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PAT WATSON

v.

Docket No. 23-88-041

LOGAN COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Pat Watson, is employed by the Logan County Board of Education assigned to Monaville Grade School as a physical education teacher. She filed a grievance in November 1987 alleging the position of Dean of Students at Omar Junior High School had been filled in violation of the requirements of W.Va. Code, 18A-4-8b(a). A decision following a Level II hearing on February 8, 1988 was adverse to the grievant and the Board waived Level III proceedings. A Level IV evidentiary hearing was held on May 23, 1988.

The position in question was posted on September 23, 1987 and eight employees including grievant made applications. An interview committee was appointed and consisted of Mr. Jack Garrett,

Associate Superintendent of Schools, Mr. George Klipa, Assistant Superintendent, Secondary Schools, Ms. JoAnn Gore, Supervisor of Guidance and Counseling, and Ms. Cosma Crites, Director of Personnel. Initially a Mr. Gillman was recommended for the position by the committee and his subsequent recommendation to the Board by Superintendent of Schools Wesley Martin was accepted. Because of family illness Mr. Gillman declined the job before he was to assume his duties and a re-evaluation of the remaining seven (7) applicants was conducted and Mr. John McQueen was selected and approved by the Board.

Grievant contends the position was not posted properly and as she was more qualified than Mr. McQueen she should have received the job. The job posting (Joint Exhibit No.1) and the testimony of Mr. Garrett and Ms. Crites revealed there was no job description attached.¹ The language of W.Va. Code, 18A-4-8b(a) is clear and unambiguous and requires a county board of education to post and date notices of all job openings and include the job description. Kell v. McDowell County Board of Education, Docket No. 33-87-236; Rash v. Wayne County Board of Education, Docket No. 50-87-263-1.

¹ Upon proof of this allegation contained in the grievance, the parties were informed that the merits of grievant's remaining claim concerning qualifications could not be reached. The Board made no legal argument that the job description was not required and in fact agreed that the failure to include one with the September 23, 1987 posting was a violation of W.Va. Code, 18A-4-8b(a). Grievant's representative and counsel for the Board agreed that the appropriate remedy would be to forward a job description to each of the original eight (8) applicants and conduct a new selection process.

In certain circumstances the West Virginia Education Employees Grievance Board could take administrative notice of the duties and responsibilities of a position, i.e., principal or assistant principal and upon a grievant's waiver of the technical requirement that job descriptions be included in the posting of such positions could reach the merits of a claim that a successful applicant was not the most qualified. In the present case, however, the function of a Dean of Students is not so clearly defined as to facilitate a reasonable analysis of the qualifications of the successful applicant, Mr. John McQueen, and those of the grievant.

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

FINDINGS OF FACT

1. Grievant, Pat Watson, is employed by the Logan County Board of Education and assigned to Monaville Grade School as a physical education teacher.

2. The position of Dean of Students at Omar Junior High School was posted on September 23, 1987 and eight (8) employees including grievant made applications.

3. An interview committee selected a Mr. Gillman as the most qualified candidate and his recommendation was subsequently accepted by the Board.

4. Mr. Gillman declined to accept the position and after a re-evaluation of the remaining candidates Mr. John McQueen was recommended for the position and the Board accepted the recommendation.

5. The posting of the Dean of Students position did not include a job description.

CONCLUSIONS OF LAW

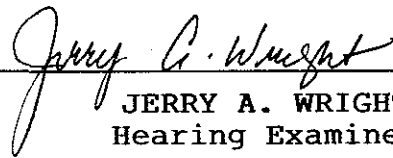
1. W.Va. Code, 18A-4-8b(a) requires that a board of education post and date notices of all openings in established, existing or newly created positions for all professional personnel to observe and consider and the position opening shall include the job description. Kell v. McDowell County Board of Education, supra; Rash v. Wayne County Board of Education, supra.

2. The Logan County Board of Education's failure to include a job description in the posting of the position of Dean of Students at Omar Junior High School was a violation of the express provisions of W.Va. Code, 18A-4-8b(a).

Accordingly, the grievance is **GRANTED** and the Logan County Board of Education is hereby **ORDERED** to furnish each of the eight (8) applicants for the position of Dean of Students at

Omar Junior High School a job description and conduct a re-evaluation of said applicants for the purpose of determining which is most qualified for said position.

Either party may appeal this decision to the Circuit Court of Logan 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: June 16, 1988