ROY G. JONES

v. Docket No. 93-43-429

RITCHIE COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant Roy G. Jones is professionally employed by Respon dent Ritchie County Board of Education (RCBE). He describes his grievance, initiated in September 1993, as follows: (See footnote 1)

On April 26, 1993, the position of administrative assistant for Ritchie County Middle School was posted. The ending posting period was May 4, 1993. On April 26, 1993, Grievant made a written application for the position. On June 9, 1993, Grievant was interviewed by Superintendent David Meador; Assistant Superinten dent, Mitchell Been; and Ritchie County Middle School Principal, John Ditlow.

On August 9, 1993, Mr. Ditlow recommended Grievant be hired as a certified applicant meeting the qualifications listed in the job posting. More than thirty days has passed since the end of the posting period. W.Va. Code §18A-4-7a requires that this posting be filled. As the applicant recommended by Principal Ditlow, as relief, Grievant seeks instate ment to the position.

The parties are in general agreement about the underlying facts which gave rise to this action. Therefore, based on thoserepresentations and all matters of record, the following formal findings of fact are made. (See footnote 2)

Findings of Fact

1. In November 1992, RCBE began the process of staffing Ritchie County Middle School (RCM), a new facility scheduled for completion and occupation in September 1993.

2. Administrators determined that RCM, with an anticipat ed student population of 490 students and forty professional and support personnel, needed an "administrative assistant" position at the school for the 1993-94 school year. This position was posted and subsequently filled by RCBE in February 1993.

3. In Spring 1993, Norma Hilvers, the successful appli cant for the upcoming RCM position, relinquished that job after she was chosen for a principalship at another school for the 1993-94 year.

4. On April 26, 1993, the administrative assistant position for RCM was again posted. Grievant

and another profes sional employee applied. Grievant completed RCBE's application package for the position on or about the time of the official closing of the posting period, May 4, 1993. Exhibit 3.

5. Grievant holds a masters degree in education adminis tration and is certified in elementary education, 1-6, and mathematics, 4-8. He also possesses administrative certification to work as a school principal in elementary schools, middle schools, junior high schools, and senior high schools or as a school superintendent, supervisor, or vocational administrator. Exhibit 2.

6. On June 9, 1993, Grievant was interviewed by RCBE Superintendent David Meador, Assistant Superintendent Mitchell Been and RCM Principal John Ditlow.

7. Mr. Ditlow agreed that he had no immediate recommenda tions for the position. However, he testified that after he had "done some more soul searching and conducting my own interviews personally," he reached the conclusion in early August 1993 that Grievant was the "best qualified applicant." T.28. Mr. Ditlow then made a written recommendation to Mr. Meador and RCBE members that Grievant be hired based on his assessment that Grievant met all the requirements for the position and was the most qualified applicant. Exhibit 8.

8. As of the time of the level two hearing on September 22, 1993, Mr. Ditlow believed that due to the enrollment at RCM, the school is in need of an administrative assistant. T.27.

9. Mr. Been established at the level two hearing that due to unanticipated county-wide staffing needs, curriculum up grades, building repairs and other financial obligations, and because RCM's pupil/teacher/administrative staff ratio satisfied existing regulations, an administrative decision was made not to staff RCM with the additional position of administrative assis tant. T.33-38.

10. Mr. Meador never nominated Grievant for employment forthe position of administrative assistant for RCM. In addition, RCBE has neither hired anyone else nor formally rescinded the posting for the administrative assistant position.

Discussion

Grievant argues that he is entitled to be instated as administrative assistant at RCM. Grievant relies on a portion of W.Va. Code §18A-4-7a which provides that when a vacancy is posted, "[i]f one or more applicants meets the qualifications listed in the job posting, the successful applicant to fill the vacancy shall be selected by the board within thirty working days of the end of the posting period."

He argues that although "W.Va. Code §18A-4-7a empowers a county board of education to eliminate positions due to lack of need[, f]ailure of a board of education to do so prior to posting a

position causes them [sic] to forfeit that right." (See footnote 3) According to Grievant, because RCBE had not "abolished the position" of administrative assistant at RCM during the posting period of April 26 through May 4, 1993, nor during the thirty working days following the end of the posting period, i.e., May 5 through June 16, 1993, RCBE is obligated to fill the position with him because no one else was recommended for the position.

Grievant is correct that RCBE violated W.Va. Code §18A-4- 7a. The violation occurred when RCBE failed to rescind a posting for an administrative assistant at RCM, to abolish theposition formally or to retain the slot and hire the most qualified candidate "within thirty days of the end of the posting period." See Gwinn/Harper v. Tucker County Bd. of Educ., Docket No. 92-47-281 (June 29, 1993). However, Grievant has failed to support the notion that he is entitled to be instated to the position of administrative assistant at RCM.

First of all, West Virginia school law contains no mention of a school-based professional position titled or defined as an "administrative assistant." Thus the Grievance Board has no legal basis upon which to order that such a job be established and filled at RCM or any other school. A question also exists as to whether this position is needed at RCM and/or otherwise required or funded.

Moreover, Grievant completely misapprehends the role of Mr. Ditlow in this controversy. Mr. Ditlow, as principal of RCM, has absolutely no independent authority to select the most qualified applicant for any vacancy at his school unless that task has been expressly granted to him by a higher authority. The record contains no evidence that Mr. Meador or RCBE delegat ed their authority to Mr. Ditlow to ascertain the most qualified applicant. Further, Mr. Meador is the only administrator who can nominate a candidate for employment before the RCBE. W.Va. Code §18-4-10.

This entire situation was properly assessed in the October 5, 1993 level two decision. Mr. Meador, the level two grievance evaluator, essentially agreed that a violation of Code §18A-4-7a occurred when the position at RCM was not filled within theproper time after the end of the posting period. However, he also determined that the viability of the administrative assis tant position had not been established and that the administra tive process of selecting the most qualified candidate had not been completed. He ruled that

the superintendent and board should (1) ascertain, with dispatch, the need for the position or the lack of need for the position; (2) determine which of the applicants is more qualified; and, (3) if it is determined that there is need for the position, then employ the most qualified candidate.

In addition to the foregoing, the following formal conclu sions of law are appropriate.

Conclusions of Law

1. It is incumbent upon a grievant to prove all the allegations constituting the grievance by a preponderance of the +evidence. Rupich v. Ohio County Bd. of Educ., Docket No. 89- 35-719 (June 29, 1990); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988).

2. Grievant established a violation of Code §18A-4-7a based on RCBE's failure to rescind a posting for an administra tive assistant at RCM, to abolish the position formally or to retain the job and hire the most appropriate candidate "within thirty days of the end of the posting period." See Gwinn/Harper v. Tucker County Bd. of Educ., Docket No. 92-47-281 (June 29, 1993).

3. Grievant failed to prove that the position of adminis trative assistant at RCM is legally required or otherwise necessary and/or desired or that he is entitled to the positionunder any theory of law.

4. The proper remedy in this case is to order that RCBE must affirmatively act to fulfill the requirements of Code §18A- 4-7a in the appropriate manner. See Gwinn/Harper.

Accordingly, the grievance is **DENIED** as to Grievant's requested relief of immediate instatement retroactive to the beginning of the 1993-94 school year; however, partial relief is **GRANTED**, in that Ritchie County Board of Education is Ordered to ascertain within thirty (30) days whether the position of administrative assistant is needed or desired for RCM, and, if not, to rescind the posting and/or abolish the position. Alternatively, if the board determines that the position is necessary and/or desired, it must select the most qualified candidate of the two who originally applied and employ that person within thirty (30) days of the decision to retain the position. If Grievant is selected, his appointment must be made retroactive to the beginning of the 1993-94 school year.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Ritchie 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 appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate Court.

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NEDRA KOVAL

Administrative Law Judge

Date: May 20, 1994

Footnote: 1 The parties agreed that a record decision could be made at level four.

Footnote: 2 The transcript of the September 22, 1993 level two hearing was filed on November 9, 1993; however, copies of the parties' exhibits were not included. In May 1994, Grievant's union representative inquired whether any further procedures were necessary. By letter of May 9, 1994, the parties were advised to send the exhibits. While these materials have not been sent to date, they are not material to the outcome of this case.

Footnote: 3 See the second and third pages of Grievant's unnumbered level two "Proposed Findings of Fact and Conclusions of Law," specifically, Grievant's enumerated "Conclusions of Law," No. 2.