HERB MUNCY,

Grievant,

v. Docket No. 95-29-278

MINGO COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Herb Muncy, states his non-selection for the Dean of Students position at Tug Valley High School ("TVHS") violates W. Va. Code §18A-4-7a. He also argues the Mingo County Board of Education ("MCBOE") violated W. Va. Code §§18A-2-1 and 18A-2-2. He requests instatement into the position. This grievance was denied at Levels I and II and waived at Level III. Following appeal to Level IV, the parties agreed to submit the case on the record. This case became mature for decision on October 9, 1995, the date the Grievance Board received the lower level record. (See footnote 1)

The record below is exceedingly sparse and this fact is reflected by the following limited Findings of Fact.

Findings of Fact

1. Grievant, a 27 year employee of MCBOE, is currently employed as a gifted teacher serving seven schools, with his homebase at TVHS.

2. Grievant is certified in Spanish, English, and gifted education. He does not have administrative certification.

3. On May 4, 1995, MCBOE posted multiple vacancies at TVHS, and Grievant applied for two of them, Dean of Students and English.

4. Grievant did not inform MCBOE which position he preferred.

5. MCBOE awarded the English position to Grievant, and the Dean of Students position to Mr. Doug Ward. (See footnote 2)

6. Mr. Ward possesses an administrative certificate, but has less seniority than

Grievant.

7. The Dean of Students Job Description is as follows:

QUALIFICATIONS:

Valid Professional Teaching Certification

AB, 5 years teaching experience

Administrative Certificate preferred/not required for consideration

JOB GOAL:

To help students resolve such nonacademic problems as may interfere with their getting the greatest benefit from the school's educational opportunities and to help them achieve the fullest benefits from the school's offerings.

PERFORMANCE RESPONSIBILITIES:

1.

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

2.

Shares responsibility for certifying students for graduation/promotion.

3.

Oversees all matters of student attendance.

4.

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

5.

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

6.

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

7.

Supervises the registration, classification, scheduling, and testing of students.

8.

Participates in the coordination, implementation, and supervision of cocurricular activities.

9.

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

10.

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

11.

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

12.

Assists with campus supervision.

13.

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

14.

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

15.

Assists in assigning faculty to supervision of cocurricular activities.

16.

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

TERMS OF EMPLOYMENT: 210 days per fiscal year

SALARY: Certification and Experience

Issues

Although Grievant alleges MCBOE violated W. Va. Code §§18A-2-1and 18A-2-2, no information or argument on violations of these Code sections was presented to the undersigned. Thus, these initially alleged violations are dismissed. Grievant alleges MCBOE violated W. Va. Code §18A-4-7a when it applied the second set of factors and failed to select him because of his greater seniority. Grievant also argues the Dean of Students Job Description does not include assistant principal or administrative responsibilities. MCBOE responds that it was required by prior Grievance Board decisions to select a candidate for Dean of Students positions with administrative certification.

Discussion

The first issue to resolve is whether MCBOE's Dean of Students position is an administrative position. This Grievance Board has previously held that the duties outlined in the Dean of Students position on pages 2 and 3 are those of an Assistant Principal and require administrative certification under W. Va. Code §18A-2-9. (See footnote 3) **Talbert v. Mingo County Bd. of Educ., Docket No. 93-29-166 (Jan. 20, 1993). The Grievance Board subsequently reaffirmed this ruling in Ward and Canter v. Mingo County Bd. of Educ., Docket No. 94-29-1134 (Apr. 26, 1995) restating that "[a]n employee holding a position which is labelled Dean of Students[,] but is in essence an assistant principal post must hold a valid administrative certificate." Quoting Talbert, supra (citing Robinette v. Logan County Bd. of Educ., Docket No. 91-23-039 (May 30, 1991)). SinceGrievant does not possess an administrative certificate he cannot hold the position of Dean of Students. Because Grievant is not qualified to fill the position, he actually has no standing to grieve his non-selection. Pomphrey v. Monroe County Bd. of Educ., Docket No. 94-31-183 (July 1, 1994). See also Weaver v. Mason County Bd. of Educ., Docket No. 94-26-028 (Oct. 25, 1994); Mullins v. Kanawha County Bd. of Educ., Docket No. 94-20-364 (Dec. 29, 1994). Thus, Grievant has not demonstrated MCBOE violated W. Va. Code §18A-4-7a in selecting the successful applicant, rather, it is clear, that MCBOE followed W. Va. Code §18A-2-9 and prior Grievance Board**

decisions which require employees who work as assistant principals, in this instance called Dean of Students, to "hold valid administrative certificates appropriate for their assignments." Id.

In addition to the above discussion, the following conclusions of law are appropriate to the disposition of this matter.

Conclusions of Law

1. In a grievance alleging improper selection, Grievant has the burden of proving the allegations of his complaint by a preponderance of the evidence. Weaver v. Mason County Bd. of Educ., Docket No. 94-26-028 (Oct. 25, 1994); Runyon v. Mingo County Bd. of Educ., Docket No. 93-29-481 (Apr. 4, 1993).
2. Grievant has not met his burden of proving he was qualified for the Dean of Students position.
3. Given that Grievant was not minimally qualified for theposition, he did not demonstrate MCBOE violated W. Va. Code §18A-4-7a in selecting the successful applicant.

Accordingly, this grievance is DENIED.

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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JANIS I. REYNOLDS

Administrative Law Judge

Dated: November 30, 1995

Footnote: 1*This case was reassigned to the undersigned on October 23, 1995, for administrative reasons.*

Footnote: 2*On August 15, 1995 Administrative Law Judge Brenda Gould denied Mr. Ward's request to intervene as untimely.*

Footnote: 3*This prior ruling is supported by a comparison of the Dean of Students job description listed in Talbert with the one submitted as evidence in this case. They are the same.*