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TIMOTHY BRYANT

v.

Docket No. 23-86-293-1

LOGAN COUNTY BOARD OF EDUCATION

DECISION

Grievant, Timothy Bryant, is employed by the Logan County Board of Education as a school bus operator. In August, 1986, he applied for a multi-classified maintenance position and filed a grievance when the position was awarded to a substitute employee. A level two hearing was conducted on September 24, 1986, and an appeal to the Education Employees Grievance Board was filed on October 17, 1986.¹

¹ On January 5, 1987, grievant's representative requested the level two transcript and it was filed with the Education Employees Grievance Board on April 6, 1987; the parties waived an evidentiary hearing at level four and submitted the grievance to the hearing examiner on the transcript, hereinafter referred to as (T.___).

Grievant has been employed as a school bus operator since April, 1981, and in August, 1986, applied for the multi-classified position carpenter II/truck driver/welder. Grievant had worked as a carpenter in private employment and also as a welder with the Fleming Construction Company and Union Tank Car Company (T.4).² While at Union Tank Car Company he attended a two-week company school program at the conclusion of which he was given a certification test and received a certification. (T.5).³

Grievant was not interviewed for the position and when the job was awarded to William Welch, a substitute employee, he filed a grievance. (Grievant's Exhibit No. 1). He received no response to the level one grievance and appealed to level two; a hearing was scheduled for September 17, 1986, but an evidentiary hearing was not conducted. Instead, grievant was assigned to the maintenance

² Grievant had taken two years of welding courses in Logan County Schools while in high school (T.4).

³ Grievant testified that when he applied for the position he gave a copy of the certificate to Danny Ellis' wife ostensibly for the purpose of delivery to the board of education office (T.6). Apparently, Mr. Ellis is a board member and grievant believed that he would give the certificate to the proper officials charged with hiring (T.12).

department on probationary status for thirty days to afford him an opportunity to demonstrate his ability to perform the duties of welder, carpenter and truck driver. Mr. Art Cole, director of maintenance, was to evaluate grievant's performance and report the results to the superintendent of Logan County Schools. (Grievant's Exhibit No. 2).⁴

Grievant testified that he reported to the maintenance department on September 18 and was given a work assignment at Christian Grade School welding on a furnace.⁵ Thereafter, Mr. Cole informed grievant that he could not perform welding assignments because he was not a certified welder in West Virginia; Mr. Cole assigned grievant to fence building chores but later directed grievant to return to the welding assignment (T.8).

⁴ Grievant was also advised that if grievant successfully demonstrated his qualifications he would be placed on permanent status in the maintenance department; if not, he was to return to his position as school bus operator.

⁵ William Welch, the substitute employee who was awarded the position in question, instructed grievant to cut off and cap some pipes and to make a 90 degree elbow on the furnace (T.7).

Grievant was not tested on carpentry and truck driver skills because it was assumed he could qualify in those areas (T.21).

On September 19 Mr. Cole sent grievant to the garbage dump to work and upon his return told him to follow him to the board of education office. At the office Mr. Cole informed Jack Garrett, associate superintendent, that it was a violation of law to permit grievant to weld on a furnace without state certification and Mr. Garrett informed grievant that he would be given thirty days to obtain a state welding certificate. In the meantime, on Monday, grievant was to return to his duties as a bus operator (T.9).⁶ On Monday grievant reported to the bus garage but his supervisor had not been informed of the change and grievant was sent home to await word; as of Wednesday, September 24, 1986, the date of the level two hearing, grievant had not been recalled to the bus garage (T.11).⁷

⁶ Grievant testified that Garrett and Cole told him to contact Bill Simpkins, a welding teacher, to obtain his welding certificate within thirty days (T.10).

⁷ Prior to convening the hearing Gary Archer, grievant's WVEA representative, had talked with Mr. Garrett and had been assured that the problem would be taken care of; that grievant would be paid for the three days (T.11).

Mr. Garrett testified that he had the position posted at the board office and in the school newsletter and also advertised it in the Logan Banner, a local newspaper in August; four school employees applied for the position and there were twenty five or thirty applicants outside the school system (T.15, 22). One of the requirements was that the applicant be a certified welder (T.14).⁸ Mr. Garrett did not conduct the interviews but delegated that responsibility to Mr. Cole, the director of maintenance.

Mr. Cole testified that he pulled grievant off the welding assignment upon learning that he did not have a welding certificate; that the paper grievant was given by the Union Boiler Company in 1977 was not a state certification (T.25). A state welding certificate, he added, is awarded upon completion of a test and expires if the certificate holder fails to weld 120 days per year thereafter (T.26). He had given grievant a welding test and in his opinion grievant had performed poorly (T.27).⁹

⁸ Mr. Garrett stated that the original notice did not contain the certification requirement but that he corrected it before it was posted or advertised. He believed that the notice specified West Virginia certification but was not sure (T.19). It was Mr. Cole's recommendation that the position be filled by a certified welder for safety reasons (T.15, 18).

The original posting was admitted into evidence at level two as Grievant's Exhibit No. 3 but was not included in the record transmitted to the Education Employees Grievance Board.

⁹ Mr. Cole stated that Mr. Garrett had advised him that grievant had certification although he had not seen it. However, when grievant reported to work Mr. Cole checked the certification and learned that it was not a state certificate (T.29,30,36).

The piece of pipe grievant welded was marked as Respondent's Exhibit No. 1 and examined by the grievance evaluator at level two (T.39; Decision of level two grievance evaluator, page 2).

In addition to the foregoing factual recitation the following specific findings of fact are included.

FINDINGS OF FACT

1. Grievant has been employed by the Logan County Board of Education as a school bus operator since April, 1981.

2. On August 13, 1986, a multi-classification position for carpenter II/truck driver/welder was posted; it was noted in the posting that welder certification was required. The notice was posted in the school board office, the school board newsletter and advertised three times in the local newspaper.

3. Grievant and several other school service employees and twenty five or thirty private individuals applied for the position and it was awarded to William Welch, a substitute employee who held a West Virginia welding certificate.

4. Grievant filed a grievance and at the level two hearing on September 17, 1986, it was represented that grievant was the holder of a valid welder's certificate so grievant was assigned to the maintenance department on probationary status for thirty days to afford him an opportunity to demonstrate his welding qualifications to the director of maintenance, Mr. Art Cole.

5. Upon reporting to the maintenance department Mr. Cole determined that grievant had a certificate from Union Boiler Company, a previous employer, that he had completed a company welding course in 1977 but did not have a valid West Virginia welding certificate. Mr. Cole administered a practical welding test to grievant and concluded that the work was inferior.

6. Upon being informed of these matters the associate superintendent in charge of personnel advised grievant that he was being returned to the bus garage to resume his driver duties and given thirty days to obtain a state welding certificate. Instead, grievant pursued his original grievance alleging the selection of Welch to be violative of W.Va. Code, 18A-4-8b.

CONCLUSIONS OF LAW

1. A county board of education is permitted to require a competency test for applicants seeking a position outside their classification. Mary Adkins v. Logan County Board of Education, Docket No. 23-86-024; Sandra Barnett and Thelma Davisson v. Lewis County Board of Education, Docket No. 21-87-005-2.

2. Regularly employed service personnel must be given first consideration for promotion or filling of vacancies; however, a board of education is not required by W.Va. Code, 18A-4-8b to offer a position to any individual who does not possess skills requisite for the position. Janice L. Jones v. Ohio County Board of Education, Docket No. 35-86-051. Sandra Barnett and Thelma Davisson, supra.

3. The grievant has failed to prove any violation of W.Va. Code, 18A-4-8b in the filling of the position in question.

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha County or Logan County and such appeal must be filed within thirty days of receipt of this decision. (W.Va. 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.



LEO CATSONIS

Chief Hearing Examiner

Dated: June 25, 1987