DEBRA HALL

v. Docket No. 94-27-1099

MERCER COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, professionally employed by Respondent Mercer County Board of Education (MCBE), alleges that a certain position as posted was "inaccurate in requiring multisubject certification," and requests that the position be reposted as a science position. MCBE responds that no abuse of discretion occurred in the posting because, at the time the position was posted and filled, the posting correctly reflected the configuration and needs of the school in question. The parties agreed that a decision could be based on the record adduced below. The case became mature for judgement on December 30, 1994, upon receipt of MCBE's fact/law proposals.1

1The record consists of the lower-level decisions and the transcript and exhibits of the November 3, 1994 level two hearing. Grievant waived her right to submit written argument at level four.

Based on all matters of record, the following findings of fact are made.

Findings of Fact

1. In January 1994, MCBE was preparing for the opening of consolidated Pikeview High School (PHS) at the beginning of the 1994-95 school year.

2. Also slated for the beginning of the 1994-95 school year was the reconfiguration of grade levels in some schools due

to the opening of PHS.

3. During 1993-94, Oakvale School (Oakvale) contained all grade levels, from elementary through high school, with separate principals for grades K-6 and grades 7-12. Beginning the 1994-95 school year, Oakvale would be a K-8 school with only one principal because the upper grades, 9-12, would move to PHS.

4. It was known in January 1994 that an additional teacher would be needed for Oakvale when it opened for the 1994-95 school year with its newly-configured K-8 grade levels.

5. On January 13, 1994, MCBE posted thirty-five vacan cies for various service and professional positions; most jobs were scheduled to begin the 1994-95 school year. The positions were advertised and filled in January 1994, primarily to facili tate the upcoming school reconfigurations and to minimize the number of teachers who would be affected by a reduction-in-force process, then in the planning stages, to occur later that Spring.

6. Principals at schools targeted for reconfiguration were given input as to the nature of the January 1994 postings because not all of them were certain about their specific scheduling needs for the coming school year.

7. Among the January 1994 job listings were several teaching jobs for targeted K-8 reconfigured schools, some of which required certification in either elementary education, K-8, or multi-subject, K-8, (ELED/MS K-8) or certification in a specific subject in the proper grade level area; some of which required certification in both ELED/MS K-8 as well as a specific subject area; some of which required only the more general ELED/MS K-8 certification; and finally, at least one job which required two specific subject areas in the K-8 grade levels.

8. A notice for a teaching position at Oakvale required certification in ELED/MS K-8 only.

9. At the time the Oakvale position was advertised, Grievant was certified in biology, 7-12, and general science, 7-12. Grievant applied for the position, although she did not meet the certification requirements stated in the posting nor did she possess any certification to teach science to students in grades 1 through 6.

10. MCBE filled the Oakvale position on February 22, 1994, with Sheila Wright, who, at the time, was certified in elementa ry education, 1-8, and general science, 1-9.

11. When the 1994-95 school year began, Ms. Wright was scheduled to teach science, grades 6 through 8, at Oakvale.

12. Grievant was assigned to teach biology and general science at Montcalm High School for the 1994-95 school year.

13. According to Grievant's testimony at the November 1994 level two hearing, she had completed the requirements for certification in general science, 5-8 (presumably, during the summer months), but that her application papers had not yet been returned.

14. Grievant also expressed a belief at the level two hearing that middle school classes should be "departmentalized" and agreed with her representative during direct examination that a person certified "in a specific area of Science would be better qualified to teach the depth and breadth of the subject than one who is certified K-8 multi-subject." T.23,24.

15. When asked at the hearing what relief she sought in her grievance, Grievant responded, "I'd like to see a readvertisement of the position as a science position. I would like to see a Science certified person, one with more speciality

in that." T.23.

Discussion

While Grievant did not allege any violations of law, statute or policy, she did assert that the posting for the Oakvale position was a "false posting" because it did not state or reflect the particular needs at the school. Thus, in her view, the posting deprived her of the "right" to apply for the position.2 Grievant stated that she was not aware of any state

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2Actually, Grievant stated that she had applied for the position, although she was not granted an interview. Notably, Grievant never asked as relief that she be instated in the Oakvale position.

statute or policy which would require MCBE to post the Oakvale position with a subject-specific certification requirement. However, she opined that a specific subject matter certification should be required as a matter of educational philosophy. Grievant theorized that if MCBE is required to re-advertise the Oakvale position as one requiring science certification, she and other certified science teachers would have an opportunity to apply for the position.3

MCBE counters that the principals at Oakvale recommended that a position be posted for that school which would permit flexibility in assigning courses after the scheduling needs of the school became better known later that year. Thus, MCBE asserts, the Oakvale position was advertised as requiring general certification, ELED/MS K-8, in order to meet the needs of the school. Most importantly, MCBE raises an issue relating to Grievant's standing in this case. It argues that Grievant's

biology and general science certifications for grades 7-12 would not have met certification requirements for a science position in a K-8 school.

Following a careful review of the record in this case, the undersigned must conclude that Grievant has no standing to challenge MCBE's personnel actions relative to the Oakvale vacancy/posting/placement, whether her challenge involves the time the job was posted, the substance and content of the

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3As indicated above, at 3, Grievant, in fact, applied for the position, although she was never interviewed.

posting, or the manner in which the job was filled. Simply put, Grievant had no personal stake in the outcome of this controversy, and one party cannot prosecute a grievance on behalf of another party. See Lewis v. Mercer County Bd. of Educ., Docket No. 94-27-603 (Feb. 23, 1995); Pomphrey v. Monroe County Bd. of Educ., Docket No. 94-31-183 (July 1, 1994); Relihan v. Greenbrier County Bd. of Educ., Docket No. 90-13-189 (Aug. 27, 1990); Lyons v. Wood County Bd. of Educ., Docket No. 89-54-601 (Feb. 28, 1990).

Generally, personnel decisions regarding the filling of teaching vacancies with currently-employed teachers must be based upon the credentials possessed by the applicants at the time positions are filled. See Adams v. Mercer County Bd. of Educ., Docket No. 92-27-455 (Mar. 31, 1993). The record in this case establishes that Grievant did not hold the proper grade level certification for teaching departmentalized middle-school science courses in all the applicable grades in a K-8 configured school, either at the time the job was posted and filled in

January 1994 or when the job began at the onset of the 1994-95 school year.

Given Grievant's certification status during the relevant times the job was posted, filled and actually taught by Ms. Wright (the successful applicant) when the 1994-95 school year began, it made no difference to Grievant whether or not MCBE had posted the Oakvale position so as to require subject-specific science certification. Furthermore, while Grievant's concern for the rights of her fellow science teachers, specifically, those who actually held the 5-8 science certification during the time in question, is commendable, none of the persons who may have been affected ever filed a grievance. In short, Grievant has offered no factual or legal basis upon which to grant the relief she requests in this case.4

In addition to the foregoing, the following conclusions of law are properly made.

Conclusions of Law

1. Decisions regarding the filling of teaching vacancies with currently-employed teachers must be based upon the creden tials possessed by the applicants at the time positions are filled. See Adams v. Mercer County Bd. of Educ., Docket No. 92-27-455 (Mar. 31, 1993).

2. Grievant was not properly certified to teach science in all of the grade levels at Oakvale, a school which is config ured for grades one through eight; therefore, she was not qualified for the job in question and had no personal interests at stake with respect to the the outcome of this case. See Pomphrey v. Monroe County Bd. of Educ., Docket No. 94-31-183 (July 1, 1994); Relihan v. Greenbrier County Bd. of Educ.,

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4Although part of Grievant's requested relief was that the Oakvale position be reposted to her own specifications, she also stated that she "would like to see a Science certified person" hired for the job. Indeed, Ms. Wright, the successful applicant for the position, holds certification in ELED/MS K-8 and general science 1-9. Thus, technically, Grievant's wishes regarding this case have been met.

Docket No. 90-13-189 (Aug. 27, 1990); Lyons v. Wood County Bd. of Educ., Docket No. 89-54-601 (Feb. 28, 1990).

3. Grievant lacked standing to complain about alleged improprieties in the posting and filling of the Oakmont position as she failed to show she was adversely affected by the actions being challenged. Lewis v. Mercer County Bd. of Educ., Docket No. 94-27-603 (Feb. 23, 1995).

Based on all of the above, the grievance is DENIED in every respect.

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 appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate Court.

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NEDRA KOVAL

Administrative Law Judge

Date: March 20, 1995