VICKI CRUM,

Grievant,

v. Docket No. 96-29-495

MINGO COUNTY BOARD OF EDUCATION,

Respondent,

and

TERESA JONES,

Intervenor.

D E C I S I O N

Grievant, Vicki Crum, states the Mingo County Board of Education ("MCBOE") improperly filled a middle school position with a new employee. She requests as relief that she be placed in the posted, multi-subjects/math position at Burch Middle School ("BMS"). The grievance was denied at Levels I and II and was waived at Level III. A Level IV hearing was held on January 23, 1997. This grievance became mature for decision on that date, as the parties elected not to submit proposed findings of fact and conclusions of law.

The facts in this case are not in dispute, and the issue to be decided is one of law.

Findings of Fact

1. Dr. John Huff, an educational consultant from Marshall University, was hired by MCBOE to assist it through the change from junior high schools to middle schools. He instructed the principals to request content specific teachers whenever possible for their middle school positions.

2. After school had started, the principal at BMS, Mr. Thomas Slone, had a teacher transfer. After this transfer, he reviewed his schedule and found he had only one certified Math teacher for all his students. He determined he needed another certified Math teacher, especially in light of the fact that changes were under way to mandate that middle schools

teach pre- Algebra and Algebra I to all their students. Algebra I cannot be taught by a multi-subject teacher unless she has received additional certification. Mr. Slone also determined he would like this teacher to have Multi-subject certification as well, to allow him greater flexibility in scheduling.

3. Principal Slone requested that Assistant Superintendent Johnny Fullen post a Multi-subject/Math 5-8 position for BMS, and Mr. Fullen did so.

4. On September 6, 1996, MCBOE posted a position at BMS for a "Multi-Subject Math 5/8 teacher."

5. Both Grievant and Intervenor applied for the position. 6. Grievant has six years of seniority and is certified in Multi-subjects, K-8 and Developmental Reading, 7-8. (See footnote 1) She was teaching Special Education at Lenore Grade School at the time she applied for the position in question.

7. Intervenor, Teresa Jones, is a new teacher and certified in Multi-subjects, K-8 and Math-Algebra I, 5-8.

8. The posting did not state that Multi-subjects or Math certification was required, as the listing was for a Multi- subject/Math teacher. MCBOE's practice is to list the required certification, only if it is not clearly discernible from the posting. Bailey v. Mingo County Bd. of Educ., Docket No. 95-29-346 (Feb. 21, 1996) at Finding of Fact 12.

9. Because Intervenor had all the certifications required in the posting, she was selected for the position.

10. Intervenor currently teaches four, sixth grade math classes and one social studies class per day.

Discussion

The issue raised by Grievant is one that has been considered many times in recent years by this Grievance Board. See Bailey, supra; Crum, et al. v. Mingo County Bd. of Educ., Docket No. 95- 29-224 (Feb. 9, 1996); Spaulding v. Mingo County Bd. of Educ., Docket No. 95-29-357 (Jan. 31, 1996). County boards of education have substantial discretion in matters relating to the hiring of school personnel. The exercise of that discretion must be in thebest interests of the schools, and in a manner which is neither arbitrary nor capricious. See Hyre v. Upshur

County Bd. of Educ., 412 S.E.2d 265 (W. Va. 1991). The West Virginia Supreme Court of Appeals has expanded this discretion "to matters involving curricular programs and the qualification and placement of personnel implementing those programs." Cowen v. Harrison County Bd. of Educ., 465 S.E.2d 648, 652 (Dec. 13, 1995). With regard to hiring for a classroom teaching position, boards of education must exercise their discretionary authority by considering the "qualifying factors" set forth in W. Va. Code §18A-4-7a (1992). Because Grievant was permanently employed, the "second set of criteria" found in 7a would usually apply to this type of selection case, and reads as follows:

If one or more permanently employed instructional personnel apply for a classroom teaching position and meet the standards set forth in the job posting, the county board of education shall make decisions affecting the filling of such positions on the basis of the following criteria: Appropriate certification and/or licensure; total amount of teaching experience; the existence of teaching experience in the required certification area; specialized training directly related to the performance of the job as stated in the job description; receiving an overall rating of satisfactory in evaluations over the previous two years; and seniority. Consideration shall be given to each criterion with each criterion being given equal weight.

As Grievant's certification is in Multi-subject, K-8, and she is not certified in Math, 5-8, and she did not meet the requirements in the job posting or the first requirement in the above-cited Code Section. Thus, no further assessment of the factors in W. Va. Code § 18A-4-7a is required. Although a superintendent has the option of employing Multi-subject teachersoutside a self-contained classroom in middle school or junior high schools if the depth and breadth of the material stays the same as that taught in a self-contained classroom, he is not required to do so. He also cannot hire a Multi-subject teacher to teach Algebra. Thus, a county board could utilize Multi-subject teachers to teach core content in a middle school setting if it chose to do so. MCBOE has chosen not to do so. MCBOE has set a standard for the certification of its junior high and middle school teachers; requiring content-specific certification in all subjects, when possible. "A board of education's right to set standards is crucial, especially when it desires to hire the most qualified person for a specific position[,] and the potential field of applicants may include the most minimally certified or qualified persons." Gilkey v. Brooke County Bd. of Educ., Docket No. 91-05- 489 (June 25,

1992).

"The notion of favoring in-depth teachers for any content area . . . is educationally sound and directly relates to the interest of the schools." Id. Because "appropriate subject-matter certification is the most basic of qualifications for a position", and since Grievant does not have this certification, she cannot be awarded this position. Argabright v. Wyoming County Bd. of Educ., Docket No. 93-55-03 (Apr. 6, 1993). Thus, although Grievant could be allowed to teach some subjects, including some math classes, in a middle school setting by her certification, she is not certified to fill the position at issue because she does not possess the certification posted and required by MCBOE. MCBOE has decided to require middle school positions to be filled by teachers certified in the content area, if at all possible. It chose to select a teacher specifically trained in the subject she will teach, instead of choosing the less specific Multi-subject certification, which is intended for a self- contained, elementary setting. This action cannot be seen as arbitrary and capricious, and clearly falls within the discretion authorized by Dillon and Cowen.

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

Conclusions of Law

1. Grievant has the burden of proving her case by a preponderance of the evidence. Rupich v. Ohio County Bd. of Educ., Docket No. 89-35-719 (June 29, 1990).

2. "County boards of education have substantial discretion in matters relating to hiring, assignment, transfer and promotion of school personnel" as long as they exercise this discretion "reasonably, in the best interest of the school, and in a manner which is not arbitrary and capricious." Dillon v. Bd. of Educ. of the County of Wyoming, 351 S.E.2d 58 (W. Va. 1986).

3. County boards of education have substantial discretion in "matters involving curricular programs and the qualifications and placement of personnel implementing those programs." Cowen v. Harrison County Bd. of Educ., 465 S.E.2d 648, 652 (W. Va. 1995). 4. Grievant failed to prove MCBOE violated W. Va. Code §18A- 4-7a when it selected Intervenor for a position for which Grievant was not certified.

5. Grievant, certified as a Multi-subject, K-8 teacher, failed to demonstrate MCBOE acted in

an arbitrary and capricious manner when it selected a new, but certified teacher, to fill a full-time teaching position at BMS instead of placing Grievant in that particular teaching slot. Donofoe v. Hancock County Bd. of Educ., Docket No. 93-15-188 (Nov. 30, 1993).

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.

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JANIS I. REYNOLDS

Administrative Law Judge

Dated: May 30, 1997

Footnote: 1

Apparently Grievant received some additional certifications in the Summer of 1997, as they were in special education areas, they do not effect the outcome of this grievance.