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JEFFERY SATTERFIELD

v.

DOCKET NO. 24-87-253-2

MARION COUNTY BOARD OF EDUCATION

DECISION

Grievant, Jeffrey Satterfield, is employed by the Marion County Board of Education as a half-time custodian. Mr. Satterfield filed a level one grievance on August 12, 1987 in which he alleged a violation of W. Va. Code, 18A-4-8b when another employee with less seniority was awarded a full-time position. The grievance was denied at levels one, two and three and appealed to level four on October 5, 1987. Both parties agreed that a decision could be based upon the record and proposed findings of fact and conclusions of law which were submitted on December 8.

The facts in this case are as follows. On July 1, 1987 three one-half time custodian I positions were posted. The grievant, the most senior substitute, was given first choice of the positions and Ronald Saloky, the second most senior applicant, was given his choice of the two remaining positions. On July 7, 1987 a full-time custodial position at Monongah Elementary School was posted and both the grievant and Mr. Saloky submitted applications. Both the grievant and Mr. Saloky were recommended for the half-time positions at a board meeting held on July 14. While Mr. Saloky was approved, the grievant's employment was tabled when the board requested additional background information. At a meeting held on July 30 the board approved the grievant's employment for the half-time custodial position and awarded Mr. Saloky the full-time position at Monongah Elementary School.

The grievant argues that the tabling of his recommendation for employment on July 14 and the subsequent approval of a less senior substitute over the grievant for a full-time position was in violation of W. Va. Code, 18A-4-8b(b).

The board argues that seniority earned as a substitute does not apply to that of a regular position and that Mr. Saloky was awarded the position in compliance with W. Va. Code, 18A-4-8b(b) which requires that regular employees be considered prior to substitute personnel.

While the board is correct in its claims regarding seniority and order of consideration of applicants, the controlling questions are whether the board acted properly in tabling the recommendation for the grievant's employment on July 14 and in filling the full-time position prior to resolving the grievant's status on July 30.

The only reason the board has provided for tabling the original recommendation for the grievant's employment was to request further background information. The board provides no indication as to what this information might have been, however, upon its receipt the grievant was promptly hired. The failure to explain or justify the request raises the concern of whether it was arbitrary and capricious action.

Although the posting period for the full-time position closed on July 13 the filling of that position was not on the agenda

for the July 14 board meeting. However, by July 13 the administrators were aware that both the grievant and Mr. Saloky had applied for both the half-time and full-time positions. While a complete copy of the board minutes was not submitted into the record, it does not appear from the section provided that the board was advised of the situation prior to first filling the full-time position and then approving the grievant for the half-time position on July 30.

While the board may have had just cause for tabling the grievant's employment and while the employment of the grievant and Mr. Saloky may have been based on a bona fide interpretation of W. Va. Code, 18A-4-8b(b) the unanswered questions raise the possibility that the procedure may have been manipulated so as to deprive the grievant of the full-time position. Had the grievant been employed on July 14 or at any time prior to the board's approval of the recommendation for the full-time position both he and Mr. Saloky would have been equally entitled to the position as neither had earned any seniority as regular employees.

From an equitable concept the grievant was deprived of a potential economic benefit through no fault of his own when the board delayed his employment for apparently no justifiable reason and then failed to resolve the matter prior to filling the full-time position.

In addition to the foregoing factual recitation, the following specific findings of fact and conclusions of law are appropriate.

Findings of Fact

1. The grievant had been employed by the Marion County Board of Education as a substitute custodian since November 1983.

2. In July 1987 three half-time custodian I positions were posted and the grievant, the most senior substitute, was permitted his choice of the positions. Ronald Saloky, second on the seniority list, was then given his choice of the two remaining positions.

3. Both the grievant and Mr. Saloky applied for a full-time custodian position at Monongah Elementary School. This position had been posted from July 7-13.

4. Both the grievant and Mr. Saloky were recommended for employment in the half-time positions at the July 14 board meeting. Mr. Saloky was approved, however, the recommendation to employ the grievant was tabled when the board requested further background information. The full-time position was not filled at this meeting.

5. On July 30 the board approved Mr. Saloky for employment at Monongah Elementary School and approved the grievant for the half-time position for which he was recommended on July 14.

6. Although Mr. Saloky had been approved as a regular employee on July 14 he had accrued no seniority as he had not yet entered into his duties.

7. The board has failed to explain or justify the need for further background information on the grievant which prevented it from acting on his employment on July 14.

8. The board failed to resolve the grievant's pending employment prior to filling another more lucrative position for which he had also applied.

Conclusions of Law

1. W.Va. Code, 18-29-5(b) provides that hearing examiners are authorized to provide such relief as is deemed fair and equitable and will provide for the effective resolution of grievances. Toney v. Lincoln County Board of Education, Docket No. 22-87-047-1; Clevenger v. Harrison County Board of Education, Docket No. 17-86-261-3.

2. The delay of action on the recommendation that the grievant be employed in a half-time position until a more lucrative full-time position for which the grievant had applied was filled was an inequitable action which deprived the grievant of any opportunity to receive the full-time position through no fault of his own.

Accordingly, the grievance is **GRANTED** to the extent that the board of education is ordered to reconsider the grievant and Mr. Saloky for the position at Monongah Elementary School using that criteria which would have been applied had the matter been properly processed, i.e., that both were regularly employed personnel with no seniority.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Marion 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 February 26, 1988

Sue Keller

SUE KELLER
HEARING EXAMINER