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DELORES RATCLIFFE

v.

Docket No. 29-87-269

MINGO COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant was first employed by the Mingo County Board of Education as a cook on February 12, 1979. In June 1982 her position was eliminated and she was placed on a preferred recall list. Ms. Ratcliffe filed the present grievance on September 24, 1987, alleging the Board had failed to properly notify her of job openings by certified mail and hired a less qualified employee for a position at West Williamson Elementary School. A Level II hearing was held October 8, 1987 and the decision at that level was adverse to the grievant and the Board waived Level III proceedings. A Level IV evidentiary

hearing was held February 10, 1988.¹

There is no factual dispute as the parties agree to the sequence of events leading to the filing of the grievance. Grievant's position was eliminated during the 1981-82 school term and she was placed on a preferred recall list. Although the Board filled nearly eighteen (18) cook positions in the county over the next five (5) years, grievant was only notified of one such position by certified mail.² In July 1987 Ms. Ratcliffe discovered through conversations with another employee that there was a job opening in a cook's position at West Williamson Elementary School and she applied for the job.

¹Grievant indicated on the Level IV appeal form a decision could be made on the record developed at Level II and the Board subsequently agreed. By letter dated January 12, 1988 grievant's representative indicated the record was insufficient and requested a Level IV hearing be held.

²This notification was dated October 15, 1987 and was received after the grievance was filed and the Level II hearing.

Ms. Betty Massey, a regularly employed part time custodian, and grievant were the only two applicants for the position and they were informed a test would be given to determine who would be awarded the position. On August 21, 1987 Ms. Massey and grievant were given a written test and shortly thereafter Ms. Massey was awarded the job.³

Grievant contends these actions of the Board constitute two violations of the W.Va.Code:

1. The failure of the Board to notify her by certified mail of job openings for which she was qualified was in direct contravention of the explicit language of W.Va. Code, 18A-4-8b(b) requiring a county board of education to so notify employees on a preferred recall list.
2. The Board also failed to follow that portion of W.Va. Code, 18A-4-8b(b) which requires a county board of education to fill vacancies occurring in service personnel positions on the basis of seniority and qualifications since grievant was more senior than Ms. Massey and more qualified in that she had a certification as Cook II.

³ Grievant testified at the Level IV hearing she was told on August 22, 1987 that her score on the test was very poor and the job would be given to Ms. Massey who had done better.

Grievant requests she be instated to the position of cook at West Williamson Elementary School because of these actions of the Mingo County Board of Education.

The Board responded to grievant's first allegation with an assertion that she was frequently given calls concerning job openings by her former supervisor and a secretary in the personnel office and she would not accept positions outside of the Williamson area because she could not drive an automobile. (T.____) The Board also takes the position that W.Va. Code, 18A-4-8b(b) required it to give preference to Ms. Massey, the regularly employed service personnel employee, when it filled the position at West Williamson regardless of the fact she did not hold certification as a cook.

Grievant is correct in her contention concerning the requirement of notification of job openings by certified mail but she is precluded from raising the issue because the provisions of the W.Va. Code regarding the timely filing of a grievance. W.Va. Code, 18-29-4 does allow an employee to file a grievance within fifteen (15) days of the most recent occurrence of a continuing practice giving rise to a grievance but in the present case nearly five (5) years elapsed since the date of her placement on the preferred recall list and the filing. Ms. Ratcliffe's testimony at the Level IV hearing revealed she only became aware of her rights to notification when she initiated that part of the grievance dealing with her non-selection for the

position at West Williamson and she failed to establish the grievance was filed within fifteen (15) days of the Board's last failure to notify her of a job opening. See generally, Hall v. Mingo County Board of Education, Docket No. 29-87-237-1; Scarberry v. Mason County Board of Education, Docket No. 26-86-291-1.

The validity of grievant's second argument or the Board's response thereto rests upon an interpretation of pertinent parts of W.Va.Code, 18A-4-8b(b), which read:

(b) A county board of education shall made 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 classification title in his category of employment as provided in this section and must be given first opportunity for promotion and filling vacancies...

Applicants shall be considered in the following order:

- (1) Regularly 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.

There is no language contained in this latter portion of W.Va. Code, 18A-4-8b(b) which would operate to nullify the provision

that service personnel positions be filled on the basis of qualifications. A county board of education is required to give first consideration to regularly employed personnel when filling such positions but an employee who holds classification for the job posted must be given preference over an employee who does not hold that classification regardless of the former's placement on a preferred recall list. Written tests for applicants may be appropriate in some circumstances but in the present case grievant's classification as Cook II and Ms. Massey's lack of certification for that job made any such tests unnecessary.

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

FINDINGS OF FACT

1. Grievant, Delores Ratcliffe, holds a classification title of Cook II and was first employed by the Mingo County Board of Education on February 12, 1979.

2. Grievant's position was eliminated in June 1982 and she was placed on a preferred recall list on June 19, 1982.

3. The Board did not notify grievant of any positions for which she was qualified by certified mail as required by W.Va. Code, 18A-4-8b(b) but she did not file a grievance over this practice within the timelines prescribed in W.Va. Code, 18-29-4.

4. In August 1987 grievant and Ms. Betty Massey applied for the posted position of cook at West Williamson Elementary School.

5. Grievant and Ms. Massey, a part time custodian, were given a written test to determine which one would receive the position and Ms. Massey was subsequently awarded the job.

CONCLUSIONS OF LAW

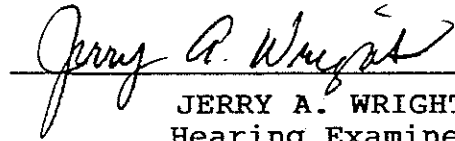
1. W.Va. Code, 18A-4-8b(b) requires a county board of education to fill vacancies in service personnel positions on the basis of seniority, qualifications and evaluations of past performance with qualifications meaning the applicant holds a classification in his or her category of employment.

2. W.Va. Code, 18A-4-8b(b) also provides that an applicant who holds a classification in a particular category of employment must be given preference for jobs in that category over applicants who do not hold such classification regardless of his or her placement on a preferred recall list.

3. The Mingo County Board of Education did not follow the requirements of W.Va. Code, 18A-4-8b(b) when it awarded the position of cook at West Williamson Elementary School to the applicant, Betty Massey.

Accordingly, the grievance is GRANTED and the Mingo County Board of Education is hereby ORDERED to instate the grievant, Delores Ratcliffe, to the position of Cook at West Williamson Elementary School and to further compensate her for any wages lost as the result of the improper filling of the position, less any appropriate set-off.

Either party may appeal this decision to the Circuit Court of Mingo County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of said decision. (W.Va. Code, 18-29-7) Please inform this office of your intent to do so in order that the record can be prepared and transmitted to the Court.


JERRY A. WRIGHT
Hearing Examiner

DATED: April 4, 1988