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GARY NELSON

v.

Docket No. 22-86-116

LINCOLN COUNTY BOARD OF EDUCATION

DECISION

Grievant, Gary Nelson, is employed by the Lincoln County Board of Education as a school bus operator. On December 2, 1985, he filed a grievance alleging that he had bid upon and had been refused a position in violation of W.Va. Code, 18A-4-8b. A level two hearing was held on December 6, 1985, and a level three hearing on January 21, 1986; the grievance was appealed to level four on February 4, 1986. The grievance was submitted to the hearing examiner on the level two and level three transcripts and oral argument of counsel on January 28, 1987.¹

¹ Initially the level four hearing had been waived and the grievance was to be submitted on the transcripts, which were not received by the Education Employees Grievance Board until January, 1987. Findings of fact and conclusions of law were filed by counsel on February 2 and February 11, 1987.

At the time of the grievance grievant had been a school bus operator for almost five years and bid upon a job posting for Inventory Supervisor. Several other more senior applicants also bid for the position but later withdrew their applications; W.Va. Code, 18A-4-8 defines the position as follows:

"Inventory supervisor" means personnel who are employed to supervise or maintain operations in the receipt, storage, inventory and issuance of materials and supplies.

The job posting contained additional criteria beyond the above description and required at least five years of experience working with inventory and/or parts.² The superintendent of schools reviewed the applications and interviewed the applicants; he presented this data to the board and the applications were again reviewed. After this review the board of education voted to remove the position from the vacancy list.

Counsel for grievant contends that a school service employee qualifies for a vacant position by holding the classification title of the position or by meeting the definition of the classification title as set out above; that five years experience is not set out in the definition of Inventory Supervisor and therefore may not be added as a qualification. In addition, grievant asserts that

² The posting was not made a part of the record at any level of the grievance but grievant acknowledged that Superintendent McCann had explained the qualifications for the position. (Level III, pp. 7,8).

W.Va. Code, 18A-4-8b required the board of education to fill the posted position within twenty working days and the board was not authorized to abolish rather than fill it when qualified applicants had bid upon the position.

Counsel for the board contends that grievant was not qualified by experience or by class title and did not demonstrate that he was familiar with the parts that the maintenance department would use or the ability to maintain the books he would be required to keep.³ It is acknowledged that W.Va. Code, 18A-4-8b requires the board to fill a posted position within twenty working days but counsel contends that the board does not have to fill the position with an unqualified employee; that the State Superintendent has ruled that the board does not have to give a reason for abolishing the position.⁴

³ At the level three hearing before the board of education grievant testified that he thought he would be qualified to work as an inventory supervisor, was familiar with a "lot" of the parts he would be working with and could keep the books. (Level III, p. 8).

Counsel for the board asserts that since the number of service personnel in Lincoln County exceeds the number allotted to the board, the board has not attempted to repost the position.

⁴ The February 2, 1986 opinion of Superintendent McNeel concludes that although W.Va. Code, 18A-4-8b directs all vacancies in school service personnel positions to be filled within twenty working days from the posting date, the board is within its authority to cancel the posting and abolish the position if the position has not yet been filled.

Counsel for grievant relies on a decision of State Superintendent Truby dated June 18, 1985 which held that where the title of a position is changed after posting and interviews have been conducted the board must show good reason for the change. It is noted therein that where decisions are made, albeit belatedly, that posted positions are not actually needed, these positions may be abolished.

In addition to the foregoing factual account the following specific findings of fact are relevant.

FINDINGS OF FACT

1. Grievant is employed as a school bus operator by the Lincoln County Board of Education.

2. Sometime in 1985 the board of education created a position designated as Inventory Supervisor; the position was posted and the posting contained a requirement that the successful applicant must have five years experience working with inventory and/or parts. Several employees applied for the position but later withdrew their applications.

3. Grievant did not have the five years experience and the board of education concluded that grievant had not demonstrated a competency for the position; the board abolished the position on November 26, 1985, for lack of a qualified applicant.

4. There is no evidence or showing that the board of education acted in an arbitrary or capricious manner in abolishing the position in question.

CONCLUSIONS OF LAW

1. County boards of education have substantial discretion in matters relating to the hiring of school personnel but such discretion must be reasonably exercised, in the best interests of the schools and not in an arbitrary and capricious manner. Dillon v. Wyoming County Board of Education, 351 S.E.2d 58 (W.Va. 1986); Neal v. Mason County Board of Education, Docket No. 26-86-329-3.

2. W.Va. Code, 18A-4-8b requires a school board to fill posted school service personnel vacancies within twenty working days of the posting unless the position has been abolished for good cause.

3. In absence of a showing of arbitrary conduct a school board may abolish a position for which there are not qualified applicants.

For the foregoing reasons the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha County or Lincoln 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: February 25, 1967