KEVIN DAVIS

v. Docket No. 94-BOT-042

WEST VIRGINIA BOARD OF TRUSTEES/

WEST VIRGINIA UNIVERSITY,

WILLIAM SOLOMON, Intervenor

DECISION

Grievant, Kevin Davis, employed at West Virginia University (WVU or Respondent) as a Senior Electrician, filed a grievance on December 6, 1993, in which he alleged that as the most qualified applicant, he had been improperly denied the position of Supervisor/ICAT. (See footnote 1) David Simpson, Assistant Director/Engineering of the Physical Plant, denied the matter at level one. Following an evidentiary hearing at level two the designated grievance evaluator recommended that the grievance be granted; however, Herman Mertins, Jr., Vice President for Administration and Finance, did not accept the recommendation after finding that "Grievant has not proven that he was better qualified than the individual selected, nor has he proven there is any other ground that would require a reversal of the original decision." (See footnote 2) Thegrievance was advanced to level four on February 7, 1994, and a hearing was conducted on April 4, 1994. Both parties declined the opportunity to submit proposed findings of fact and conclusions of law.

The issue in this matter is whether WVU appointed the proper applicant to the position of Supervisor/ICAT. Grievant asserts that the experience he earned while employed at WVU is more relevant than that gained in the private sector by the successful applicant; therefore, he was the most qualified applicant. In the alternative, Grievant argues that even if he and the successful applicant were found to be equally qualified, he would be entitled to the position based upon his greater continuous seniority earned at WVU. Respondent argues that it is the nature of the experience, not where it was earned, that is important and that the most qualified applicant was appointed to the position.

The facts of this matter are undisputed. Sometime in October 1993, WVU advertised a position

vacancy for Supervisor/ICAT. The Position Function Statement describes the primary purpose of the position as follows: "Supervise and conduct daily activities of the [ICAT] in accordance with recognized procedures and coordination of multiple trades. . . coordinate material availability, personnel, blueprints and schedule needs per University construction standards." The Essential Functions section of the position description indicates that fifty percent of the duties involves the supervision of a varying number of workers from multiple crafts. The incumbent's work includes coordinating materials, blueprints, and schedules of jobs assigned to the ICAT, inspecting jobs to insure that quality work is being performed on schedule, maintaining records, and assigning job duties to the crew. Another twenty-nine percent of the duties involves the installation of electrical devices. The remaining duties include maintenance of WVU and Physical Plant policies in respect to usage of the time clock, leave forms, material requisitions, inventories, key control, security, employee performance evaluations, etc.

Kathryn Trickett, Supervisor of Employment Services, testified at the level four hearing that she paper screened the applicants to determine whether they met the educational and experience criteria. She referred a list of those applicants deemed qualified, including Grievant and the successful applicant, William Solomon, to Mr. Simpson who then chose which individual would be appointed to the position.

Mr. Simpson testified that he interviewed several applicants but that Grievant and Mr. Solomon were the most qualified. Using the job description as a guide, Mr. Simpson stated that he considered Grievant's supervisory experience, his demonstrated ability to coordinate, and his familiarity with University standards and the physical plantfacilities. He also acknowledged that Grievant had established a working relationship in the area and was familiar with the applicable rules and regulations, but opines that both were easily attainable by Mr. Solomon.

In reference to Mr. Solomon, who was then employed at WVU as a General Trades Worker, Mr. Simpson noted that he had previously worked on an alterations team, had some training in heating and ventilation, and prior to his employment at WVU, had accrued more extensive, diverse, and formal supervisory experience than Grievant. Although Mr. Simpson found Grievant to be the more capable electrician, Mr. Solomon's supervisory experience was more heavily weighted, resulting in a determination that he was the most qualified applicant.

W.Va. Code §18B-7-1(d) provides that a nonexempt, classified employee (one to whom the

provisions of the federal Fair Labor Standards Act would apply) who meets the minimum qualifications for a job opening, either a lateral transfer or a promotion, at the institution where he is currently employed, and applies for the same shall be transferred or promoted before a new person is hired unless such hiring is affected by the mandates of an affirmative action plan or the Americans with Disabilities Act. If more than one such employee applies for a vacancy, the best- qualified employee shall be awarded the position. If two or more employees are found to be equally qualified, theemployee with the greatest amount of continuous seniority at that state institution shall be awarded the position.

Mr. Simpson has established that the position was filled on the basis of qualifications; therefore, the only remaining issue is whether he properly determined Mr. Solomon to be more qualified than Grievant. Because the above-cited statutory provision does not set any criteria or guidelines as to what should be considered when evaluating qualifications, the standard for review is whether the supervisor acted in an arbitrary and capricious manner. See Booth v. W.Va. Bd. of Trustees/Marshall University, Docket Number 94-BOT-066 (July 25, 1994).

A review of the evidence in its entirety establishes that Mr. Simpson considered the technical and supervisory skills of the applicants. While he found Grievant to be the more expert electrician, Mr. Solomon was not only qualified as an electrician but also possessed additional knowledge in the area of air conditioning and refrigeration. Grievant's two years of supervisory experience on an alterations team was considered, as was Mr. Solomon's approximately thirteen years of experience in the coal industry. (See footnote 3) Mr. Simpson's determination that supervisory experience was more importantthan technical expertise for an individual chosen to fill a supervisory position was reasonable and proper.

Furthermore, Mr. Simpson's evaluation of the nature of the applicants' supervisory experience is valid. That is, because Grievant's experience was earned at WVU, he would likely be initially more familiar with procedures, regulations, etc., utilized by the ICAT. However, Mr. Simpson's conclusion that Mr. Solomon's supervision of a greater number of employees for a longer period of time exposed him to many situations and personalities and demonstrated his ability to coordinate the work of full-time employees, thereby providing him with a higher quality, as well as greater quantity of supervisory experience, is well- reasoned. Because Mr. Simpson determined that the successful applicant was more qualified than Grievant based upon his more extensive technical skills and supervisory

experience, it cannot be concluded that the decision to appoint Mr. Solomon as Supervisor of ICAT was arbitrary or capricious.

In addition to the foregoing facts and narration it is appropriate to make the following formal findings of fact and conclusions of law.

FINDINGS OF FACT

1. Grievant, employed as a Senior Electrician at West Virginia University, applied for the position of Supervisor of the Inter-College Alteration Team in October 1993.

2. William Solomon was appointed to the position based upon his broader technical background and more extensive supervisory experience.

CONCLUSIONS OF LAW

1. Absent any controlling factors established by an Affirmative Action plan or the Americans with Disabilities Act, the most qualified employee shall be granted a requested transfer to a lateral position or to a higher position which would constitute a promotion. W.Va. Code §18B-7-1(d).

2. Grievant has failed to prove that he was more qualified than the successful applicant or that the determination of which applicant was most qualified was otherwise arbitrary or capricious.

Accordingly, the grievance is DENIED.

DATED August 11, 1994 Sue Keller

Senior Administrative

Law Judge

22222222

Footnote: 1

ICAT is the acronym for the Inter-College Alterations Team.

Footnote: 2

The level two grievance evaluator recommended the grievance be granted based upon a finding that the successful applicant's experience in the private sector should not be given the same orgreater weight than Grievant's in-house experience.

Footnote: 3

Mr. Solomon's resume indicates that he worked as a Longwall Maintenance Supervisor from 1983-92; Maintenance Superintendent from 1982-83; and General Maintenance Supervisor from 1979-82. Grievant was first employed as a Laborer at WVU in 1978. He has advanced over the years to a Lamper Helper, Lamper, Electrician Helper, Electrician, and Senior Electrician. Grievant has acted in a supervisory capacity since 1986 and served as supervisor of the Alterations Crew for two years prior to applying for the position herein.

-1-