

THOMAS NEWSOME, .

Grievant, .

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v. .

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MINGO COUNTY BOARD OF EDUCATION, . Docket Number: 95-29-279

Employer, .

.

and .

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C. DOUG WARD, .

Intervenor. .

DECISION

Grievant, Thomas Newsome, filed this complaint against the Mingo County Board of Education (Mingo) challenging his non-selection for the position of Dean of Students at Tug Valley High School for the 1995-1996 school year. He alleges he is better qualified for the position than the successful applicant; therefore, Mingo violated West Virginia Code §18A-4-7a in not selecting him for the position. Mingo contends that it hired the mostqualified candidate for the job pursuant to Code §18A-4-7a. The successful applicant for the position, C. Doug Ward, has intervened in the case. ([See footnote 1\)](#))

Grievant's appeal of the level two decision dated June 19, 1995, was received by this Grievance Board on July 7, 1995. An evidentiary hearing was held on September 26, 1995, at this Board's Charleston, West Virginia Office. The case became mature for decision on September 31, 1995, as both parties were given time to decide if they wished to offer the testimony of additional witnesses to

support or rebut evidence not presented at level two. Neither party informed the Undersigned of their intent to offer such additional evidence.

The material and relevant facts are not in dispute and are set forth below as formal findings of fact.

Findings of Fact

1. Grievant is employed by Mingo as a teacher at Tug Valley High School. He is certified by the State Board of Education to teach Biology Science, Major 7 - 12 and General Science, Major 7-12.

2. Effective September 18, 1991, Grievant was issued a provisional professional administrative certificate by the State Board of Education, covering the positions of Principal, Superintendent, Supervisor of General Instruction and Vocational Administrator. This certification was valid for three years.

3. Professional administrative certificates issued provisionally may be renewed by the holder provided he meets the requirements for renewal established in the State Board of Education's Legislative/Procedural Rule, 126 C.S.R. 136, Policy 5202.

4. Prior to the beginning of the 1995-1996 school year, Mingo posted the vacant position of Dean of Students at Tug Valley High School for competitive bid. 5. Grievant applied for the position of Dean of Students but was not found to be the most qualified applicant pursuant to Mingo's application and interpretation of W. Va. Code §18A-4-7a.

6. As of the date the position in question was filled, Grievant had not completed all of the steps to renew his administrative certification. He had attended the required training but had failed to submit verification of training to Mingo, and had failed to submit the proper verification/application to the State Board for renewal of his certification. Therefore, his administrative certification lapsed.

7. Superintendent Everett Conn and Assistant Superintendent John Fullen evaluated the credentials of the applicants for the position of Dean of Students. Both individuals assumed Grievant was properly certified to hold the position but did not recommend to Mingo that he be hired for the position based upon an evaluation of Doug Ward's total credentials.

Conclusions of Law

1. Grievant bears the burden of proving his claims by a preponderance of the evidence. W. Va.

Code §18-29-6.

2. Both Superintendent Conn and Assistant Superintendent Fullen abused their discretion in determining that Grievant was certified by the State Board of Education to hold the position of Dean of Students. See, Goodwin v. Kanawha County Bd. of Educ., Docket No. 93-20-260 (Mar. 14, 1994).

3. The error cited above in Conclusion of Law number 2 was harmless. 4. Grievant was not competent to hold the position of Dean of Students at the time it was filled because he was not certified by the State Board of Education to be an administrator. See, Rogers v. Kanawha County Bd. of Educ., Docket No. 93-20-447 (Mar. 23, 1994).

5. Grievant has failed to prove by a preponderance of the evidence that he was more qualified for the position of Dean of Students than Doug Ward. W. Va. Code §18A-4-7a.

Therefore, this grievance is hereby **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.

ALBERT C. DUNN, JR.

Administrative Law Judge

February 8, 1996

[Footnote: 1](#)

Mr. Ward was not present at the level four hearing.