JEFFREY G. TAYLOR

v. Docket No. 95-24-047

MARION COUNTY BOARD OF EDUCATION

DECISION

Grievant, Jeffrey G. Taylor, employed by the Marion County Board of Education (Board) as a teacher at Monongah Middle School, filed a level one grievance on August 15, 1994, in which he alleged that he was improperly denied a transfer to Barrackville Middle School. The grievance was denied at levels one and two; the Board waived consideration at level three. The grievance was advanced to level four on January 26, 1995. An evidentiary hearing was conducted on February 10, 1995, and the matter became mature on April 11, 1995, upon receipt of final written submissions by the parties.

The undisputed facts of this matter are as follows:

1. Grievant has been employed by the Board since 1984 and is presently assigned to teach seventh and eighth grade mathematics at Monongah Middle School.

2. Grievant is certified in the areas of Elementary Education (Grades One through Eight), Physical Education andHealth (Grades One through Nine).

3. In 1985, the Board determined that middle school students would be better served by teachers with a specific endorsement in mathematics. All middle/junior high school mathematics positions have been posted with the requirement of a specific mathematics endorsement since that time.

4. By posting dated July 7, 1994, the Board advertised a vacancy for a mathematics instructor, grades seven and eight, at Barrackville Middle School. The posting specifically stated that certification in mathematics appropriate to the assigned grade level was required.

5. Grievant bid on the position at Barrackville but was not considered due to his lack of a certification endorsement in mathematics.

Grievant argues that the Board acted in an arbitrary and capricious manner when it eliminated him from consideration as a candidate for the position because a specific subject endorsement is not required by the State Department of Education for the position. He claims that the additional certification required by the Board is discriminatory in its application to him inasmuch as his degree and certification in elementary education remain valid. Grievant concludes that his experience, qualifications and seniority establish that he was the most qualified applicant and entitles him to the position at the Barrackville School.

The Board asserts that its practice to require subjectspecific certification was based upon determinations that the undergraduate requirements for content area specializations are more stringent, and it would allow teachers to instruct higher level classes, such as algebra. It argues that the requirement for subject specific certification is rational, not arbitrary or capricious. While the Board agrees that the position at the Barrackville School is lateral to that presently held by Grievant, it asserts that he is not entitled to the assignment because he lacks the required certification endorsement listed on that posting.

The Board cites West Virginia Board of Education Policy 5202 as support for its position, specifically:

J.3. The county board of education shall employ and assign the most qualified person for all instructional, student support, and administrative assignments. When filling a vacancy, the licensure held by the applicants shall be a major factor in determining the most qualified person.

V. A county superintendent has the option of placing a teacher with an elementary education 1-6 or 1-8 or multi-subjects K-8 endorsement to teach any subject covered within the elementary education program to multiple classes provided the depth and breadth of the curriculum remain the same as that of the self-contained classroom.

The Board does not dispute that Grievant has functioned satisfactorily as a math teacher for eleven years. It is also recognized that a Board may employ a teacher with Elementary Certification to teach a specific subject area in a middleschool. However, pursuant to State Department of Education Policy 5202, a board of education has the discretion to require that middle school teachers possess specific, subject-area certification. This requirement is

neither prohibited by statute, policy, or regulation, nor is it arbitrary and capricious.

While a generic Elementary Certification minimally qualifies an individual to teach a variety of subjects, specialized certification inherently provides a teacher with more expertise in a designated area. Because middle school teachers are assigned by subject area rather than grade level, the subject endorsement would result in the employment of teachers with a more comprehensive education in the subject which they teach. Although teachers with Elementary Certification may well possess the ability to teach advanced level mathemathics, the Board's practice of requiring the endorsement is not inappropriate or improper and must be upheld.

In addition to the foregoing findings of fact and discussion it is appropriate to make the following conclusions of law.

CONCLUSIONS OF LAW

1. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer and promotion of school personnel so long as this discretion is exercised reasonably, in the best interests ofthe school, and in a manner which is not arbitrary and capricious. Harrison Co. Bd. of Educ. v. Coffman, 430 S.E.2d 331 (W.Va. 1992).

2. Grievant has failed to prove by a preponderance of the evidence that a practice by the Marion County Board of Education to require a specific subject endorsement for middle/junior high school teachers is contrary to statute, policy, or regulation, or is arbitrary and capricious.

Accordingly, the grievance is DENIED.

DATED APRIL 28, 1995 SUE KELLER, SENIOR ADMN. LAW JUDGE