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PAUL TEREK

v.

Docket No. 52-86-122-2

WETZEL COUNTY BOARD OF EDUCATION

DECISION

Grievant, Paul Terek, is currently employed by the Wetzel County Board of Education in the maintenance department. In July 1985 he had been laid off from his service personnel position as glazier and was on a preferred recall list. On August 20, 1985 grievant filed a level one grievance alleging violation of W.Va. Code, 18A-4-8b when the board of education hired three other persons for window replacement work that he was capable of performing. Denied at the lower levels, the grievance appeal was apparently filed at level four sometime in early 1986 and submitted for decision upon the record in early 1987.¹

¹The grievance was transferred from the Elkins, West Virginia Grievance Board office to the undersigned hearing examiner in late February, 1987 at the request of the respondent after the parties had agreed to submit the matter for decision based upon the record, oral argument and written proposals. The parties were cognizant that the transfer might delay a decision of the grievance. Oral argument was heard April 10, 1987 at which time counsel for the respondent tendered her proposals. Grievant's written materials were received from his counsel April 16, 1987.

Grievant commenced employment with the board of education on July 1, 1977 as a custodian IV; sometime in July, 1983 he bid on a glazier position and worked in that capacity until he was laid off in July, 1985. Grievant collected unemployment compensation until he was recalled on September 16 for a temporary position as a Secretary II. His remuneration increased from grade D as a glazier to that of grade E with the clerical position.

Subsequent to grievant's lay-off as a glazier for lack of need he became aware that certain persons performed window replacement work on school buildings. He claims that no jobs were posted and he was not notified of a job opening. He contends that the board had an obligation to post and fill the window repair/replacement work with board employees who are appropriately classified to perform the work and that the board may not hire outside contractors to perform the work.

Grievant questions why he was laid off when there was obviously a need for window and other maintenance work. Grievant alleges violation of statutory requirements that compel the board to post vacancies and to fill positions with qualified employees, such as he, who are on a preferred recall list. For relief, grievant seeks the pay he would have received as a glazier from July 1 to his recall in September, 1985 and any lost benefits to which he was entitled during that period.

The board contends that grievant was properly released from his duties in July, 1985 as the result of a county-wide reduction-of-force of both professional and service employees; grievant was the least senior maintenance worker/glazier. His termination on the RIF action was upheld at the culmination of a fully adjudicated grievance on the matter.²

Notwithstanding grievant's lay-off, the board argues that it had the authority to contract for work which would be best performed by an independent contractor. Over the past five years independent contractors, and contracted for services, had been utilized by the board for various window, roofing and gutter work, landscaping, lighting, painting, vehicle maintenance, carpet and tile repair and the like. Due to an upcoming on-site review by the State Department of Education, the board had determined that certain maintenance work would have to be performed by an outside contractor who had the proper expertise and equipment. Included was roof and gutter repair, window replacement and road work.

Consequently, sometime after grievant's lay-off, a contractor was secured for the refurbishing and the three-man crew completed the work over a two and one-half month period. The board argues that the contract for services was proper and, thus, there was no position vacancy or need to comply with posting and employee recall requirements.

²In a decision rendered July, 1985 the State Superintendent determined that grievant's lay-off was justified; grievant did not challenge the decision.

In addition to the foregoing recitation, the following specific findings of fact and conclusions of law are appropriate. To the extent the parties' proposals are in agreement and not in conflict with determinations of the undersigned hearing examiner, they are incorporated herein.

FINDINGS OF FACT

1. Grievant was first employed by the Wetzel County Board of Education as a Custodian IV from July, 1977 until July, 1983. In July 1983, he bid into the maintenance department as a Glazier and worked in that position until July, 1985.

2. Grievant was laid off from his position as glazier in the maintenance department July, 1985 in a county-wide reduction-in-force action and placed on a preferred recall list.

3. Grievant filed a grievance on the RIF action; denied at the lower procedural levels, the appeal was ultimately dismissed by the State Superintendent of Schools. Grievant did not pursue that matter further.

4. Grievant returned to work for the board of education as a Secretary II on September 16, 1985 but is currently again serving in the maintenance department.

5. Following grievant's lay-off in July, 1985 and prior to his recall in September, 1985, the board of education had need to prepare several schools for an on-site review. Consequently, the board contracted out certain roof repair, gutter repair, window replacement and road work to an independent contractor who supposedly had the necessary expertise and equipment to timely finish the work. The contractor and his two employees completed the work in two and one-half months. The board had contracted out similar types of work for the past five years.

6. Upon learning of the work performed by the contractor and his crew, grievant filed a grievance alleging that the board of education failed to post job vacancy notices or notify board employees on the preferred recall list of the needed repair work but instead employed others for the job.

7. In this case grievant has failed to establish that the board of education exceeded its discretionary authority to contract with independent contractors and refurbish its schools in the most appropriate manner possible.

CONCLUSIONS OF LAW

1. W.Va. Code, 18-5-5 vests a board of education with contractual powers; competitive bids must be solicited for construction projects over \$25,000. W.Va. Code, 5-22-1.

2. School law requires that a board of education post notices and inform employees on the recall list of position vacancies and openings and there is no requirement to do so when a legitimate vacancy does not occur. W.Va. Code, 18A-4-8b; C. Douglas Richmond v. Raleigh County Board of Education, Docket No. 41-86-127-1; Phillip Soohy v. Wetzel County Board of Education, Docket No. 32-86-138-2.

Accordingly, this grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Wetzel County and such appeal must be filed within thirty (30) 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.

DATED:

August 25, 1987

Nedra Koval

NEDRA KOVAL
Hearing Examiner