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MARY ROBINSON

V.

DOCKET NO. 41-86-193-4

RALEIGH COUNTY BOARD OF EDUCATION

DECISION

This grievance comes before the West Virginia Education Employees Grievance Board on appeal from a waiver of consideration at level three. A level two hearing was held and by a decision rendered by Ronald B. Cantley, Superintendent of Raleigh County Schools, the grievance was denied.

Upon appeal to this Board, the grievant requested an evidentiary hearing to which the respondent board objected. Following consideration of the matter, a notice of hearing was duly issued pursuant to WV Code §18-29-6. Subsequently, the hearing was scheduled for October 7, 1986, and was thereafter continued on two occasions upon motion of the grievant's counsel.

A level four hearing was conducted and the receipt of evidence was concluded on February 23, 1987, it being understood by the parties that the level two record would be considered together with the evidence presented at the level four hearing, and that the

requirement of rendering a decision within thirty days was waived.

The grievant, a black female, is employed as a Cook II by the Raleigh County Board of Education and assigned to Park Junior High School. For her complaint, the grievant alleges that the respondent board has violated WV Code §18A-4-8b, Raleigh County Board of Education Policy GAA and Title VII of the Civil Rights Act of 1984, in that she has applied for ten positions since 1979 and on each occasion was denied those positions.

The evidence reveals that in 1979 the grievant applied for a secretarial position at Park Junior High School in order to better herself and make more money. She was denied the job and was informed by Mr. Stone, Principal at Park Junior High School, that he would rather she stay a cook. No other reason was given her for denying her the position. The next job the grievant sought was that of a switchboard operator/receptionist at the Central Office in 1982. The grievant was given a typing test and later informed by Mr. Rappold, Assistant Superintendent in Personnel, that he thought he would go with the other lady. At that time, the grievant suggested to Mr. Rappold that her nonselection might be due to prejudice.

In August and September of 1983, the grievant applied for three different aide positions and after being informed by Mr. Rappold that these positions were not secure due to the federal funding situation, she heard nothing further about her application.

In August 1985, the grievant applied for a secretarial

position at Lincoln Elementary School and was called in for an interview by the Principal, Mr. Meadows, who gave her a three minute typing test and informed her that the only typing she would be doing would be the menus and that the job primarily consisted of "taking care of the children and parents and being real nice to them". The grievant recalls that Mr. Meadows informed her a couple of days later that another lady who had college hours and computer training was selected for the position.

In the summer of 1985, the grievant applied for three positions, namely, aide at Lincoln Elementary School, secretary at Park Junior High School and secretary III/switchboard operator at the Central Office. The grievant never heard anything further about the first two positions but was informed that a secretary III with seventeen years seniority was selected for the secretary III/switchboard operator position.

During October 1985, and shortly before filing her grievance, the grievant was informed during a conversation with Ruth Hurt that when Ms. Hurt had applied for the position of switchboard operator/receptionist in 1982, that no test was required of the successful applicant.¹ Upon learning that no test was required, the grievant filed her present grievance.

The respondent, in denying any violation, asserts that any grievance relating to applications for positions which the grievant sought prior to October 17, 1985, is untimely. In an attempt to

¹The successful applicant was Ruth Hurt who had previous experience with the respondent board as a secretary and for that reason the respondent board did not give her a typing skills test.

rebut the question of untimeliness, the grievant offered into evidence certain documents which reveals that over the relevant period of time, the respondent's EEOC reports indicate a significant disparity between the number of white and black employees employed in the areas of teachers aide, clerical/secretarial staff and skilled crafts. The grievant asserts that this disparity reveals a "pattern of practice" which is of a continuing nature up to the present date and that such continuing practice combined with the fact that the grievant first learned of the disparity of treatment in the selection process relating to the 1982 switchboard operator/receptionist position in October 1985 is sufficient to establish a valid basis for not filing her grievance until October 17, 1985.

In analyzing the evidence, it is apparent that on each occasion that the grievant was tested that she failed to qualify for the position.² It is further uncontested that the grievant, by classification, was not per se qualified for any of the positions she sought. That is, she was classified as a Cook III and she sought clerical and aide positions which, by definition of WV Code §18A-4-8, required different qualifications.

Thus, it was incumbent upon the grievant that in order to prove discrimination pursuant to Title VII/IX of the Civil Rights Act of 1964 (see WV Code §5-11-1, et seq.), that she prove she was

²The grievant was tested on two occasions, once in 1982 while applying for a switchboard operator/receptionist position and again when she applied for a secretarial position at Park Junior High School. On both occasions, the grievant was informed she did poorly on the typing tests which was not contested in the evidence.

able and competent to perform the services for which she applied. This was not done and indeed the preponderance of the credible evidence reveals that the grievant was not a qualified applicant for any of the positions she sought.

Additionally, while there was evidence introduced which would be some indication that there was an unaccountable disparity in the number of black employees in certain positions, this was uncorroborated by any evidence showing the number and race of the applicants or the population ratios which exist in Raleigh County and the surrounding areas. This lack of statistical evidence combined with the failure to prove that the grievant was qualified, dispels any possibility of finding that the Raleigh County Board of Education was engaged in an ongoing pattern of practice in its employment process. Without establishing this "pattern of practice" the grievant had no basis upon which to link the filing of her October 17, 1985 grievance with the failure to employ her as a switchboard operator/receptionist in 1982.

The only position which the grievant alleges she was wrongfully denied and which occurred within fifteen (15) days of the filing of her complaint, was that of a secretary III/switchboard operator at the Central Office. In that connection, the evidence reveals that a secretary III with seventeen or eighteen years of seniority and experience was awarded the position. The grievant offered no evidence that the filling of this position was improper.

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

FINDINGS OF FACT

1. The grievant, Mary Robinson, is a black female employed as a Cook III with seventeen years of seniority and assigned to Park Junior High School.

2. Since 1979 grievant has applied for approximately ten different positions outside of her classification and has not been selected for any of the positions.

3. The grievant did not file a grievance after not being selected for any of the positions until October 17, 1985.

4. In 1982, the grievant applied for a switchboard operator/receptionist position which required typing skills as posted. The grievant was tested on her typing skills and did poorly.

5. Ruth Hurt, a less senior applicant for the 1982 switchboard operator/receptionist position and a secretary, was the successful applicant. She was not given a typing skills test.

6. When grievant was informed that she was not the successful applicant in 1982, she believed then that it was a result of prejudice but did not file a grievance.

7. In October 1985, the grievant applied for a secretary III/switchboard operator position. The position was awarded to a more senior secretary III applicant.

8. The grievant offered no evidence that the filling of the October 1985 secretary III/switchboard operator position was improper or discriminating.

9. The grievant failed to offer evidence to show the number or race of applicants for the positions she sought or the ratio of blacks to white in Raleigh County or the surrounding area.

10. By way of relief the grievant sought instatement to the 1982 position of switchboard operator/receptionist together with back wages.

11. The grievant was not a qualified applicant for any of the positions she sought.

CONCLUSIONS OF LAW

1. WV Code §18-29-4(a)(1) provides that before a grievance is filed and within fifteen (15) days following the occurrence of the event upon which the grievance is based, or within fifteen (15) days of the date on which the event became known to the grievant or within fifteen (15) days fo the most recent occurrence of a continuing practice giving rise to a grievance, the grievant shall schedule a conference with the immediate supervisor to discuss the nature of the grievance and the action, redress or other remedy sought. Burton v. Boone County Board of Education, Docket No. 03-86-098.

2. WV Code §18-29-3(a) provides that a grievance must be filed within the times specified in Section 4, above, and shall be processed as rapidly as possible. Burton v. Boone County Board of Education, Docket No. 03-86-098.

3. Administrative notice will not be taken that a grievance has been untimely filed and must be proved by the party asserting the untimeliness. Burton v. Boone County Board of Education, Docket No. 03-86-098.

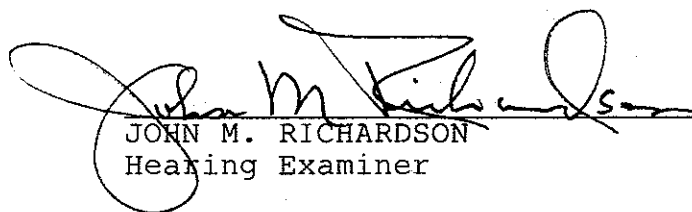
4. The respondent has proven by a preponderance of the evidence that the grievances relating to positions for which the grievant applied prior to October 1985 were untimely.

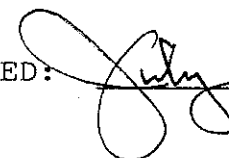
5. The grievant failed to prove by a preponderance of the evidence that she was a qualified applicant for any of the positions she sought thereby failing to establish that discrimination was a factor in her nonselection.

6. The grievant has failed to prove by a preponderance of the evidence any grounds upon which the relief requested could be granted.

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Raleigh County or the Circuit Court of 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:  July 15, 1987