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JACK McLAUGHLIN

v.

DOCKET NO. BOR1-87-208-2

WEST VIRGINIA UNIVERSITY

DECISION

Grievant, Jack McLaughlin, is employed by West Virginia University as a plasterer/mason assigned to the medical center physical plant. Mr. McLaughlin filed a level four grievance in July, 1987 in which he alleged that job filling procedures were violated and/or compromised when selected individuals were sent to asbestos school so that they would qualify for new positions which became available shortly thereafter. The grievant requests that the assignment be retracted and the positions be reposted with the successful applicants to receive any necessary training at the institution's expense.

After numerous continuances of the level four hearing the matter was submitted for decision based upon the record. Documents

referred to but not enclosed in the record were requested by the examiner and proposed findings of fact and conclusions of law were submitted by both parties.

The factual situation of this grievance is that three physical plant employees; John Jones, a plasterer/mason; Neil Wilson, a maintenance helper classified as a temporary employee; and Barry Arnold, a laborer, all of whom work in asbestos abatement at the Medical Center, requested and received permission to attend a three day seminar "Practices and Policies in Asbestos Control" in March, 1987. In April two positions as asbestos abatement worker were posted. Four internal employees applied for the positions which were subsequently awarded to Mr. Wilson and Mr. Arnold, effective April 16. Mr. McLaughlin began grievance proceedings on May 27, 1987.¹

¹Mr. McLaughlin does not appear to be a party in interest as he in no way alleges to have been affected by the actions described herein. As the purpose of the grievance procedure is to resolve problems which occur between an affected employee i.e., the grievant and the employer it is improper for another employee acting in his capacity as union representative to bring an action on behalf of other employees who may or may not chose to pursue their individual rights. As Mr. Alan Rogers, an unsuccessful candidate for the positions, appeared at the level two hearing the matter will be processed on his behalf at level four.

The grievant argues that two positions titled "asbestos abatement worker" were improperly filled in violation of the guidelines for promotion of classified employees. He does not specifically state how the guidelines were violated nor does he allege that either of the two unsuccessful applicants were more qualified for the positions. He does contend that the administration had pre-selected Wilson and Arnold for the positions as indicated by their attendance at the March seminar for which no other maintenance personnel were given the opportunity to attend.² The university argues that selection of the successful applicant was based upon management judgement of which individual's qualifications best met the position requirements.

The testimony and evidence presented at level two is disorganized, incomplete, vague and, to a great extent, pointless.

²The grievant has submitted the "WVU Employee Handbook", page 1 pertaining to the Equal Opportunity and Affirmation Action policies and pages 16 and 17 which refers to promotions and also pages 3-6 of the WVU Equal Employment Opportunity Policy and Affirmative Action Plan. He has offered no explanation as to how these policies were violated and therefore they will not be included in the discussion. Issues raised by the grievant in his proposed findings of fact and conclusions of law which were not previously raised, such as discrimination, will also not be considered.

There is no indication in the personnel regulations pertaining to promotion that the university has any responsibility to notify and train its employees for future job openings. Neither has the grievant proven that attendance at the March seminar guaranteed the positions to the successful applicants nor that Mr. Rogers would have attended the seminar if he had been given the opportunity.

This was not an instance of the administration soliciting individuals to attend a seminar but rather was employees who were interested in improving their job skills requesting that they be permitted to attend the training session. According to Gary Miller, Director of Maintenance Engineering, the policy permits only two employees to attend out of state schooling at any one time. (T. Level II p. 57). Therefore, it would have been useless to notify other employees who could not attend. As Mr. Wilson and Mr. Arnold were already working with asbestos as part of their regular assignment it would be unreasonable to send other employees who were not to this seminar. In summary, the grievant has made no showing that the positions were improperly filled procedurally or that the positions were filled by less qualified applicants.

In addition to the foregoing it is appropriate to make the following specific findings of fact and conclusions of law.

Findings of Fact

1. The named grievant, Jack McLaughlin, is employed by West Virginia University as a plasterer/mason assigned to the medical center physical plant. Mr. McLaughlin also serves as union steward for the Laborers' International Union of North America, Local 814. Mr. McLaughlin is not an affected employee in the present matter.

2. Mr. Alan Rogers who is employed by West Virginia University as a general maintenance worker and who was an unsuccessful candidate for the advertised positions is an affected employee and as he appeared as a witness at the level two hearing this matter will be processed at level four on his behalf as the grievant in fact.

3. In March, 1987 John Jones, Barry Arnold and Neil Wilson requested and received permission to attend a three day seminar in Pittsburgh on "Practices and Policies in Asbestos Control".

4. In April, 1987 two positions as "asbestos abatement worker" were posted.

5. Four applications were received for the two positions; Mr. Arnold, Mr. Wilson, Mr. Rogers and a fourth internal employee

not a party to this grievance.

6. Mr. Arnold and Mr. Wilson had been working in asbestos control as part of their regular duties prior to the positions being posted. Mr. Rogers had assisted with asbestos removal on two projects in which he participated as overtime work. He also had some experience working in asbestos control while in the U.S. Navy.

7. The grievant does not claim that he was more qualified than the successful candidates, only that the positions were unfairly filled as they were preselected as evidenced by their attendance at the March seminar.

Conclusions of Law

1. It is incumbent upon a grievant seeking relief pursuant to W.Va. Code, 18-29-1 et seq. to prove all of the allegations constituting the grievance by a preponderance of the evidence. Bulford v. Preston County Board of Education, Docket No. 39-87-203-2; McDaniel v. Berkeley County Board of Education, Docket No. 02-87-318-2.

2. The grievant has failed to prove that the successful candidates were preselected for the positions based upon their attendance at a seminar or that any violations of university guidelines, the Equal Opportunity or Affirmative Action policies have occurred.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Monongalia 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

May 19, 1988

Sue Keller

SUE KELLER

HEARING EXAMINER