

BEVERLY C. BAILEY,

Grievant,

v. Docket No. 95-29-346

MINGO COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Beverly Bailey, Grievant, grieves her non-selection for a Chapter I Math ("ECIA") teaching position at Gilbert Middle School ("GMS"). [\(See footnote 1\)](#) She contends her non-selection for the position constitutes a violation of the preferred recall provisions of W. Va. Code §18A- 4-7a, and that she was more qualified than the successful applicant. She 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 December 20, 1995, and this case became mature for decision on January 29, 1996, the deadline for submission of proposed Findings of Fact and Conclusions of Law.

The material facts are not in dispute and this grievance involves 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 a Chapter I Math teacher at GMS.
3. Thereafter MCBOE selected James Ellis to fill the position.
4. Grievant is certified as a Multi-subject teacher, K-8, Remedial Reading, K-12, and Developmental Reading, 7-8. [\(See footnote 2\)](#)
5. Mr. Ellis is certified in Mathematics, 5-12.
6. The Chapter I positions are funded by the federal government.
7. MCBOE completed a W. Va. Code §18A-4-7a matrix when selecting the successful

applicant for the position. Grievant was credited with having a greater amount of teaching experience, satisfactory evaluations, and seniority. Mr. Ellis received marks or checks for having the appropriate certification, teaching experience in the required area, degree level in the required certification, special training, and satisfactory evaluations.

8. The West Virginia State Department of Education ("SDOE") recommends that Chapter I positions be filled by an individual certified in the subject area. If the position is not filled with a certified teacher and one applied for the position, MCBOE may be cited by the SDOE. Spaulding v. Mingo County Bd. of Educ., Docket No. 95-29-357 (Jan. 31, 1996).

9. 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.

10. Grievant has approximately eighteen more months of seniority than Mr. Ellis.

11. Grievant did not testify about her prior teaching experience.

12. 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

individual's recall rights are "confined to the areas in which [an employee] is certified", here, Multi-subject, K-8, Developmental Reading, 7-8, or Remedial Reading, K-12. Id.

Although Grievant is currently teaching sixth grade Math, this position was posted as a Multi-subject position and that is Grievant's certification area. [\(See footnote 3\)](#) Additionally, there was no testimony from Ms. Hatfield as to why she requested a Multi-subject teacher. Because "appropriate subject-matter certification is the most basic of qualifications for a position", and Grievant does not possess the Math certification required for the ECIA position, she cannot be awarded the GMS position. [\(See footnote 4\)](#) Argabright v. Wyoming County Bd. of Educ., Docket No. 93-55-053 (Apr. 6, 1993).

Additionally, it is well-settled that "[c]ounty boards of education have substantial discretion in matters relating to hiring, assignments, transferring and promotion of school personnel," as long as they exercise this discretion "reasonably, in the best interests of the school, and in a manner which is not arbitrary and capricious." MCBOE can require that middle school ECIA Chapter I Math positions be filled by Math certified teachers. This decision falls within their broad discretion as discussed in Dillon. Spaulding v. Mingo County Bd. of Educ., Docket No. 95-29-357 (Jan. 31, 1996). Further, the W. Va. Supreme Court has recently expanded the Dillon standard "to matters involving curricular programs and the qualifications and placement of personnel implementing those programs." Cowen, et. al v. Harrison County Bd. of Educ., No. 22704 (Dec. 13, 1995). MCBOE's decision falls within these identified parameters.

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 his or her 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 provisions of W. Va. Code §18A-4-7a, or abused its substantial discretion in applying the law to the particular facts of this case.

6. County boards of education have substantial discretion in "matters involving curricular programs and the qualification and placement of personnel implementing those programs." Cowen et. al. v. Harrison County Bd. of Educ., No. 22704 (Dec. 13, 1995).

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Mingo Circuit Court of 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: February 21, 1996

[Footnote: 1](#)

Originally, Grievant had two grievances that were consolidated at Level II. Both grievances dealt with her non-selection for ECIA, Chapter I positions. At the Level IV hearing, Grievant stated she was only interested in the Gilbert Middle School position, thus the portion of her grievance relating to the Burch Middle School position is dismissed.

[Footnote: 2](#)

Grievant is currently employed at GMS as a sixth grade math teacher. This position was posted as a Multi-subject position at the request of the principal, Ms. Burma Hatfield. At the time of the posting, Ms. Hatfield did not inform Assistant Superintendent Fullen that the person in the position would teach only math.

[Footnote: 3](#)

Multi-subject degrees are designed for teaching in a self-contained classroom, but a county board may use teachers with these degrees to teach core content in a middle school, if they choose to do so. Math is considered core content. MCBOE has chosen to require Math certification for the ECIA Math position. See, Crum, et al. v. Mingo County Bd. of Educ., Docket No. 95-29-224 (Feb. 9, 1996).

[Footnote: 4](#)

Grievant presented no testimony to support her argument that she is more qualified than the successful applicant. Thus, this argument is considered abandoned.