

KAREN FISHER-COLLINSWORTH,

Grievant,

v.

DOCKET NO. 95-50-457

WAYNE COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Karen Fisher-Collinsworth, filed this grievance on August 24, 1995, challenging her non-selection for a middle-school math and science teaching position. Grievant alleges she has greater seniority and is more qualified than the successful applicant and seeks instatement into the position. Following adverse decisions at the lower levels, Grievant appealed to Level Four on October 16, 1995. Following several continuances for good cause, the parties requested this matter be decided on the record developed below. This case became mature for decision on February 22, 1996, following receipt of the parties' proposed findings of fact and conclusions of law.

Findings of Fact

1. Grievant has been employed by Respondent Wayne County Board of Education for twenty years, and currently is employed at Prichard Elementary School.
2. By letter dated June 8, 1995, the Principal at Ceredo-Kenova Middle School informed Respondent that she had completed her teacher's schedule for the following year, and due to the achievement test scores being under the 50th percentile, felt it was necessary to request a certified teacher to teach four 6th grade science classes. Further, the Principal requested Respondent fill this position with a teacher who could also instruct one 6th grade math class and one 7th grade math class.
3. Respondent posted a teaching position for the above middle school in August 1995, for a Science/Math teacher, with certification in General Science 5-8 or 7-12 and Math 5-8 or 7-12.

4. Twenty applicants responded to the above posting and the successful applicant, Nancy Stumbo, was a teacher within the school system who had a bachelor's degree plus fifteen (15) hours, and whose certifications were General Science Major 5-12 and Math through Algebra I 5-8. Ms. Stumbo was fully qualified for the posted position.

5. Grievant has a Master's Degree plus forty-five (45) hours, and certifications in Elementary Education 1-8 and Math 1-9. Grievant has twenty years' seniority with the Wayne County school system, has taught science and math before and had specialized training relative to the posted position.

Discussion

Grievant alleges Respondent acted arbitrarily and capriciously in posting the position as requiring middle-school specific certifications. Further, Grievant alleges she is more qualified and has more seniority than the successful applicant, Ms. Stumbo. With respect to Grievant's second argument, that she is more qualified and has more seniority than Ms. Stumbo, the Grievant bears the burden of proving her allegations by a preponderance of the evidence. While Grievant may possess more seniority than Ms. Stumbo, Grievant has failed to present any relevant information regarding Ms. Stumbo's qualifications. Grievant's only witness regarding the selection process, Paul Fulks, Assistant Superintendent of Wayne County Schools, testified he had no role in the selection process and knew nothing more about Ms. Stumbo's qualifications than what was presented on her teaching certificate. Grievant's evidence on this issue is woefully inadequate and no determination can be made that she is more qualified than Ms. Stumbo. On this basis alone, Grievant has failed to prove this allegation by a preponderance of the evidence.

Moreover, Grievant's allegation that Respondent acted in an arbitrary and capricious manner in posting the position requiring middle-school specific certification must fail in light of existing caselaw on this matter.

County boards of education have substantial discretion in matters relating to hiring, assignment, transfer, and promotion of school personnel, as well as matters involving curricular programs and qualification and placement of personnel implementing those programs. However, that discretion must be tempered in a manner that is reasonably exercised, in the best interest of the schools, and in a manner which is not arbitrary and capricious. Cowen v. Harrison County Bd. of Educ., 465 S.E.2d

648 (W. Va. 1995).

A board of education is permitted to define or set forth a position's standards in a job posting and to require the applicants to meet those standards. A board's right to set standards is crucial, especially when it desires to hire the most-qualified person for a specific position. See Cowen, supra, Gilkey v. Brooke County Bd. of Educ., Docket No. 91-05-489 (June 25, 1992); see also Melchiori v. Marshall County Bd. of Educ., Docket No. 92-25-106 (Apr. 29, 1992). Certainly, the Principal's concern regarding recent achievement test scores in her school, as well as the fact that the middle school setting requires a departmentalized approach and not a traditional elementary self-contained approach to education, combine to make the Principal's request and Respondent's posting appropriate and reasonable in this instance. See Gilkey, supra.

Conclusions of Law

1. It is incumbent upon the Grievant in a non-disciplinary matter to prove her allegations by a preponderance of the evidence.
2. Grievant has failed to prove that she was more qualified than the successful applicant for the middle-school science/math teaching position.
3. County boards of education have substantial discretion in matters relating to hiring, assignment, transfer, and promotion of school personnel, as well as matters involving curricular programs and qualification and placement of personnel implementing those programs. However, that discretion must be tempered in a manner that is reasonably exercised, in the best interest of the schools, and in a manner which is not arbitrary and capricious. Cowen v. Harrison County Bd. of Educ., 465 S.E.2d 648 (W. Va. 1995).
4. Grievant has failed to prove Respondent acted in an arbitrary and capricious manner in requiring middle-school specific certification for the Ceredo-Kenova science/math teaching position.
5. Grievant failed to prove 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.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Wayne 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.

MARY JO SWARTZ

Administrative Law Judge

Dated: March 15, 1996