STEPHEN D. JONES

v. Docket No. 94-45-153

SUMMERS COUNTY BOARD OF EDUCATION

DECISION

The grievant, Stephen Jones, is employed by the Summers County Board of Education (Board) as a teacher at Hinton Area Elementary School. He initiated a grievance at Level I February 28, 1994, alleging,

> The Summers County Board of Education failed to interview me, even though I meet objective eligibility criteria, for vacant professional position. This arbitrary decision denied me the opportunity to compete for a position for which I was fully qualified.

The grievant's supervisor was without authority to grant relief and the grievance was denied following a hearing held April 7, 1994. The Board waived participation at Level III and appeal to Level IV was made April 29, 1994. The parties subsequently agreed to submit the case for decision on the record developed at Level II. Proposed findings of fact and conclusions of law were submitted on June 2, 1994.

There is little if any dispute over the facts of the case. On January 24, 1994, the Board posted the positions of Principal and Assistant Principal of Summers County Middle School, a facilitywhich was then under construction and slated for completion at the beginning of the 1994-95 school year. Included in the minimum qualifications for the positions was the requirement that the applicant possess a "Middle Childhood endorsement or a graduate level class in Middle School Administration." Attached to the Assistant Principal posting was the following addendum. (See footnote 1)

> The successful applicant shall assume full time duties 8 working days prior to the start of the two hundred day school term for 1994-95. However if the successful applicant is presently a full time employee of Summers County Board of Education, he/she shall perform the following duties in addition to his/her full time regular duties without additional compensation. These duties shall begin immediately upon being hired:

1. Aid in developing the curricular plan for Summers County Middle School.

2. Aid in pre-enrolling students for classes for Summers County Middle School prior to February 1, 1994. (See footnote 2)

3. Become familiar with the operation of the physical plant of Summers County Middle School.

4. Aid in developing the block schedule for students, teaching positions, and other staff positions prior to March 1, 1994.

5. Aid in finalizing all scheduling before August 1, 1994.

6. Aid in planning staff development for Summers County Middle School.

7. Aid in obtaining grants for identified needs at Summers County Middle School.

The grievant and others made timely applications for both posts.

During his February 4, 1994 interview for the principal position, the grievant advised Superintendent of Schools Charles Rodes that he did not have a middle childhood teaching endorsement and had not taken a graduate level class in middle school administration but that he

would have the endorsement in May 1994. Superintendent Rodes then advised the grievant that he did not meet the minimum requirements for the position and that there was no need to continue the interview. After the grievant expressed dissatisfaction over the requirements, the interview was terminated. The superintendent either terminated or did not conduct interviews with all other applicants who did not possess the minimum requirements for the position.

On February 7, 1994, Superintendent Rodes conducted interviews for the Assistant Principal position. He determined that an interview with the grievant was unnecessary in light of their February 4 conversation. The posts were eventually filled with applicants who either had the required endorsement or had completed the graduate level course.

At the Level II hearing, the grievant clarified that his complaint concerned only the Assistant Principal position. Through his testimony and his representative's remarks, it was also explained that the grievant objected to the endorsementrequirements in the postings on the basis that they intruded upon the authority of the West Virginia Department of Education (DOE) to establish minimum standards for professional positions.

The grievant, however, further testified and his representative confirmed that he was not seeking the position as relief but was merely asking for some written concession on the Board's part that he was qualified for the position and should not have been denied an interview. In his proposals at Level IV, the grievant does not include a request for relief.

The Board asserts that the relief sought is de minimis at best and that the grievance should be denied on the basis that such relief is unavailable at Level IV. Alternatively, the Board argues that the grievant has not proven that he is entitled to the written statement or the position. After a careful review of the record and the parties' positions, the undersigned concludes that the Board must prevail.

De minimis relief or relief which would serve no useful purpose is unavailable from the Education and State Employees Grievance Board. Inclan v. Marshall County Bd. of Educ., Docket No. 94-25-233 (July 29, 1994); Payton v. Lincoln County Bd. of Educ., Docket No. 89-22-653 (Feb. 16, 1990). This holding clearly applies to the relief sought by the grievant herein.

Notwithstanding the nature of the redress sought, the grievant has failed to show that he is entitled to any relief. Superintendent Rodes testified credibly and convincingly at the Level II hearing that there was an immediate need to hire anassistant principal at HMS despite that the person

chosen would not enter into full time duties until August 1994. He explained that it was crucial that the tasks listed in the above discussed addendum to the posting, particularly those related to the appointment of staff, be completed during the second semester of the 1993-94 school year so that the new school could be open and operating at the beginning of the 1994-95 year.

Superintendent Rodes also explained that the middle childhood endorsement or graduate level class requirement was included in the posting because the middle school concept was new to Summers County, and he had determined that the HMS administrators should have some knowledge of that concept. The grievant presented no evidence to rebut Mr. Rode's assertions.

A county board may consider and even appoint an applicant for a professional position who does not meet the certification requirements of a posting but has completed all college hour requirements for the licensure. See, Grossl v. Mingo County Bd. of Educ., Docket No.93-29-496 (July 21, 1994). The evidence in the present case, however, does not support that at the time of the posting for the position in question, the grievant needed only to complete paperwork required by DOE for the issuance of the necessary teaching endorsement. (See footnote 3) Rather, it reflects that he had yet to complete several college courses before he was even eligiblefor the endorsement. Further, there is no evidence whatsoever that the grievant was enrolled in the graduate level class which could have been substituted for the endorsement requirement. The Grievance Board has ruled that in such circumstances the applicant's licensure is too speculative for consideration. See, Shrewbridge v. Mercer County Bd. of Educ., Docket No. 94-27-094 (Sept. 28, 1994). Given that the Board demonstrated the need for filling the position when it did, there can be no finding that the board acted arbitrarily in refusing to consider the grievant "prospectively" qualified for the position.

Finally, the grievant's assertion that the posting requirements in issue encroach upon DOE's authority to set minimum standards for the certification of administrators is wholly without merit. He cites no statutory authority for this assertion and none is found. W.Va. Code §18A-4-7a does not prohibit county boards from including in its job postings, minimum qualifications which exceed the licensure requirements of DOE. Indeed, the statute by its terms requires county boards to fill professional positions such as the one in issue herein with the applicant with the highest qualifications. To restrict boards to a mere review and verification of DOE issued licenses would be inconsistent with that requirement. See, Hamrick v. Tyler County Bd. of Educ., Docket No. 93-48-185 (Dec. 30, 1993).

Accordingly, the grievance is **DENIED.**

Any party may appeal this decision to the Circuit Court of Kanawha County or the Circuit Court of Summers 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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JERRY A. WRIGHT

CHIEF ADMINISTRATIVE LAW JUDGE

Dated: November 16, 1994

Footnote: 1*Only the posting for the Assistant Principal job was admitted into evidence at the Level II hearing. The testimony indicates that the posting for the Principal slot also had an addendum. The record suggests, however, that since it was the higher ranking position, the addendum most likely contained language to the effect that the successful applicant for that position would be responsible for the duties listed rather than "aiding" in their completion. It is the Assistant Principal post which is the focus of the grievant's complaint,*

Footnote: 2*It was revealed at the Level II hearing that this goal was not realized and that a later deadline was established after the positions were filled.*

Footnote: 3*The only evidence on this issue was the grievant's assertion that he "would have the middle childhood endorsement by the middle of May this year" and Mr. Rodes' testimony that the grievant "may" have told him in the interview that he was "enrolled in some classes."*