HUGH TALBERT

v. Docket No. 93-29-166

MINGO COUNTY BOARD OF EDUCATION

DECISION

The grievant, Hugh Talbert, is employed by the Mingo County Board of Education (Board) as a classroom teacher assigned to Matewan Junior High School (MJHS). He filed a grievance at Level I April 19, 1993, alleging his transfer to that position was the result of an improper calculation of his seniority. The grievant's supervisor was without authority to address the matter and the grievance was denied at Level II following a hearing held April 27, 1993. The Board, at Level III, waived consideration of the case and an appeal to Level IV was made May 13, 1993. The parties subsequently agreed to submit the case for decision on the record developed at Level II. The grievant submitted a short statement of his legal position on or about August 6, 1993, but the record was not received until December 15, 1993. The Board declined to submit written legal argument.

FACTS

There is essentially no dispute over the facts of the case. The record developed at Level II supports the following findings.

1) The grievant was employed as Dean of Students at Lenore Junior High School (LJHS) from the beginning of the 1989-90 school term to the end of the 1991-92 term. The position was a full-time 210-day post.

2) The Board prefers but does not require administrative certification as a qualification for the Dean of Students position. The grievant has held a Principal's certificate since at least the time he was appointed to the LJHS position.

3) The Board's job description for Dean of Students lists the following responsibilities:

> Shares with the principal the responsibility for protecting the health and welfare of students.

Oversees all matters of student attendance.

Administers the extracurricular program of the school, and responds to student initiated requests for specific new extracurricular clubs, activities, and programs.

Makes recommendations for appropriate revisions of policies and rules affecting the student's life in the school.

Resolves all discipline problems in a fair and just manner, and maintains records of any disciplinary action taken.

Participates in the coordination, implementation, and supervision of co-curricular activities.

Assists in the interpretation of school and district programs, policies, and procedures to students, parents, staff, and community.

Works with community and government agencies on problems relating to drug abuse and truancy from school.

Assists in developing and administering practices dealing with campus control and security.

Assists with campus supervision.

Confers with parents, teachers, counselors, support service personnel, and students on matters of discipline and welfare.

Confers with and makes appropriate referrals to psychologists, social workers, and other personnel.

Has general supervisory responsibility for student activities, athletic events, programs of students orientation and similar activities.

Supervises development, maintenance, and distribution of student handbooks, schedules, bulletins, and the like.

Assume any other responsibilities the principal may deem appropriate and necessary.

4) The grievant was appointed Principal of Dingess Elementary School (DES) at the beginning of the 1992-93 school term.

5) During the spring of 1993 the Board decided to close a number of elementary schools effective the end of the 1992-93 school term. One of the principals affected by the closures was allowed to displace or "bump" the grievant. This action was based on the Board's determination that the grievant possessed only one year of administrative seniority. He was credited with seniority as a teacher for his service as Dean of Students.

6) The grievant was transferred from DES to his current teaching position at MJHS.

___7) But for the Board's determination that the grievant's service as Dean of Students should not be counted as administrativeseniority, he would have retained his position as Principal at DES. (See footnote 1)

ARGUMENT

The grievant contends that during his tenure as Dean of Students he was serving as an administrator and should have been credited with seniority as such. He cites Robinette v. Logan County Bd. of Educ., Docket No. 91-23-039 (May 30, 1991) in support of his contention that a Dean of Students is, in all respects except title, an Assistant Principal, a position recognized by W.Va. Code §18A-2-9 as an administrative post. The Board's legal position is difficult to discern but it appears to argue that since no administrative certificate was required for the Dean of Students, it was not an administrative position for the purpose of calculating seniority. (See footnote 2)

CONCLUSIONS

After a thorough review of the parties' positions, the applicable law and the foregoing findings of fact, the undersigned makes the following conclusions of law.

1) "Upon recommendation of the county superintendent of schools, the county board of education shall, when needed, employee and assign, through written contract, assistant principals whoshall work under the direction of the school principal. Such assistant principals shall hold valid administrative certificates appropriate for their assignments." W.Va. Code §18A-2-9.

2) "Professional instructional personnel means a professional educator whose regular duty is as that of a classroom teacher, librarian, counselor." W.Va. Code §18-9A-2. The duties listed in the Board's job description for Dean of Students are not consistent with this definition and thus that position is not an instructional one.

3) A county board of education is not required by law to attach any particular titles to its professional positions but when the duties of such positions coincide with those of positions recognized and defined by statute it must adhere to any certification-related requirements imposed by the statute. An employee holding a position which is labeled Dean of Students but is in essence an assistant principal post must hold a valid administrative certificate. Robinette, supra.

4) The nature of the work of the Dean of Students position held by the grievant from 1989 to 1992, as reflected by the position's job description, dictates that it was an Assistant Principal post which required administrative certification under W.Va. Code §18A-2-9.

5) A professional employee of a county board of education in a nonteaching area of professional employment accrues seniority on the basis of the length of time the employee has been employed by the county board in that area. W.Va. Code §18A-4-7a, ¶4.

6) Since the grievant was, in essence, serving as an Assistant Principal from 1989 to 1992, and possessed a valid administrative certificate during that time, he should have been credited with administrative seniority for those years in accordance with W.Va. Code §18A-4-7a.

Accordingly, the grievance is **GRANTED** and the Mingo County Board of Education is hereby **ORDERED** to recalculate the grievant's administrative seniority; reinstate him to his former position at Dingess Elementary School; and compensate him for any loss of wages and benefits he may have incurred.

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

CHIEF ADMINISTRATIVE LAW JUDGE

Dated: January 20, 1994

Footnote: 1 The parties stipulated that this was so. The record is sparse and contains insufficient evidence for an independent finding on this point.

Footnote: 2 This characterization of the Board's position is based on several findings in the Level II decision which is vaguely worded. As previously noted, the Board declined to submit written argument.