REBECCA CRAWFORD,

Grievant,

v. DOCKET NO. 94-03-1131

BOONE COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Rebecca Crawford, alleges the Boone County Board of Education ("BCBOE") violated W. Va. Code §18A-4-7a when it filled a computer teacher position at Madison Middle School ("MMS"). (See footnote 1) Grievant seeks immediate instatement into the position. This grievance was denied at Levels I and II and waived at Level III. The parties agreed to submit the case on the record, and this grievance became mature for decision on April 25, 1995, after the submission of proposed findings of fact and conclusions of law.

The following facts are not in dispute.

Findings of Fact

1. On September 7, 1994, BCBOE posted a position for a computer teacher at MMS. The posting required certification inMathematics, grades 5-12, and required the applicant to be "proficient in computers."

2. Several individuals applied immediately for the position.

3. Mr. Keith Phipps, Principal at MMS, requested the posting be amended and be reposted. This request was granted and on or about September 12, 1995, the position was reposted requiring either a certification in Business Education 5-12 or Mathematics 5-12. The proficiency in computers was still required.

4. Mr. Bobby Hall, BCBOE Board Member, testified at the Level II hearing. He stated that at its October meeting, BCBOE asked why the position was reposted and expressed concern that a reposting of the position, to enlarge the pool of candidates after teachers had applied, might give "a

bad appearance." The Board was worried people might think the position was being "tailor-made" for a particular person. Mr. Hale also stated BCBOE thought the math certification was the appropriate one for a middle school computer position. Trans., Level II at 39-40.

5. BCBOE's past practice has been to require math certification for its computer positions.

6. While the second posting was in effect, Grievant applied for the position.

7. BCBOE directed the Director of Personnel to post the position a third time with the original Mathematics 5-12 certification only. This was done.

8. Before the third posting, the Director of Personnel completed a matrix utilizing W. Va. Code §18A-4-7a, and recommendedGrievant as the most qualified applicant. He based this on two factors. One, the State Education Department did not require any specific certification to teach computers. Two, the Grievant, although not certified for either Mathematics or Business Education in grades 5-12, did possess certification in grades K-12 in Special Education, thus he thought she was qualified to teach in a middle school setting.

9. Grievant has taught for four years in the Boone County School system in the area of special education. She is also certified in Business Principles, (See footnote 2) not Business Education, grades 9-12. She has never taught computers or business.

10. Ms. Elswick, the successful applicant, has taught for three years in the Boone County School system. She is certified in Math grades 5-12. Ms. Elswick has taught computer classes in the past.

Issues

Grievant makes three arguments. First, she argues BCBOE violated W. Va. Code §18A-4-7a and did not select the most qualified applicant for the position. Second, Grievant argues the requirements in the first and third postings were inappropriate and specified higher qualifications than needed for the position. Third, Grievant argues BCBOE also violated W. Va. Code §18A-4-7a when the position was not filled within thirty working days at the end of the posting period. Respondent argues the Grievant was notqualified for the position, even if the second posting is utilized. Respondent also argues BCBOE is permitted to require and state specifically, in a job posting, requirements directly related to the performance of the position.

Discussion

The first issue is whether the Grievant is qualified for the position. If that question is resolved in the negative, the other issues become moot. The undersigned Administrative Law Judge concludes Grievant is not qualified for the position even if the second job posting is used. The posting required the applicant to be certified in Business Education 5-12. Even if the Grievant's explanation is accepted, that Business Principles is the same as Business Education with the exception of shorthand, this still does not resolve the issue of the grade certification. Grievant is only certified to teach business principles to grades 9-12. It is certainly appropriate for a board of education to require a teacher in a middle school setting to be certified to teach the subject to that age group. Grievant was not.

In order for the Grievant to pursue the reminder of her grievance she must show she was "adversely affected" by the employment decision being challenged. Mullins v. Kanawha County Bd. of Educ., Docket No. 94-20-364 (Dec. 29, 1994); Weaver v. Mason County Bd. of Educ., Docket No. 94-31-028 (Oct. 25, 1994); Pomphrey v. Monroe County Bd. of Educ., Docket No. 94-31-183 (July 1, 1994). Because Grievant is not qualified for the position at issue, she does not have standing to challenge BCBOE's selection of thesuccessful applicant. Mullins, supra.

___In addition to the above discussion, the following Conclusions of Law are appropriate in this grievance.

Conclusions of Law

1. In a grievance alleging improper selection, grievant has the burden of proving the allegations of her complaint by a preponderance of the evidence. Mullins v. Kanawha County Bd. of Educ., Docket No. 94-20-364 (Dec. 29, 1994).

2. Grievant has not met her burden of prove to demonstrate that she was qualified for the position at issue.

3. Given Grievant was not qualified for the position, she lacks standing to complain about alleged improprieties in the selection of another individual for the position, as she has not shown she was "adversely affected" by the employment decision being challenged. Mullins, supra.

4. A board of education may identify required certification for a position, as long as this decision is not arbitrary and capricious or an abuse of discretion. Dillon v. Wyoming County Bd. of

Educ., 351 S.E.2d 58 (W. Va. 1986).

5. BCBOE's decision to require a Math certification, grades 5-12, for a middle school computer teaching position was not arbitrary or capricious or an abuse of discretion.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Boone 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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JANIS I. REYNOLDS

Administrative Law Judge

Dated: June 30, 1995

Footnote: 1Initially Ms. Carolyn Elswick, the successful applicant intervened in this grievance. Later she requested to withdraw as she was RIF'd from the position. This request was granted by Order dated May 1, 1995.

Footnote: 2Apparently, business principles is also an education degree, but does not contain the shorthand component and grants certification only for grades 9-12. Trans. Level II at 31-32.