JANET PICCIRILLO

v. Docket No. 94-05-626

BROOKE COUNTY BOARD OF EDUCATION

D E C I S I O N

While this case comes to level four under the guise of a selection dispute, in reality, the grievance involves the grade-level scheduling of English teachers within Respondent Brooke County Board of Education's (BCBE) consolidated Brooke County High School (BHS). Events which lead to the filing of the grievance are as follows.

Apparently, each of BHS' English teachers are assigned to teach courses and students in a designated grade level, from ninth through twelfth grade. BHS's twelfth grade English teacher resigned or retired at some time prior to the beginning of the 1994-95 school year. Hence, on August 26, 1994, BCBE posted a vacancy for a "Secondary Teacher/English/Language Arts" position for BHS. The listed "Certification Requirements" were: "Certification as established by the West Virginia Department of Education. Applicant must have an endorsement in English 9-12, 7-12 or 5-12, or Language Arts 9-12, 7-12 or 5-12." Notably, the posting did not include any grade-level specificity in describing the position's responsibilities or the job duties involved. Moreover, BCBE's job description for (secondary) "English Teacher" does not contain any data which relates to one specific secondary grade level.

The record reflects that eight persons applied for this opening at BHS. However, according to Assistant Superintendent Phillip M. Darmelio, only two of the eight applicants were considered and interviewed, primarily because they were the only

"permanent, regular employees" who had applied. T.46, 53. Those two applicants were already two current members of BHS's English Department: Grievant, who listed herself as a "Freshman English Teacher" at BHS and Mona Jean Schafstall, who listed herself as a teacher of "English 10, Practical English 11" at BHS.

The outcome of the selection deliberations, ostensibly based on the hiring criteria contained in W.Va. Code 18A-4-7a, was Ms. Schafstall's assignment to teach BHS's twelfth-grade English classes. The record contains no evidence that this employment, or more correctly stated, "reassignment," was acted upon by BCBE's members in a formal hiring process. However, Grievant testified that a colleague at BHS informed her on September 13, 1994, that BCBE had met the night before and that Ms. Schafstall had gotten the job. Subsequently, since a vacancy still existed within BHS's English Department, another English teaching position for BHS was posted and filled.

After Grievant learned that Ms. Schafstall had been select ed to teach the twelfth-grade classes, she filed the following grievance complaint:1

I file this grievance based on the fact that I was not awarded the Secondary Teacher/English/Language Arts position at Brooke High School under Job Posting A-232. I contend that under West Virginia State Law I was clearly the most qualified applicant. I also contend that my Degree Level under the seven criteria of 18A-4-7A was miscalculated and that my Master's Degree in Speech Communication should have been counted under the Language Arts category of the Job Posting. I further contend that I was the only

applicant to meet all the standards in the Job Posting as required by law. I specifically refer to the WV Writing Project standard. I am seeking relief by being awarded the English/Language Arts position at Brooke High School.

At the level two hearing, Grievant inquired of Mr. Darmelio, "Why was this job posted and did the principal have in his authority the capability of just reassigning schedules and not even posting this job?" To which Mr. Darmelio responded: That question has come up, but I'm told that whenever we have a vacancy that you need to post the vacancy. I know what you're saying, what you're saying to me is could he shuffle people within his school. As I said, I have been informed that you should post jobs when they are up. I like moving people within a schedule.

This case requires no extensive discussion. Moreover, there is no need here for the Grievance Board to scrutinize the applicants' credentials or review the board of education's hiring decision. The only true issue in this case involves the

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1Grievant appealed to level four on October 28, 1994 where hearing was held December 1, 1994. At hearing BCBE's counsel asserted the affirmative defense of untimeliness; by letter dated December 5, 1994, he abandoned this issue. Neither party elected to submit fact/law proposals at level four.
scheduling of certified secondary English teachers within a high school's English Department.
Simply put, BCBE's action to fill the position as original

ly posted, that is, as a non-grade level specific secondary English teaching position at BHS, was unnecessary since the only two candidates who were considered were already English teachers in BHS's English Department. Consequently, the "true" vacancy in BCBE's English Department was later filled, presumably with an external applicant.

In addition to the foregoing, the following formal findings of fact and conclusions of law are appropriate.

Findings of Fact

1. Grievant and Mona Jean Schafstall are longtime English teachers at BHS. Prior to the 1994-95 school year, the teacher who had taught twelfth grade English retired or resigned, and a legitimate vacancy occurred within BHS's English Department.

2. In August 1994, BCBE properly posted notice of the vacancy. The posting identified a non-grade level specific English teaching position at BHS.

3. Grievant, Ms. Schafstall and six other persons (non-employees) applied for the English teaching position at BHS. Only Grievant and Ms. Schafstall were interviewed and considered for the vacancy.

4. Ms. Schafstall was selected for the position and subsequently scheduled to teach the twelfth-grade English classes at BHS.

5. Since the candidate selected for the English teaching job at BHS already held an English teaching job at BHS, BCBE had to repeat the posting and hiring process in order to fill the true English teaching vacancy at BHS.

Conclusions of Law

1. Grievant and Ms. Schafstall were not legitimate candidates for a non-grade level specific secondary English

teaching position at BHS since both were already staff members in the English Department at BHS, and hiring either of them for that position would be redundant and unnecessary.

2. Since grade-level course scheduling is the real dispute in this case and not Grievant's and Ms. Schafstall's qualifications relative to a teaching vacancy, no need exists for an analysis of these persons' credentials.

3. Pursuant to W.Va. Code 18A-2-9, school principals "shall supervise the management and the operation of the school or schools to which they are assigned." Accordingly, BHS's principal must schedule his or her English teachers within their areas of certification. See Hamrick v. Tyler County Bd. of Educ., Docket No. 93-48-185 (Dec. 30, 1993); Kidd v. Fayette County Bd. of Educ., Docket No. 89-10-452 (Dec. 14, 1989); Schafstall v. Brooke County Bd. of Educ., Docket No. 05-86-347-3 (Mar. 30, 1987).

Accordingly, this grievance, as it relates to a selection dispute, has no basis in fact or law and must be DENIED. Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Brooke 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 appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate Court.

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NEDRA KOVAL

Administrative Law Judge

Date: December 30, 1994