JULIA LEWIS,

Grievant,

v. DOCKET NO. 94-27-603

MERCER COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Julia Lewis, filed this grievance on September 1, 1994, alleging violations of W. Va. Code §§ 18A-2-2 and 18A-4-7a. Following adverse decisions at the lower levels, Grievant appealed to Level IV on October 19, 1994, and a hearing was held on December 19, 1994. The parties filed timely post-hearing submissions and this case became mature for decision on January 23, 1995.

Based on the testimony and evidence, it is appropriate to make the following findings of fact.

Findings of Fact

1. Grievant was employed by the Mercer County Board of Education ("Board") for 8 years and, at the time at issue, was certified in Science 7-12 and Biology 7-12.

2. Grievant was the subject of a reduction in force (RIF) in Spring 1994, effective the end of the 1993-94 school year, and was placed on the Board's preferred recall list.

3. Zora Milam was also the subject of the Spring 1994 reduction in force and was placed on the Board's preferred recall list. Ms. Milam had a multisubject certification, grades K-8.

4. Grievant had more seniority than Ms. Milam.

5. On April 12, 1994, the Board posted, among others, a teaching position at Lashmeet/Matoaka School requiring "[a] valid West Virginia teaching certificate with proper endorsement to teach Science, grades 5-8." G. Ex. 1.

6. Grievant and Ms. Milam applied for the Science teacher position. Ms. Milam also applied for a Chapter 1 Pre-Kindergarten ("Pre-K") teaching position.

7. Ms. Milam was recalled on July 5, 1994, for the Pre-K teaching position, effective the beginning of the 1994-95 school year. W. Va. Code § 18-1-2 defines "school year" as beginning on the 1st day of July and ending on the 30th day of June. Thus, Ms. Milam's recall was effective July 1, 1994. G. Ex. 3.

8. Ms. Milam was removed from the recall list when she was awarded the Pre-K position and became a regular, full-time employee effective July 1, 1994. Ms. Milam did not withdraw her application for the Science teacher position.

9. Grievant had informed Mr. Daniels, Director of Human Resources, when she applied for the Science teacher position, that she was in the process of obtaining certification in Science 5-8 and she expected to complete the necessary coursework by the end of the Summer 1994. Due to scheduling problems, Grievant was unable to complete the coursework until Fall 1994.

10. The Board acted to fill the Science teacher position on August 23, 1994. At the time the Board acted, Grievant remained on the preferred recall list and Ms. Milam was a regular, full-time employee.

11. The Board acted to transfer Ms. Milam to the Science teacher position, because she was the only applicant who was a regular, full-time employee meeting the posted requirements for the position. W. Va. Code § 18A-4-7a. R Ex. 3.

12. Grievant filed this grievance on September 1, 1994.

13. Grievant was notified by the West Virginia Department of Education on September 16, 1994, that she had been issued a temporary certificate in Science, grades 5-8. The certificate was backdated to July 1, 1994. A temporary certificate indicates that all of the necessary coursework for the certification has not yet been completed. R Ex. 2.

Discussion

Grievant argues that the Board violated W. Va. Code §§ 18A-2-2 and 18A-4-7a in not selecting her for the Science teacher position, 1) because she had more seniority than Ms. Milam; and, 2) she was more qualified for the position because she was close to completing the coursework for certification in Science, 5-8, while Ms. Milam only had a multisubject K-8 certification.

The Board argues that Ms. Milam was a regular employee who had the required certification for the position, and thus was properly selected for the position over employees on the preferred recall

list, in accordance with the provisions of W. Va. Code § 18A-4-7a. In addition, the Board argues, Grievant was not qualified for the position at the time the Board filled the position.

First, W. Va. Code § 18A-2-2 is inapplicable to this grievance to the extent that Code section requires that employees on the preferred recall list be considered for recall in order of seniority and qualifications. Ms. Milam, the successful applicant for the Science teacher position, was not on the preferred recall list at the time of selection, but rather, was a regular, full-time employee of the Board.

With respect to the applicable provisions of W. Va. Code § 18A-4-7a, this Board has held that when the Grievant is not qualified for a posted position, then no violation has occurred in the non-selection of the Grievant for the position. Mullins v. Kanawha County Bd. of Educ., Docket No. 94-20-364 (Dec. 29, 1994). Personnel decisions must be based upon the credentials on file at the time of appointment to a position. Dunford v. Mercer County Bd. of Educ., Docket No. 94-27-618 (Dec. 21, 1994); Adams v. Mercer County Bd. of Educ., Docket No. 92-27-455 (Mar. 30, 1993). Grievant did not possess the necessary certification to teach Science, grades 5-8, at the time of selection, and thus did not meet the minimum requirements of the posting and was not qualified for the position.

Grievant argues that Ms. Milam also did not meet the minimum requirements of the posting for the Science teacher position. Grievant contends that Ms. Milam's multisubject K-8 certification did not qualify her to teach Science, grades 5-8.

In order for Grievant to pursue the issue of whether Ms. Milam was properly certified for the position, she must show she was "adversely affected" by that employment decision. Weaver v. Mason County Bd. of Educ., Docket No. 94-26-028 (Oct. 5, 1994); Pomphrey v. Monroe County Bd. of Educ., Docket No. 94-31-183 (July 1, 1994). Since Grievant was not qualified for the position in question at the time the position was filled, she does not have standing to challenge the Board's selection of Ms. Milam. Weaver, supra. at 8. Because Grievant does not have standing to challenge Ms. Milam's selection, the issue of Ms. Milam's qualifications need not be addressed here.

Conclusions of Law

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

Grievant has not proven that she should have been recalled to the position at issue.

2. Grievant was not certified for the position at the time the Board acted to fill the position. Personnel decisions must be based upon the credentials on file at the time of appointment to a position. Dunford v. Mercer County Bd. of Educ., Docket No. 94-27-618 (Dec. 21, 1994); Adams v. Mercer County Bd. of Educ., Docket No. 92-27-455 (Mar. 30, 1993).

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

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mercer 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: February 23, 1995