JUDITH BARKER

v. DOCKET NO. 94-20-634

KANAWHA COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Judith Barker, a teacher with the Kanawha County Board of Education ("KCBOE"), grieves her non-selection for the position of "Summer School Supervisor - East Bank High School." This grievance (See footnote 1) was denied at Levels I and II and waived at Level III. The Grievant appealed to Level IV, and the parties agreed to submit the case on the record developed below. This case became mature for decision on December 15, 1994.

The lower level record is very limited. At no time did the Grievant testify, and the information about the Grievant and hercase was presented by her representative. The following facts are derived from the record.

Findings of Fact

1. On June 30, 1994, the position of Summer School Supervisor was posted. The posting stated:

Summer School Supervisor - East Bank High School

Employment term is from July 5 through August 15, 1994

Experience in Summer School teaching or supervision preferred

Secondary certificate required. Salary based on degree level and years of experience.

2. Grievant had taught summer school previously and had applied for the position for the second session. (See footnote 2) Grievant is certified in secondary education.

3. The successful applicant was certified in secondary education and in secondary administration. She/He had taught less years of summer school than the Grievant. It is assumed the successful applicant supervised both sessions of summer school.

4. Dr. Jack McClanahan, Associate Superintendent of Administration and Instruction, testified the position entailed supervising teachers and dealing with disciplinary matters. He compared the position to that of a principal. He further stated that the secondary certificate required was an administrative one.

Issues

Grievant argued Respondent violated W. Va. Code § 18-5-39 when they did not fill the position with the teacher having the most seniority in teaching summer school. Grievant also argued the posting did not specifically require a secondary administrative certificate. Grievant stated the broad definition of teacher utilized in W. Va. Code § 18-1-1 should be applied to W. Va. Code § 18-5-39. Respondent argued the secondary certificate required was clearly an administrative one as the position was advertised as a supervisor. Respondent further argued that W. Va. Code § 18-5-39 did not apply to the filling of supervisory positions.

Discussion

The primary issue to resolve is whether the position requires an administrative certificate. The position was clearly posted as a supervisory one. W. Va. Code §18A-1-1 defines a supervisor as "[t]he professional educator who, whether by this or other appropriate title, is responsible for working primarily in the field with professional and/or other personnel in instruction and other school improvement." The duties of the summer school supervisor were to "supervise the teachers in terms of the program being implemented." Lower Level Trans. at 12. Additionally, this superior "would also handle any discipline problems that would come from the teachers just like a principal would do, an

administrator in a school." Id. Thus, the person in this position would function as an administrator or principal, supervising the teachers in the areas of program and instruction and handling disciplineproblems as they arose. Given the duties and responsibilities of the position and the fact that the posting clearly stated the position was for a supervisor, an administrative certificate was required for this position.

While it is true the posting did not specifically state the secondary certification required was administrative, this criteria is inherent in the posting for an administrative position. To rule otherwise would elevate posting over certification and allow an individual not qualified to be a supervisor during a regular school session to hold such a position during the summer session. This ruling is also supported by W. Va. Code §18-5-39, as it requires proper certification before employment in the summer session.

The above discussion is supplemented by the following conclusions of law.

Conclusions of Law

1. Grievant has the burden of proving her case by a preponderance of the evidence in a non-disciplinary matter.

2. A posted, summer school, supervisor position requiring the professional educator to supervise teachers, administer the education program, and handle student discipline required administrative certification.

Accordingly this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha 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: January 31, 1995

Footnote: 1 Apparently the grievant has filed two grievances over this issue. The first grievance was filed on August 15, 1994 at an informal level and denied by her immediate summer school supervisor, Mr. William Milan. He stated the Grievant was "not the most eligible applicant." Mr. Milan also noted that the position was for both summer school sessions not just the second session. This grievance was filed a second time on September 29, 1994. Both grievance forms were admitted into the record at the Level II hearing. Respondent did not speak to this issue at the Level II hearing and did not raise the issue of timeliness.

Footnote: 2 Although the Grievant did not testify to this, indeed did not testify at all as noted above, this information was derived from the Grievant's first statement of grievance and her immediate supervisor's response.