

THOMAS HOFFMAN

v.

Docket No. 96-29-021

MINGO COUNTY BOARD OF EDUCATION

DECISION

The grievant, Thomas Hoffman, is employed by the Mingo County Board of Education (Board) as a teacher assigned to Burch High School (BHS). He filed a grievance at Level I December 22, 1995, protesting his non-selection for the post of BHS Dean of Students. His supervisor was without authority to grant relief, and the grievance was denied at Level II following a hearing held January 4, 1996. The Board, at Level III, declined to address the matter and appeal to Level IV was made January 18, 1996; a hearing was held March 11, 1996. [\(See footnote 1\)](#) The parties did not submit proposed findings of fact and conclusions of law.

Background

There is no dispute over the facts of the case. The Board's job description for Dean of Students specifies "Valid Professional Teaching Certificate; MA, 5 years teaching experience; and Administrative Certificate preferred/not required for consideration" as "Qualifications" for the post. The November 27, 1995 posting for the Dean of Students position in issue did not specify any minimum certification requirements.

The grievant, who possesses secondary administrative certification and otherwise meets the specifications of the job description, applied for the position and was not selected. Mr. Leonard Haney, a teacher who did not have administrative licensure, was ultimately awarded the post.

Argument

The grievant primarily asserts that the Dean of Students position is, in essence, an

Assistant Principal post and that pursuant to Talbert v. Mingo County Bd. of Educ., Docket No. 93-29- 166 (Jan. 20, 1994), and subsequent decisions of the Education and State Employees Grievance Board, the Board was under a duty to impose administrative certification as a minimum requirement for the job. The grievant makes a second, less specific claim that the Board acted arbitrarily in assessing the applicants and determining that Mr. Haney was the most qualified. [\(See footnote 2\)](#) He acknowledges that other candidates also may have had administrative licensure, and does not seek reinstatement to the position under either theory; rather, he requests a reevaluation of the candidates.

The Board's position is less clear. Superintendent of Schools Everett Conn, in response to questions from Board counsel, asserted at Level IV that state law did not mandate that a Dean of Students possess administrative licensure. It appears that his conclusion is based on W.Va. Code §18A-3-2a, which authorizes the State Superintendent of Schools to issue various certificates. Code §18A-3-2a(B)(2) addresses "Professional administrative certificates" in general and also specifically provides that "any person serving in the position of dean of students on the effective date of this section shall not be required to hold a professional administrative certificate."

Findings and Conclusions

Talbert held that a county board of education's discretion to create and define professional posts may be limited by operation of statutes which identify and establish licensure and other requirements for certain positions. The grievant therein demonstrated that the duties of the Board's Dean of Students position were substantially similar to those of an assistant principal which, per Code §18A-2-9, [\(See footnote 3\)](#) is a post requiring administrative licensure.

The holdings in Talbert have been affirmed on several occasions, [\(See footnote 4\)](#) most recently in Jeffrey v. Mingo County Bd. of Educ., Docket No. 95-29-105 (Jan. 11, 1996). The Board does not assert and the record will does support that the duties of the Dean of Students have since been changed. Further, the Board does not represent that any of the cited decisions have been reversed or modified on appeal. Except for Superintendent Conn's reference to Code §18A-3-2a, there is no explanation of record for the Board's decision to continue its policy of not requiring administrative certification for the position.

The undersigned summarily finds that while the quoted language of Code §18A-3-2a is somewhat ambiguous, it does not exempt from administrative licensure requirements, a post which is designated Dean of Students but which is, in essence, an Assistant Principal position. A more reasonable interpretation of the provision is that, since June 4, 1992, the effective date of the legislation, an administrative license for the appropriate grade levels is required of any newly-appointed Dean of Students, regardless of whether his or her duties are those of an Assistant Principal.

The grievant has also demonstrated that there were other, perhaps more significant flaws in the assessment of the candidates. W.Va. Code §18A-4-7a, ¶1 does not prohibit a county board from assigning different weights to the various criteria contained therein when selecting "professional personnel other than classroom teachers," Fisher v. Marion County Bd. of Educ., Docket No. 93-24- 042 (March 11, 1993), but it does require that "consideration be given" each criterion listed. Amick v. Nicholas County Bd. of Educ., Docket No. 95-34-037 (Aug. 23, 1995).

The record reflects that in making his recommendation of Mr. Haney, Superintendent Conn relied heavily if not wholly on a review of the candidates performed by a committee comprised of BHS Principal Don Gillman and other employees at the school. The record, particularly Mr. Gillman's testimony, further establishes that the committee was given only one or two days to recommend a applicant and that the Board's central office provided it with the candidates' letters of application and little else.

The evidence clearly demonstrates that the committee conducted a hurried review which was based nearly entirely on the members' personal knowledge of the candidates, and that not all members were familiar with all applicants. No interviews were conducted. Simply stated, the record supports that the committee could not have given meaningful consideration to such factors as length of administrative experience, degree level, performance evaluations and other statutory criteria, because it lacked reliable information on those matters.

The evidence also reveals that the committee's failure to inquire into specific aspects of the candidates' backgrounds was in no way attributable to the applicants. Consistent with Board practice, they were only required to submit letters of interest in the position. It appears

that the applicants, including the grievant, had very reasonable expectations that credentials on file would be examined, and that their qualifications would be explored further through an interview process. The record does not reveal the reason for the haste or the failure of the Board's central office staff to provide the committee with the specific information required for an adequate review. For the reasons discussed, the undersigned finds that the Board was required to impose administrative licensure on the post in issue, and that the assessment of candidates for the position did not comport with the requirements of Code §18A-4-7a.

Accordingly, the grievance is GRANTED and the Mingo County Board of Education is hereby ORDERED to reassess the candidates for the position of Burch High School Dean of Students consistent with the holdings herein. In the event that the grievant is selected for the position, he is to be compensated for any loss of pay and benefits he may have incurred.

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

JERRY A. WRIGHT
ADMINISTRATIVE LAW JUDGE

Dated: June 28, 1996

Footnote: 1 *At least two hearings were continued at the parties' request.*

Footnote: 2 *The grievant's presentation of evidence on the second claim was poorly organized and often shifted abruptly from one aspect of the selection process to another. Ultimately, the record was sufficiently developed for a review of the merits of the claim.*

It is further noted that during the course of his presentation, the grievant raised the issue of his service as Principal of Matewan High School from September 1992 to September 1995, and at least implied that during the selection process, the Board had not accurately assessed his performance in that position. Upon cross-

examination, it was revealed that the grievant had been demoted to his present teaching position on September 11, 1995, for neglect of duty, and that his protest of that action had recently been heard at Level IV. The parties proceeded to present evidence on the demotion and it appeared, at least initially, that the Board was relying on the disciplinary action as a reason for rejecting the grievant for the post in issue. Eventually, however, Board counsel represented that this was not the case, and that any evidence regarding the grievant's removal from the Matewan High position was largely if not wholly irrelevant to the issues in the case. The grievant agreed.

Finally, it is noted that during Superintendent Conn's testimony on matters relating to the demotion, he at first represented that he would have recommended the grievant for the post in issue if the selection committee had so suggested, and then stated that he would not have nominated him, presumably because of the events leading to the disciplinary action. To the extent that this testimony is relevant, the first representation is considered the more reliable.

Footnote: 3 *"Upon recommendation of the county superintendent of schools, the county board of education shall, when needed, employ and assign, through written contract, assistant principals who shall work under the direction of the school principal. Such assistant principals shall hold valid administrative certificates appropriate for their assignments."*

Footnote: 4 *The undersigned's research reveals Ward v. Mingo County Bd. Of Educ., Docket No. 94-29-1134 (April 26, 1995) and Muncy v. Mingo County Bd. of Educ., 95-29-278 (Nov. 30, 1995).*