



**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**
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DANA SMITH

v.

Docket No. 22-87-112-3

LINCOLN COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Dana Smith, has been employed by the Lincoln County Board of Education as a purchasing agent since 1982. On October 22, 1986 the job of Coordinator of Finance at a contract term of 200 days was posted and subsequently awarded to Mr. Conrad Lucas. Mr. Smith filed the present grievance when he learned the contract term of the position had been increased to a term of 261 days in March 1987. After an adverse decision at Level II, grievant requested the Board to make its decision at Level III on the submitted record. Grievant appealed the adverse decision of the Board at that level to Level IV. A Level IV evidentiary hearing was held on February

26, 1988.¹

When the position of Coordinator of Finance was posted grievant did not apply for the job and it is not contested that the person who did apply and receive the job met the posted requirements and was otherwise qualified for the position. Grievant's only allegation is that the Lincoln County Board of Education acted improperly in posting the position as a 200 day contract term and later increasing the contract term to 261 days. It is his contention that this action by the Board disguised the true nature of the job and discouraged certain qualified employees, including himself, from making application. The Board responded by simply noting that there is no W.Va. Code provision requiring it to post any position for a certain contract term or prohibiting it from later changing that term as shifts in workload or staffing problems arise.² Grievant cites no legal

¹At this hearing grievant testified he had only an informal conference with Charles McCann, Assistant Superintendent, at Level II and no recording was made. The Board therefore had little if any record on which to base its decision at Level III and grievant was then informed the case could be remanded to Level II for a full development of the record or he could request a continuance of the Level IV proceedings until he could subpoena witnesses, obtain documentary evidence, etc. He declined to have the grievance remanded and indicated he was prepared to present all the evidence necessary for a decision in the case at the Level IV evidentiary hearing.

²Mr. McCann testified at Level IV that because of some severe financial constraints on the Board in the last several years positions were often posted at what was determined to be the shortest contract term possible
(footnote cont.)

authority in support of his allegations and basically his claim is one of an abuse of discretion in hiring on the part of the Board.³

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

FINDINGS OF FACT

1. Grievant, Dana Smith, has been employed by the Lincoln County Board of Education as a purchasing agent since 1982.

2. On October 22, 1986 the Board posted a position of Coordinator of Finance at a contract term of 200 days.

3. Grievant did not apply for the position and it was awarded to the applicant, Conrad Lucas.

(footnote cont.)

and later the term was increased if it appeared the job could not be done efficiently within that time frame. He also testified that in some cases the term was increased if the employee showed satisfactory progress in the job but in the present case certain changes in central office assignments placed a greater burden on the position and the duties could not be performed during a 200 day term.

³ It should be noted that grievant called no witnesses on his behalf nor did he question Mr. McCann, the only person appearing for the Board at Level IV.

4. Grievant presented no evidence that Mr. Lucas did not meet the minimum requirements for the position of Coordinator of Finance.

5. In March 1987 the contract term for the position was changed from 200 days to 261 days.

CONCLUSIONS OF LAW

1. W.Va. Code, 18A-4-8b(a) requires a county board of education to post a vacant position for a minimum of five working days before it is filled but there is no statutory provision contained therein which requires said board to set a specific contract term for the position.

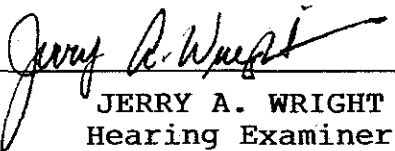
2. W.Va. Code, 18A-4-8b also requires a county board of education to fill vacancies in professional positions on the basis of qualifications.

3. When a grievant alleges a vacancy has been filled in violation of W.Va. Code, 18A-4-8b the allegations must be proven by a preponderance of the evidence. Parsons v. Cabell County Board of Education, Docket No. 06-87-067-1; Cornell v. Berkeley County Board of Education, Docket No. 02-87-222-2.

4. Grievant, Dana Smith, has failed to prove by a preponderance of the evidence that the Lincoln County Board of Education did not adhere to the requirements of W.Va. Code, 18A-4-8b(a) when the Coordinator of Finance position was filled.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Lincoln County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this 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: March 18, 1988