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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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HELEN YEAGER

VS:

DOCKET NO: 34-86-229-4

NICHOLAS COUNTY BOARD OF EDUCATION

DECISION

This grievance comes before the West Virginia Education Employees Grievance Board following a waiver of consideration by the Nicholas County Board of Education. The grievant, Helen Yeager, filed her grievance on June 2, 1986; the grievant's immediate supervisor, Wilbert D. Mick, waived determination of the matter to level two. At level two, B. L. Poole, Superintendent of Nicholas County Schools, without a hearing, waived the matter to the Nicholas County Board of Education asserting that he did not have the authority to grant the relief requested. Thereafter, and as aforesaid, the Nicholas County Board of Education waived consideration of the grievance to level four.

The grievant, a Cook III at Summersville Junior High School, complains that in February 1986, Evelyn Stephenson, a Cook III at Glade Elementary School, filed a grievance alleging that she was overworked and in need of assistance. Ms. Stephenson's

grievance was denied at level two; however, the Nicholas County Board of Education at its April 4, 1986 meeting, transferred Ms. Helen Campbell, a substitute Cook at Birch River School, to Glade Elementary School in order to provide the assistance Ms. Stephenson requested. The job at Glade Elementary School was not posted. Whereupon, Mary Salisbury, a Cook, formerly assigned to Glade Elementary School, filed a grievance (in late April, 1986) alleging that since she was formerly assigned to Glade Elementary School but had been transferred due to a reduction in force, she should have been re-assigned to Glade Elementary School instead of Ms. Campbell. The Nicholas County Board of Education agreed with Ms. Simpson, and at its May 21, 1986 meeting, Ms. Campbell was returned to the Birch River School and Ms. Salisbury was transferred back to Glade Elementary School. Again, there was no posting of this job by the Nicholas County Board of Education.

Thus, the grievant, Helen Yeager, complains that she and other regular full-time Cooks were denied the opportunity to bid for the job at Glade Elementary School. The grievant does not seek any monetary relief and requests only that the job be properly posted in accordance with WV Code §18A-4-8b(b). The Nicholas County Board of Education acknowledges that there was no posting of the job at Glade Elementary School and asserts only that they were trying to accommodate grievant Stephenson and grievant Salisbury.

Neither parties contested the facts at the hearing and agreed that the matter required a determination concerning the application of WV Code §18A-4-8b(b), which in pertinent part provides:

(b) A county board of education shall make decisions affecting promotion and filling of any service personnel positions of employment or jobs occurring throughout the school year that are to be performed by service personnel as provided in section eight [§18A-4-8], article four of this chapter, on the basis of seniority, qualifications, and evaluation of past service . . .

Boards shall be required to post and date notices of all job vacancies of established existing or newly created positions in conspicuous working places for all school service employees to observe for at least five working days. The notice of such job vacancies shall include the job description, the period of employment, the amount of pay and any benefits and other information that is helpful to the employees to understand the particulars of the job. After the five day minimum posting period all vacancies shall be filled within twenty working days from the posting date notice of any job vacancies of established existing or newly created positions.

In addition to the foregoing, the following findings of fact and conclusions of law are incorporated herein.

FINDINGS OF FACT

1. In April 1986, the Nicholas County Board of Education filled a job vacancy at Glade Elementary School without posting any notice of the job opening.
2. The grievant, Helen Yeager, was denied the opportunity to bid for the job opening at Glade Elementary School.
3. The facts out of which this grievance arises were not contested by either party.
4. The grievant seeks no monetary award.
5. The grievant seeks only to have the Nicholas County Board of Education comply with the law as set forth in WV Code §18A-4-8b(b).

6. No level two hearing was held and the grievant did not agree to waive any hearing.

CONCLUSIONS OF LAW

1. WV Code §18-29-4(b) requires that the Chief Administrator or his or her designee, conduct a level two hearing and issue a written decision.

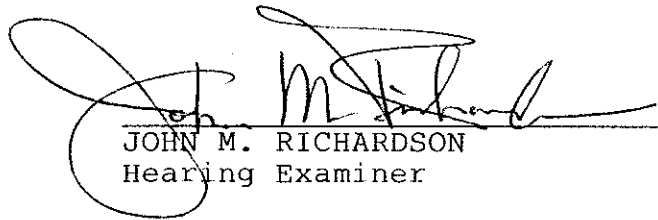
2. WV Code §18A-4-8b(b) requires, inter alia, that all job vacancies be posted in conspicuous working places for at least five days and that the filling of these vacancies of school personnel positions be made on the basis of seniority, qualifications, and evaluations of past service.

3. The Nicholas County Board of Education violated WV Code §18A-4-8b(b) by not posting the job vacancy at Glade Elementary School.

4. The Nicholas County Superintendent of Schools violated WV Code §18-29-4(b) by not holding a level two hearing as required.

For the reasons herein set forth, the grievance is granted. The Nicholas County Board of Education is **ORDERED** to post and fill the job at Glade Elementary School in accordance with WV Code §18A-4-8b(b).

Either party may appeal this decision to the Circuit Court of Nicholas County or Kanawha county and such appeal must be filed within thirty (30) days of receipt of this decision. (WV Code §18-29-7) Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the Court.



JOHN M. RICHARDSON
Hearing Examiner

DATED: 9 Nov 7, 1986