

**MARY SPAULDING,**

**Grievant,**

**v. Docket No. 95-29-357**

**MINGO COUNTY BOARD OF EDUCATION,**

**Respondent.**

## **DECISION**

Mary Spaulding, Grievant, grieves her non-selection for a chapter I Math ("ECIA") teaching position at Kermit Middle School ("KMS"). She contends her non-selection constitutes a violation of the preferred recall provision of W. Va. Code §18A-4-7a, and requests as relief that she be placed in the position. This grievance was denied at Level II and waived at Level III. A Level IV hearing was held on October 5, 1995, and this case became mature for decision on October 27, 1995, the deadline for submission of proposed Findings of Fact and Conclusions of Law.

The material facts are not in dispute and this grievance deals with a question of law.

### **Findings of Fact**

1. In Spring, 1995, both Grievant and the successful applicant were RIF'd and placed on the preferred recall list.

\_\_\_ 2. On May 24, 1995, MCBOE posted a position for an "ECIA Math Teacher" or Chapter I math teacher at KMS. 3. On June 21, 1995, Grievant learned from the newspaper that Ms. Sabrina Runyon had received the position.

4. Grievant is certified as a Multi-Subject teacher, K-8, and as a Reading Specialist, K- 12.

5. Ms. Runyon is certified in Mathematics, 5-8, and Biological Science, 9-12.

6. The Chapter I positions are funded by the federal government.

7. The West Virginia Department of Education ("SDOE") prefers that Chapter I position be filled by an individual certified in the subject area. If the position is not filled with such a certified teacher and one applied for the position, MCBOE may be cited by SDOE.

8. To prevent being cited, MCBOE fills the ECIA Math middle school and high school positions with a teacher certified in Mathematics, if at all possible.
9. Grievant has approximately eight more months of seniority than Ms. Runyon.
10. During Grievant's four years of teaching experience, she taught kindergarten for one year, special education at Tug Valley High School for two years, and held a combined Chapter I Reading and Math position in an elementary school for one year. This last position was oriented more to teaching reading than math. Grievant taught some math in her high school position.
11. The posting did not state that math certification was required, as the listing was for a math teacher. MCBOE's practice is to list the required certification only if it is not clearly discernible from the posting.

### Discussion

W. Va. Code §18A-4-7a lists the guidelines for recalling professional employees after they have been RIF'd. The pertinent section states:

All professional personnel whose seniority with the county board is insufficient to allow their retention by the county board during a reduction in work force shall be placed on a preferred recall list. As to any professional opening within the area where they had previously been employed or to any lateral area for which they have certification and/or licensure, such employee shall be recalled on the basis of seniority if no regular, full-time professional personnel, or those returning from leaves of absence with greater seniority, are qualified, apply for and accept such position.

W. Va. Code §18A-4-7a also requires that any special criteria or skills required by the position be directly related to its performance.

The above-cited Code Section was "intended to afford laid-off employees a right to be recalled to employment, [in] order of seniority in the certification area in which they had been previously employed or in another area in which they had been certified or licensed." Woodson v. Monroe County Bd. of Educ., Docket No. 92-31-282 (Feb. 10, 1993). This Board has previously held that an individuals recall rights are "confined to the areas in which [an employee] is certified," here, Multi-Subject, K-8 or Reading Specialist, K-12. Id.

Although Grievant did previously teach in a combined Chapter I Reading and Math position, that is not the same as a middle school position teaching only math. Additionally, there was no testimony concerning this prior position, and whether of the applicants for that position, Grievant was the best

qualified individual available at the time. Because "appropriate subject-matter certification is the most basic of qualifications for a position", and Grievant does not have this certification, she cannot be awarded the position. Argabright v. Wyoming County Bd. of Educ., Docket No. 93-55-053 (Apr. 6, 1993).

The above discussion will be supplemented by the following Conclusions of Law.

#### Conclusions of Law

1. "The preferred recall provision of W. Va. Code §18A-4-7a, was intended to afford laid-off employees a right to be recalled to employment, [in] order of seniority, in the certification area in which they had been previously employed or in another area in which they had been certified or licensed." Woodson v. Mercer County Bd. of Educ., Docket No. 92-31- 282 (Feb. 10, 1993).

2. Under W. Va. Code §18A-4-7a's recall provisions, a grievant's recall rights are confined to their areas of certification. Woodson, supra.

3. "Appropriate subject-matter certification is the most basic of qualifications for a position." Argabright v. Wyoming County Bd. of Educ., Docket No. 93-55-053 (Apr. 6, 1993).

4. Grievant was not entitled to be recalled from the preferred recall list to fill the vacant ECIA math position because she was not certified in math. Dunford v. Mercer County Bd. of Educ., Docket No. 94-27-618 (Dec. 21, 1994); Bailey v. Wyoming County Bd. of Educ., Docket No. 92-55-478 (July 19, 1993); Adams v. Mercer County Bd. of Educ., Docket No. 92-27-455 (Mar. 31, 1993).

5. Grievant has not established MCBOE violated the preferred recall provision of W. Va. Code §18A-4-7, or abused its discretion in applying this law to the particular facts of this case.

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.

**JANIS I. REYNOLDS**

**Administrative Law Judge**

**Dated: January 31, 1996**