-3-2, he could have been properly employed as an Assistant Principal even though he had not yet actually received the certificate. Cf. Grossl v. Mingo County Bd. of Educ., Docket No. 93-29-496 (July 21, 1994); Davidson v. Wyoming County Bd. of Educ., Docket No. 92-55-402 (Feb. 23, 1993). Unfortunately, that is not what happened in this case. Mr. Disibbio only had an Internship License-Administrative in October, 1993. The Board's posting clearly states "[m]ust have West Virginia Administrative

Certification and Administrative experience." Mr. Disibbio did not have administrative certification in October, 1993, when he was approved for the Assistant Principal position at Bluefield Junior High School, nor was he expected to receive that certification prior to starting in that position.

In order to prevail, a grievant must establish the truth of her allegations by a preponderance of the evidence. Black v. Cabell County Board of Education, Docket No. 06-88-238 (Jan. 31, 1989). Ms. Shewbridge has met her burden of proving that Mr. Disibbio did not have the appropriate certification or licensure to comply with the Board's posting, and was thus ineligible for the Assistant Principal position.

It is up to the county boards of education to look behind the appropriate license or certificate to determine who of the interested candidates is the most qualified for a position, using the factors listed in W. Va. Code § 18A-4-7a. The transcript of the Level II hearing contains evidence that Ms. Shewbridge had the appropriate certification, five years administrative experience, and satisfactory evaluations. Mr. Mack Barber, the Principal of Bluefield Junior High School, testified at the Level II hearing that Ms. Shewbridge came in second to Mr. Disibbio in the ranking for the position. Tr., p. 8. No other evidence was presented about the selection process used by the Board and how each of the seven factors in Code § 18A-4-7a were used to determine who was most qualified.

Conclusions of Law

1. An internship license-administrative is not the equivalent of professional administrative certification for the purposes of analyzing the minimum qualifications of a job posting requiring certification under W. Va. Code § 18A-4-7a. Therefore,Mr. Disibbio, as a holder of an intership license, was not eligible under the job posting for the position of Assistant Principal.

2. The provisions of W. Va. Code § 18A-3-2 apply to principals, assistant principals, and others as defined in W. Va. Code § 18A-1-1(c), "professional educator", and W. Va. Code § 18-1-1, "teacher." To the extent that the decision in Andrews v. Putnam County Bd. of Educ., Docket No. 91-40-048 (Jan. 31, 1992) held otherwise, it is overruled.

3. Grievant has established by a preponderance of the evidence that she was second in line for the position of Assistant Principal at Bluefield Junior High School, and as the successful applicant, Mr. Disibbio, was ineligible for the position, Grievant becomes the most qualified for the position.

Accordingly, this grievance is **GRANTED** and the Board is hereby **ORDERED** to instate Grievant

into the Assistant Principal position at Bluefield Junior High School and to compensate Grievant the difference in pay between her salary and the salary she would have received as Assistant Principal from October 27, 1993 to the present.

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 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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MARY JO ALLEN

Administrative Law Judge

Dated: September 28, 1994

Footnote: 1 *This grievance was assigned to the undersigned from another Administrative Law Judge for administrative reasons.*

Footnote: 2 *Mr. Disibbio has subsequently obtained a Provisional Professional Administrative Certificate, effective September 1, 1994.*