

DIANE LETT

v. Docket No. 95-40-514

PUTNAM COUNTY BOARD OF EDUCATION

## DECISION

Grievant Diane Lett filed a grievance on or about September 25, 1995, against her employer, Respondent Putnam County Board of Education (PCBE), when she was not selected for a middle school language arts teaching position. She alleges PCBE's awarding of the position was contrary to the hiring and selection criteria for teachers found in W.Va. Code §18A-4-7a. Following adverse decisions at the lower grievance levels, she appealed to level four. The parties agreed that a level four decision could be based on the record below, and the case became mature for decision on March 24, 1996, upon receipt of the parties' fact/law proposals. [\(See footnote 1\)](#) Based on all matters of record, the following findings of fact can be made.

### Findings of Fact

1. Grievant, certified in Elementary Education, 1-8, and Social Studies, 1-9, has approximately seventeen years' seniority with PCBE. As of the 1994-95 school year, she had taught elementary education at Winfield Elementary School (WES) for many years. Grievant has never taught in a middle school.

2. At all times pertinent to this grievance, Grievant held a Masters plus fifteen hours for salary purposes. Grievant does not hold any certification for language arts and has no specialized training in language arts.

3. On August 17, 1995, PCBE posted a Job Vacancy Bulletin, "VB 56 - 95/96," for a middle school language arts teacher at Winfield Middle School (WMS), effective the

1995-96 school year. The job posting for the WMS language arts position contained the requirement, "CERTIFICATION; Language Arts 6-8."

4. PCBE has both elementary education certified teachers and subject (content) area certified teachers placed in its middle schools. T.74. Thus, not all of the postings introduced into the record (four for 1995, and one for 1994) for middle school teaching positions were advertised as exclusively subject-specific. Additionally, only one of these postings was for a language arts teacher, the subject-specific posting of August 17, 1995 for WMS.

5. Grievant and approximately five other currently employed teachers bid on the WMS language arts position. Of the applicants who did not withdraw their bid, only two held the language arts certification. T.67.

6. The successful applicant for the WMS position, Thelma Issacs, holds a language arts certification 5-12, but has less seniority with PCBE than Grievant. Ms. Issacs has a Masters plus forty-five hours for salary purposes and some specialized training in language arts.

7. During Summer 1995, at least two teachers were on a transfer-unassigned list. At the time the decision was made to employ Ms. Issacs (several days before the students were to report for the start of the 1995-96 school year), she remained on the transfer-unassigned list and spent at least one day working in the central office. T.59-60.

8. Grievant and Assistant Superintendent of Personnel Harold Hatfield, longtime acquaintances who had taught together in the past, had conversations, at the time the WMS language arts teaching position was posted and on August 25, 1995, after the job had been filled.

9. During the August 25, 1995 conversation, Grievant and Mr. Hatfield discussed the selection criteria for the WMS position, specifically, how Grievant's qualifications compared with those of another applicant holding only elementary education certification,

Joan Bumgardner. Grievant agreed at the level two hearing that she was less qualified than Ms. Bumgardner. T.43-44.

10. Although Mr. Hatfield could not recall all of the particulars regarding his conversation with Grievant on August 25, 1995, he thought he may have told her at some point that the decision to post the WMS language arts position as subject-specific had been, to some extent, a "business" decision. 11. By letter dated September 12, 1995 (over two weeks after Grievant's August 25, 1995, conversation with Mr. Hatfield about the selection process for the WMS language arts position), Grievant formally asked Mr. Hatfield why she had not been hired for the WMS language arts position.

12. Mr. Hatfield responded to Grievant's inquiry in a September 15, 1995 letter, and informed Grievant that she did not meet certification requirements for the WMS language arts position. He also advised Grievant to improve her qualifications by obtaining additional certification and the highest degree levels possible and by participating in specialized training in her area of interest.

13. Grievant, not satisfied with Mr. Hatfield's response, filed this grievance.

### Discussion

Grievant contends she possesses the appropriate qualifications to teach middle school language arts, and that, considering her teaching experience and seniority, she should have been hired for the WMS assignment in question, pursuant to *W. Va. Code* §18A-4-7a. However, the language arts position at issue was posted subject-specific and required the successful applicant to hold language arts certification, which Grievant does not hold.

Thus, the threshold issue to be addressed is whether a board of education may post and fill a subject-specific middle school teaching position based on a "standard" or requirement that the successful candidate hold more than an ordinary elementary

education, 1-8, licensure, i.e., some additional endorsement or certification in the teaching discipline in question beyond the minimum required by law. Grievant must prove by a preponderance of the evidence that PCBE improperly included qualifications in the posting for the WMS language arts position at issue. *Jones v. Summers County Bd. of Educ.*, Docket No. 94-45-153 (Nov. 16, 1992).

It is recognized that a certified elementary teacher such as Grievant receives some degree of training for which to teach multiple subjects, including language arts, in an elementary school setting, or perhaps even in a middle school setting. Even conceding that Grievant's elementary education certification minimally qualified her to exclusively teach language arts in a middle school program, a more important question exists with respect to a school board's right to determine hiring standards. There is no authority which would preclude PCBE from setting the standard of subject-matter certification for the middle school teaching position at issue, if such a standard is reasonably related to the requirements of the teaching position.

In fact, it has been previously held that a board of education may post and fill a subject-specific middle school teaching position based on a standard or requirement that the successful candidate hold a subject- matter endorsement or certification in the teaching discipline in question. *Gilkey v. Brooke County Bd. of Educ.*, Docket No. 91-05-489 (June 25, 1992). In *Cowen v. Harrison County Bd. of Educ.*, 465 S.E.2d 648 (W.Va. 1995), it was found that a board of education's grade-level specific requirement for middle school teaching vacancies, i.e., 6-8 certification (middle school endorsement) rather than the traditional elementary education, 1-6, certification, was not arbitrary and capricious. Thus, the answer to the question whether a school board may add a subject-matter certification requirement beyond an ordinary elementary education, 1-8, certification for a middle school teaching position is yes, as long as that additional requirement is reasonably related to the performance of the job. *Gilkey, supra.* ([See footnote 2\)](#)

However, Grievant also believes and asserts that Mr. Hatfield "discouraged" her from applying for the WMS language arts teaching position because he already had a person in mind for the job who was on the transfer list. She claims that the certification requirement listed for the position was a "business" decision and a mere subterfuge to ensure that a particular individual would be hired, Ms. Isaacs. Given this situation, Grievant argues, PCBE's filling of the WMS language arts position was not only a violation of *Code* §18A-4-7a, but also, she argues for the first time in her level four brief, an arbitrary and capricious action.

Grievant's opinion that improper motivation prompted the subject- specific posting for the WMS language arts position is not supported by the record. Norman S. Welton, Jr., PCBE's Director of Middle Childhood Education, testified that the educational approach in the middle schools is different from that of the primarily self-contained elementary schools, in that middle-school students and teachers are placed in interdisciplinary teams for program delivery. He said that the composition of the teams is partially content-area trained teachers and partially elementary-education trained teachers. He further explained that he, Mr. Hatfield, and the respective middle school principal, base their decision about the content of a posting for a middle-school teaching vacancy upon the existing ratio of content-area trained teachers and elementary education trained teachers comprising the interdisciplinary team. He said he had absolutely no way of knowing who would apply for the WMS language arts position in question when the posting was created. Although Mr. Welton had not been involved in the selection process for the WMS language arts position, he recalled that Ms. Isaacs was selected only after the person considered the most qualified language arts certified teacher had withdrawn.

Additionally, Mr. Hatfield denied that the decision to post the WMS position as subject-specific was solely a business decision to affect the placement of a certified language arts teacher who had not been assigned for the rapidly upcoming school year.

He admitted he was surprised that Grievant would consider leaving her long-standing position at WES and apply for the WMS job. However, Mr. Hatfield denied he ever told Grievant not to apply. He emphasized that all decisions about the structure of a posting are based upon a desire to "do what [is] best for the entire school system and still meet the needs of students and individual schools." T.71. According to Mr. Hatfield, the "[n]umber one" reason for the WMS posting in question was to "get the most qualified language arts person we could get." T.72; see also, T.73.

Assuming *arguendo* that Grievant had established by a preponderance of the evidence that improper motivation prompted the subject-specific WMS posting, Grievant would not necessarily be entitled to reinstatement to the WMS language arts position, the requested relief. In most cases, the proper remedy for an illegal or faulty posting which fatally flawed the selection process would be a reposting of the position. *Robinette v. Logan County Bd. of Educ.*, Docket No. 91-23-039 (May 30, 1991); *Kaplin v. Cabell County Bd. of Educ.*, Docket No. 89-06-445 (Oct. 22, 1990); *Jarrell v. Raleigh County Bd. of Educ.*, Docket No. 90- 45-155 (Aug. 22, 1990).

Mr. Hatfield testified that, if no certified language arts persons had applied for the WMS position as posted, the position would have been reposted with the minimal elementary education, multi-subjects requirement. Had that occurred, or had the position initially been posted for elementary education certification instead of subject-specific, language arts certification, the applicant pool may have been different. Mr. Hatfield also testified that, from among the elementary education certified people who did apply for the job as posted, Joan Bumgardner would have been the leading candidate for the job. T.70. Indeed, Grievant had discussed this matter with Mr. Hatfield long before she ever filed a grievance.

Interestingly, Ms. Bumgardner filed the first grievance over the selection of Ms. Isaacs. Grievant's representative introduced this evidence into the record when he cross-examined Mr. Hatfield about Ms. Bumgardner. Apparently, Ms. Bumgardner immediately

filed a grievance regarding the August 25, 1995 selection of Ms. Isaacs for the WMS language arts position and withdrew the claim only after she bid on and received a later-posted (September 6, 1995) position for a social studies teacher at WMS. [\(See footnote 3\)](#) See T.76-77. From all appearances, Grievant waited until the Bumgardner grievance regarding the WMS language arts position was resolved before she filed an action over the same issue. [\(See footnote 4\)](#) However, Grievant agreed at the level two hearing that, in a contest between her and Ms. Bumgardner as elementary education certified teachers vying for a language arts position, Ms. Bumgardner would be the most qualified candidate. T.43-44. Therefore, Grievant's assertion that she would have been the most qualified candidate for the WMS language arts position, from among all of the applicants, including Ms. Bumgardner and those holding only elementary education certification, is not borne out by the record.

In summary, Grievant failed to establish that the subject-specific posting for the WMS language arts position was illegally motivated. Messrs. Welton and Hatfield established that the rationale for the subject-specific language arts certification requirement and posting was reasonably related to the performance of the job, in that a certified, content-trained teacher was sometimes necessary for a particular interdisciplinary team in a middle school. What is more important, Grievant failed to establish by a preponderance of the evidence, that, had the WMS position not been posted for subject specific certification and instead posted for elementary education, multi-subjects certification, she would have been the most qualified applicant. See *Brown v. Hancock County Bd. of Educ.*, Docket No. 94-15-207 (Aug. 24, 1994).

In summary, Grievant has not established any basis requiring a reposting of the WMS position, or any basis entitling her to reinstatement to the WMS position in question, as a matter of law. Simply put, Grievant did not meet the certification requirements of the posting.

### Conclusions of Law

1. A county board of education must exercise its substantial discretion to employ professional personnel based upon the best interests of the schools and in a manner which is not arbitrary and capricious. *Dillon v. Bd. of Educ. of Wyoming County*, 351 S.E.2d 58 (W.Va. 1986). See also *Cowen v. Harrison County Bd. of Educ.*, 465 S.E.2d 648 (W.Va. 1995).

2. W.Va. Code §18A-4-7a requires that all professional positions be filled by the county board of education on the basis of qualifications. *Triggs v. Berkeley County Bd. of Educ.*, 425 S.E.2d 111 (W.Va. 1992).

3. Under W.Va. Code §18A-4-7a, an applicant for a posted classroom position who is already permanently employed as a teacher by the hiring board of education must "meet the standard set forth in the job posting" in order to be considered and chosen. *Gilkey v. Brooke County Bd. of Educ.*, Docket No. 91-05-489 (June 25, 1992).

4. Because Grievant did not meet PCBE's posted standard which required a language arts certification for the middle school language arts teaching position at issue, she had no standing to grieve the actual selection process. *Crawford v. Boone County Bd. of Educ.*, Docket No. 94-03-1131 (June 30, 1995).

5. Grievant failed to show a violation of W.Va. Code §18A-4-7a or any other relevant law, policy or regulation with respect to the posting and filling of the position at issue.

6. Grievant failed to prove that the school board's decision to post and fill the position at issue in the manner it did was arbitrary and capricious or not in the best interests of its schools.

Accordingly, this grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Putnam 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: April 23, 1996**

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[Footnote: 1](#)

*The record consists of the pleadings, the lower-level decisions, the transcript and exhibits of the October 17, 1995 level two hearing and the parties' level four fact law proposals.*

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[Footnote: 2](#)

*See also, Edwards v. Summers County Bd. Of Educ., Docket No. 95-45-264 (Nov. 30, 1995), at 2.*

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[Footnote: 3](#)

*Grievant did not bid on the social studies position, which had been posted for either elementary education, multi-certified, or social studies 4-8 certification.*

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[Footnote: 4](#)

*It is noted that PCBE raised a timeliness issue at level two. However, because the timeliness issue was not addressed in PCBE's level two decision, or raised in its level four brief, it is presumed abandoned. Therefore, while it cannot be found in this decision that the grievance was untimely filed (Grievant's level two explanation for her delay in filing after she learned on August 25, 1995, that Ms. Isaacs had been selected was because she had to know Mr. Hatfield's reasons for her own non-selection before she could know if she had a grievance), it can be inferred from the record that Grievant waited to file her grievance until after the Bumgardner case was resolved.*