C. DOUG WARD and

STEPHEN C. CANTEES,

Grievants,

v. DOCKET NO. 94-29-1134

MINGO COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

The Grievants, C. Doug Ward and Stephen C. Cantees, are employed by the Mingo County Board of Education as Principal of Thacker Elementary School and Dean of Students of Birch High School, respectively. Grievants appealed this grievance to Level IV on December 27, 1994, following adverse decisions at the lower levels. Hearing was held on March 27, 1995, at which time this case became mature for decision. (See footnote 1)

Background

This case came to Level IV in an unusual posture, in that Respondent, Mingo County Board of Education, supports the Grievants' position in this matter. Respondent did not dispute anyof the factual allegations made by Grievants, and they are thus taken as true. The facts as stated by the Grievants are set out in narrative form as follows.

On January 20, 1994, this Grievance Board issued a decision, Talbert v. Mingo County Bd. of Educ., Docket No. 93-29-166 (Jan. 20, 1994), wherein the Administrative Law Judge held that individuals holding the title "Dean of Students", and possessing an administrative certificate, must be credited with administrative experience for the period in which they performed the duties of Dean of Students, as enumerated in a position description developed by Respondent and reproduced as follows:

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. (See footnote 2)

As a result of the Talbert decision, the grievant therein was credited with administrative seniority for his experience as Dean of Students, and was placed in a position as Principal of Dingess Elementary School. Grievant Cantees had been Principal of Williamson Elementary School at the time the Talbert decision was rendered. Apparently, also as a result of Talbert, others who held the Dean of Students title were also given administrative seniority, placing them above Grievant Cantees, thus resulting in him being reduced in force in April, 1994. (See footnote 3) Grievant Cantees was recalled and now serves as the Dean of Students for Birch High School in Mingo County.

According to the Grievants' testimony, individuals who possess administrative certificates and perform the functions of Dean of Students as enumerated in the position description are not the only individuals being given admininstrative seniority by Respondent in accordance with the ruling in Talbert. Apparently, individuals who do not possess administrative certificates are being credited with administrative seniority if they hold the title Dean of Students. In addition, individuals who possess the title Dean of Students, but who are not performing the functions enumerated on the position description, are also being credited with administrative seniority. (See footnote 4)

Grievant Cantees testified that his responsibilities as Dean of Students at Birch High School only include attendance and discipline. He is counted as a classroom teacher, paid as a classroom teacher, and does not receive any more extra days than classroom teachers. Grievant Cantees does

not allege that he should be awarded any administrative seniority for the time served as Dean of Students, even though he does possess an administrative certificate. Rather, Grievants do not believe that individuals holding a Dean of Students title should be awarded administrative seniority for time served in that post.

Grievants ask that the Board be ordered to adopt a position description for the Dean of Students position; that Dean ofStudents positions not be considered administrative positions; that individuals holding such positions not be given administrative seniority; and that the Talbert decision be overruled.

This Grievance Board adheres to the doctrine of stare decisis (See footnote 5) in adjudicating grievances that come before it. Chafin v. W. Va. Dept. of Health and Human Resources, Docket No. 92-HHR-132 (July 24, 1992), citing Dailey v. Bechtel Corp., 207 S.E.2d 169 (W. Va. 1974). Thus, the undersigned declines the invitation to overrule Talbert and the holdings therein. Individuals who perform the duties enumerated in the position description of "Dean of Students", and who possess an administrative certificiate, shall be credited with administrative seniority for the period served in that position.

Nevertheless, it is clear that the holdings in Talbert need some clarification in order that Respondent may correctly apply them to all circumstances involving Deans of Students. The Administrative Law Judge in Talbert found that the duties performed by the grievant as enumerated on the Dean of Students position description was essentially the work performed by an Assistant Principal, thus justifying the award of administrative seniority. However, W. Va. Code § 18A-2-9, clearly states that, "assistant principals shall hold valid administrative certificates appropriatefor their assignments." Talbert held, then, that an individual holding a position which is labeled Dean of Students but is in essence an assistant principal post must also hold a valid administrative certificate in order to be credited with administrative seniority. Thus, individuals who do not possess an administrative certificate, even if they are performing the duties described in the Dean of Students position description, may not properly be awarded administrative seniority, because they do not hold the appropriate administrative certification.

Conversely, if an individual holding the post of Dean of Students does possess an administrative certificate, but is not performing the duties enumerated in the position description of the Dean of Students, that individual likewise should not be awarded administrative seniority. If the individual is

merely a classroom teacher with attendance and discipline duties, and counted as a classroom teacher, paid as a classroom teacher, and serving the same amount of days as a classroom teacher, then that individual should be credited with classroom teaching seniority, not administrative seniority.

The confusion which currently exists in Mingo County can easily be resolved. First, the Mingo County Board of Education must formally adopt a position description for its Dean of Students position. (See footnote 6) In accordance with the Talbert decision, should theDean of Students position encompass a majority of administrative duties akin to that of an assistant principal, then an administrative certificate is a necessary requirement for the position. Certainly, if the Board wishes to require certain classroom teachers within its schools to be responsible for such things as attendance or discipline, but not for the overall administration of the schools, that, too, is within the Board's discretion. However, it would be prudent to refrain from designating those individuals as "Deans of Students" in the future, if in fact, they are only classroom teachers with some additional duties.

Based on the foregoing discussion and the evidence presented in this case, it is appropriate to make the following findings of fact and conclusions of law.

Findings of Fact

1. Grievants are employed by the Mingo County Board of Education. Grievants possess administrative certificates and have served in professional administrative capacities within the Mingo County Schools.

2. Grievant Cantees, Principal of Williamson Elementary school, was subject to a reduction in force in April, 1994, and removed from his position at Williamson Elementary.

3. Grievant Cantees was recalled and now serves as the Dean of Students at Birch High School.

4. Grievant Cantees' duties as Dean of Students encompasses only attendance and discipline. He is counted as a classroom teacher, paid as a classroom teacher, and serves the normal amount of days under contract assigned to classroom teaching positions.

5. Respondent is not only crediting individuals who serve in a Dean of Students capacity who possess administrative certificates with administrative seniority, in compliance with the Talbert decision, but also crediting individuals who do not possess administrative certificates, or who are not performing the duties enumerated on the Dean of Students position description, with administrative

seniority.

6. Because of this misapplication of the rulings in Talbert, some individuals have obtained greater administrative seniority than Grievant Cantees, thus resulting in his having been subject to the April, 1994, reduction in force.

Conclusions of Law

1. In order to prevail, a grievant must establish the truth of his allegations by a preponderance of the evidence. Black v. Cabell County Bd. of Educ., Docket No. 06-88-238 (Jan. 31, 1989).

2. Grievant Ward has failed to prove that he has been harmed in any way by the actions of Respondent, and thus has no standing in this grievance. Lyons v. Wood County Bd. of Educ., Docket No. 89-54-601 (Feb. 28, 1990).

3. Grievant Cantees has proven by a preponderance of the evidence that Respondent has misapplied the holdings in Talbert v. Mingo County Bd. of Educ., Docket No. 93-29-166 (Jan. 20, 1994), to his detriment, and has violated state certification laws and regulations.

4. "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." Talbert, supra, citing Robinette v. Logan County Bd. of Educ., Docket No. 91-23-039 (May 30, 1991).

5. Respondent has misapplied the holdings in Talbert by crediting individuals who do not possess administrative certificates, but hold Dean of Students positions, with administrative seniority.

6. Respondent has misapplied the holdings in Talbert by crediting individuals who possess administrative certificates and hold the title Dean of Students, but who do not perform the functions enumerated on the position description, but are merely classroom teachers with some additional duties, with administrative seniority.

7. This Grievance Board declines the invitation to overrule the holdings in Talbert, supra, relying on the doctrine of stare decisis.

Accordingly, this grievance is **GRANTED** in part and **DENIED** in part. Respondent is hereby **ORDERED** to formally adopt a position description for the Dean of Students position. Should that

position description require Deans of Students to perform duties that are, in essence, those of an assistant principal, those individuals shall be required, pursuant to W. Va. Code § 18A-2-9, to possess an administrative certificate. Respondent is further **ORDERED** to review all of its Dean of Students positions and recalculate administrative seniority to comply with state law and the directives herein.

Any party may appeal this decision to the Circuit Court of Kanawha County or to 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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MARY JO SWARTZ

Administrative Law Judge

Dated: April 26, 1995

Footnote: 1 *Grievant Ward has not demonstrated any standing to file the subject grievance. He cannot show that he has been adversely affected by any action of Respondent, only that he may be adversely affected in the future. Grievant Cantees, on the other hand, has shown that he has suffered adversely as a result of action by Respondent, and thus has standing to bring this grievance.*

Footnote: 2 *The position description for Dean of Students which was also reproduced in Talbert, apparently has never been adopted by the Mingo County Board of Education. On December 2, 1994, the hearing examiner at Level II in the instant grievance ordered the Respondent to formally adopt a position description for the Dean of Students position. No action has yet been taken by the Board.*

Footnote: 3 *No timeliness issue was raised by Respondent.*

Footnote: 4 *It should be noted that, according to at least one other grievance filed with this Board, some individuals who do perform the enumerated functions on the Dean of Students position description, and do possess an administrative certificate, are, confusingly, not being credited with administrative seniority.*

Footnote: 5 *Literally, "to stand by things decided." When a court has laid down a principle of law as applicable to a*

certain state of facts, it will adhere to that principle and apply it to all future cases, where the facts are substantially the same. See

W. Va. Dept. of Admin. v. W. Va. Dept. of Health and Human Resources, 451 S.E.2d 768, 771 (W. Va. 1994).

Footnote: 6 Please note that the Board is not mandated to adopt the position description which has been duplicated in this and the Talbert decision. It is certainly within the Board's discretion to draft an appropriate position description for one of itsprofessional positions. However, once a position description is drafted, it must be uniformly applied to those positions recognized to be "Deans of Students."