BOYD H. MAYLE

v. Docket No. 94-01-260

BARBOUR COUNTY BOARD OF EDUCATION

DECISION

Grievant Boyd H. Mayle, employed by the Barbour County Board of Education (Board) as a bus operator, grieves his non-selection for the position of Plumber/Heating and Air Conditioning Mechanic II. After evaluators at both levels one and two determined that they lacked authority to resolve the matter, the Board denied the grievance at level three. Appeal was made to level four on June 28, 1994. An evidentiary hearing was conducted on November 4, 1994, and the matter became mature for decision with the submission of proposed findings of fact and conclusions of law by both parties on or before December 20, 1994.

The facts in this matter are undisputed.

1. Grievant has been regularly-employed by the Board as a bus operator since the 1983-84 school year.

2. By posting dated May 6, 1994, the Board advertised a vacancy for the position of Plumber/Heating and AirConditioning Mechanic II.

3. The posting listed the following requirements for the position:

- High School Diploma or Relevant Training
- Ability to Interpret and Transmit Written Communication
- Achievement of a Passing Score on the State Competency Test for Service Personnel
- Ability to Operate Plumbing Equipment
- EPA Certified as a Universal Refrigerant Technician
- Ability to Operate Equipment Required for Air Conditioning or Heating Repair
- Five Years Experience as a Plumber and/or Heating, Air Conditioning Mechanic

4. Four individuals bid on the position. None of the applicants held the classification title of

Plumber/Heating, Air Conditioning Mechanic II at that time.

5. On May 17, 1994, the Board awarded the position to Brett Mick, the only applicant to possess the required EPA certification. Prior to this time, Mr. Mick was not an employee of the Board.

6. Grievant was not given the opportunity to take the Plumber or Heating, Air Conditioning Mechanic competency tests developed and promulgated by the West Virginia Department of Education.

7. Grievant's evaluations of his prior employment with the Board are satisfactory or better.

8. Grievant was not the applicant with the most seniority; however, he was the most senior applicant to pursue a grievance in this matter.

9. In September 1994, Grievant acquired the EPAcertification as a Universal Refrigerant Technician.

Grievant argues that the Board acted in violation of W.Va. Code §18A-4-8e when it denied him one day of inservice and the opportunity to demonstrate his qualification for the position by taking the competency tests offered by the State Department of Education. Grievant asserts that the tests for Plumber/Heating, Air Conditioning Mechanic II were available and that their use is mandatory for the purpose of determining whether an applicant can meet the definition of the classification title in another category of employment.

Grievant also alleges a violation of W.Va. Code §18A-4-8b which requires that all school service personnel positions be posted and filled on the basis of seniority, past evaluations and qualifications, with regularly employed personnel given first preference for a vacancy. Grievant avers that the Board erred in including the EPA certification as a qualification inasmuch as that requirement, set forth in §608 and §609 of the Clean Air Act of 1990, did not become effective until November 14, 1994. (See footnote 1) Therefore, Grievant asserts that he would have been entitled to the position in May 1994, upon his successful completion of the competency tests.

The Board argues that educational policies promulgated bythe State Board of Education shall not be interfered with, unless unreasonable or arbitrary. On that basis, the Board argues that it properly followed the State Board of Education guidelines which determine that if an applicant for a service personnel position of certain named classifications, including heating, air conditioning mechanic, holds a license or certification from an accepted institution or agency, said applicant is to be considered qualified and not required to take a competency test. Because Grievant did not hold

seniority in the multi-classified position and did not meet the certification qualification within the twenty working days in which the position was to be filled, the Board asserts that it was unnecessary to administer the state competency tests.

The Board stipulates that Grievant's past evaluations are satisfactory, but argues that he had earned no seniority in the classification of Plumber/Heating, Air Conditioning Mechanic II, and did not meet the stated qualifications. Therefore, the Board asserts that the position was filled in compliance with W.Va.Code §18A-4-8b.

Boards of education in West Virginia must fill school service personnel positions on the basis of seniority, qualifications, and evaluations of past service. Qualifications are defined as holding the classification title of the vacancy or being able to meet that definition contained in W.Va. Code §18A-4-8. The Grievance Board has further held that a board may expand the qualifications found in the Codeso long as said expansion is consistent with the statutory definition. Hopkins v. Ohio County Bd. of Educ., Docket No. 92-35-359 (Aug. 12, 1993); Brewer v. Mercer County Bd. of Educ., Docket No. 49-88-127 (Nov. 7, 1988).

In the present case, the Board expanded the qualifications to include a federally-mandated certification for those individuals who work with certain refrigerants, such as freon. This expansion was consistent with the statutory definition of Heating, Air Conditioning Mechanic II. Although the federal certification did not become effective until six months after the position was filled, the Board was fortunate to have an applicant already in possession of the certification. The lapse of a relatively short period of time between the filling of the position and the effective date for the required certification does not render the qualification inconsistent with the statutory definition.

The Grievance Board has also previously held that consistent with State Board of Education guidelines, when an applicant for a position in certain named classifications holds a license or certification from an accepted institution or agency, said applicant will be considered qualified and will not be required to take a competency test. Cyphers v. Marion County Bd. of Educ., Docket No. 94-24-134 (Oct. 31, 1994). Because Mr. Mick held appropriate certification in a classification identified by the "Guidelines for Administering School Service Personnel Tests," he was "qualified" for theposition in question. While Grievant would generally be entitled to complete the competency tests offered by the State Board of Education, to do so in this instance would have been an exercise in futility inasmuch as he would have still lacked the EPA certification and would not have been qualified. (See

footnote 2)

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

CONCLUSIONS OF LAW

1. Boards of education in West Virginia must fill school service personnel positions on the basis of seniority, qualifications, and evaluations of past service. Qualification is defined as holding the classification title of the vacancy or being able to meet that definition as contained in W. Va. Code, §18A-4-8.

2. A board of education may expand the qualifications found in the Code so long as the expansion is consistent with the definition found in the Code. Hopkins v. Ohio County Bd. of Educ., Docket No. 92-35-359 (Aug. 12, 1993).

3. A requirement that a Heating, Air Conditioning Mechanic II possess EPA certification as a Universal Refrigerant Technician is a qualification consistent with thestatutory definition of that classification.

4. Requiring a federally-mandated certification which was to take effect within six months of filling a vacancy was neither unreasonable nor improper.

5. The determination of educational policies of the public schools is vested in the state board of education, and, unless unreasonable or arbitrary, its actions relating to such policies will not be controlled by the courts. Detch v. Board of Educ., 145 W.Va. 722, 117 S.E.2d 138 (1960).

6. In the absence of relevant statutory provisions, state board of education guidelines which determine that if an applicant for a service personnel position in certain named classifications, holds a license or certification from an accepted institution or agency, said applicant will be considered qualified and will not be required to take a competency test, is controlling. Cyphers v. Marion County Bd. of Educ., Docket No. 94-24-134 (Oct. 31, 1994).

7. The failure to administer Grievant the competency tests was not a violation of W.Va. Code §18A-4-8e when another applicant met all the qualifications for the position, and, even with the successful completion of the competency test, Grievant would have remained unqualified.

Accordingly, the grievance is DENIED.

DATED 2/28/95 Sue Keller

Senior Admn. Law Judge

Footnote: 1Section 608 of the Clean Air Act Amendments of 1990 directs the EPA to establish requirements to prevent the release of ozone-depleting substances during the servicing, repair, or disposal of appliances and industrial process refrigeration. Section 609 establishes standards specifically for the service of motor vehicle air conditioners.

Footnote: 2As previously noted, Grievant secured the EPA certification in September, 1994. The record does not reflect whether the certification could have been obtained prior to that time. In any event, it is clear that Grievant did not have the certification within the twenty days in which the Board was statutorily required to fill the position.