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LINDA WOODS, RUBY KELLY
and PAUL RITCHEA

v.

DOCKET NO. 34-86-302-4

NICHOLAS COUNTY BOARD OF EDUCATION

DECISION

This grievance comes before the West Virginia Education Employees Grievance Board on appeal from a level three decision rendered on October 13, 1986. On October 23, 1986 the matter was assigned to John M. Richardson, Hearing Examiner, who thereafter on October 24, 1986, by notice duly issued, set the grievance for hearing on November 18, 1986. On motion by counsel for the grievants, there being no objection thereto, the hearing was continued to December 18, 1986.

On December 18, 1986, a level four hearing was held following which the parties were to file proposed findings of fact and conclusions of law on or before December 31, 1986. The respondents timely filed their proposed findings and conclusions; however, the grievants failed to file their proposed findings until January

13, 1987.

For their grievance, the grievants complain that the position of Supervisor of Transportation, a service personnel position, was improperly filled in violation of WV Code §18A-4-8b(b). Each of the grievants complain that they applied, were qualified and should have been hired before the professional employee who was selected.

The respondents assert that one of the grievants were qualified as specified by the job posting and statutory definition of Supervisor of Transportation.

The record reveals that following a reorganization of the respondent's transportation department, the position of Supervisor of transportation was posted on August 8, 1986 accompanied by a job description.¹ In response, the respondent received fifteen applications/resumes. Superintendent Ron Welty directed that Bernard W. Lindsay, Director of Transportation, screen the applications and select those that met the statutory definition and posted job qualifications. None of the grievants survived the screening process and, consequently, were not interviewed.

WV Code §18A-4-8 in part provides:

"Supervisor of transportation" means qualified personnel employed to direct school transportation activities, properly and safely, and to

¹This reorganization plan was approved by the respondent board at its August 6, 1986 meeting (Hearing Examiner's Exhibit #1).

supervise the maintenance and repair of vehicles, buses and other mechanical and mobile equipment used by the county school system.

Each of the grievant's applications/resumes was introduced into evidence (Respondent's Exhibit #1, 2, 3 and 4) and none reveals that they had any expertise in the maintenance or repair of vehicles. Additionally, each of the grievants testified that they, in fact, had no such expertise.²

The grievants strongly urge that since they are regular full time service employees, that in accordance with WV Code §18A-4-8b(b), they should have been selected over the successful applicant who was a professional employee.³

This board has consistently held that service personnel positions are to be filled pursuant to WV Code §18A-4-8b(b) on the basis of seniority, qualifications and evaluation of past service. Beckett v. Raleigh County Board of Education, Docket No. 41-86-107; Cheripko v. Brooke County Board of Education, Docket No. 05-86-217-3; Jones v. Kanawha County Board of Education, Docket No. 20-86-084; and, Jones v. Ohio County Board of Education, Docket No. 35-86-051.

²Each of the grievants were bus operators, and as such, were familiar with checking oil, gas and matters related to safety of bus operation.

³There is no contest regarding the issue of the most senior applicant being given a written statement of reasons showing cause for not being selected for the position. Similarly, the qualifications of the successful applicant were considerable and not contested.. (Hearing Examiner's Exhibit #2).

In pertinent part, WV Code §18A-4-8b(b) 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.

Qualifications shall mean that the applicant holds a classifications title in his category of employment as provided in this section and must be given first opportunity for promotion and filling vacancies. Other employees then must be considered and shall qualify by meeting the definition of the job title as defined in section eight [§18A-4-8], article four of this section, that relates to the promotion or vacancy. If the employee so requests, the board must show valid cause why an employee with the most seniority is not promoted or employed in the position for which he applies. Applicants shall be considered in the following order:

- (1) Regular employed service personnel;
- (2) Service personnel whose employment has been discontinued in accordance with this section;
- (3) Professional personnel who held temporary service personnel jobs or positions prior to the ninth day of June, one thousand nine hundred eighty-two, and who apply only for such temporary jobs or positions;
- (4) Substitute service personnel; and
- (5) New service personnel. . .

For purposes of determining seniority under this section, an employee's seniority begins on the date that he enters into his assigned duties. . .

In the present grievance, it appears that Linda Woods was the most senior applicant but like the other two grievants, she did not possess the necessary mechanical expertise to qualify as Supervisor

of Transportation. In similar situations, this board has held that while the most senior applicant(s) must be considered before other applicants, a board is not required to fill a position by an applicant who does not possess the required skills. Cheripko v. Brooke County Board of Education, Docket No. 05-86-217-3; Jones v. Ohio County Board of Education, Docket No. 35-86-051. This, of course, would apply to the other grievants who admittedly also lacked mechanical expertise.

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

FINDINGS OF FACT

1. Grievants, Linda Wood, Paul Ritchee and Ruby Kelly, were regularly employed as bus operators by the Nicholas County Board of Education.

2. Each of the grievants applied for the position of Supervisor of Transportation; none were selected.

3. Fifteen applicants applied for the position of Supervisor of Transportation and only three applicants revealed they had credentials which met the job description and the job definitions; these three applicants were interviewed.

4. No evidence was introduced to show that the respondent should have been required to interview all of the applicants.

5. Each of the grievants admitted that they had no mechanical expertise which was essential to the needs of the respondent and part of the job definition.

6. None of the grievants indicated they had any mechanical expertise on their applications or resumes.

7. Linda Woods was the most senior of all the applicants.

8. The successful applicant met the qualification requirements of the statute and job description.

CONCLUSIONS OF LAW

1. WV Code §18A-4-8b(b) requires that a county board of education make decisions in the filling of service personnel positions on the basis of seniority, qualifications and evaluation of past service. Cheripko v. Brooke County Board of Education, Docket No. 05-86-217-3; Jones v. Ohio County Board of Education, Docket No. 35-86-051; and, Jones v. Kanawha County Board of Education, Docket No. 20-86-084.

2. While WV Code §18A-4-8b(b) requires that the most senior applicant be considered before other applicants, a county board of education is not required to fill a position by an applicant who does not possess the skills required for the position. Cheripko v. Brooke County Board of Education, Docket No. 05-86-217-3; Jones v. Ohio County Board of Education, Docket No. 35-86-051.

3. The respondent did not act arbitrarily or capriciously in screening all the applicants and interviewing only those applicants who revealed on their applications and resumes that they possessed the necessary expertise required by the statutory job definition and job posting.

4. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. Nevertheless, this discretion must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious. Dillon v. Board of Education of the County of Wyoming, 351 S.E.2d 58 (W.Va. 1986).

For all of the foregoing reasons, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Nicholas County or the Circuit Court of Kanawha County and such appeal must be made 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: April 10, 1987