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JOHN BONNETT

v.

DOCKET NO. 89-DOH-043

W.Va. DEPARTMENT OF HIGHWAYS

DECISION

Grievant, John Bonnett, has been employed by the W.Va. Department of Highways (Department) for nineteen years and is presently classified as an Equipment Operator in District Seven, Lewis County. Mr. Bonnett filed a level one grievance on November 28, 1988 in which he alleged that he had been denied the position of Maintenance Crew Leader I in violation of W.Va. Code §29-6-1, Department personnel policy, and as a result of favoritism. The matter was denied at levels one through three and was appealed to level four on February 3, 1989. An evidentiary hearing was held on March 3 at which time the parties supplemented the evidence contained in the level three transcript.

On August 8, 1988 the Department posted a position vacancy of Maintenance Crew Leader I. The posting included this brief description: "Leads and participates in a crew performing maintenance and repair on highways. Keeps time

attendance of crew. Completes daily report of the project. Performs related work as required." Four individuals, including the grievant, submitted application for the position which was awarded to Richard Carpenter.

The grievant argues that the selection was made in an unfair manner as: one, the Department used subjective, rather than objective criteria, e.g., a supervisor's evaluation as to the quality of work completed; two, that certain factors such as his much greater seniority and completion of a course in Maintenance Management were not properly weighted and three, that favoritism was shown to the successful applicant as evidenced by the position not being filled until he had clearly completed the required two years of experience. The grievant asserts that these actions are in violation of Department of Highways Administrative Operating Procedures for the posting and filling of job vacancies and W.Va. Code §29-6-1 which provides the general purpose of the Civil Service System is to attract personnel of the highest ability and integrity based on merit, principles and scientific methods governing the appointment, promotion, transfer, etc. of its employees.¹

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The grievant did not specifically state how the Department had violated its policy regarding the posting and filling of job vacancies. The policy provides that employees shall be given opportunity for advancement based upon their knowledge skills and efficiency but also that skilled employees should be attracted from outside the

(Footnote Continued)

The Department argues that the position was properly filled with the most qualified applicant. At the level four hearing the Department presented testimony of the following individuals. Marvin Murphy, Chief Administrative Officer of District Seven, stated that the criteria considered in filling a vacancy was determined by the supervisor and based upon the position's responsibilities. Mr. Murphy conceded that some subjective observations were considered by necessity but in reviewing the selection made by the supervisor he found the promotion to have been based upon objective criteria in compliance with Department policy.

William Cayton, county supervisor, described how he arrived at his decision on filling the position. Mr. Cayton stated that as all four applicants met the minimum requirements for the position he also considered the quality and quantity of their work. He noted that the grievant had a much higher use of sick and annual leave than the successful applicant and that there were indications that the leave time had been abused. Specifically, the grievant had once taken more leave time than he had earned and he frequently reported in sick on Mondays and Fridays. Further the grievant had refused to work overtime on numerous occasions and was often sick or did not answer his telephone when called for emergency snow and ice removal. The grievant has

(Footnote Continued)

Department. Objective criteria is to be used in the selection process.

been disciplined by verbal reprimand for the unauthorized use of a state vehicle and had received a written reprimand (dated April 21, 1986) for insubordination evidenced by his failure to care for his assigned vehicle. The successful applicant had used little leave time, worked overtime when requested, always responded for snow and ice removal and had not been subject to discipline.

Mr. Cayton stated that he had considered the training, skills and experience of the applicants and while the grievant had received certification as a foreman the successful applicant had worked in that capacity at a previous job in addition to having operated various types of trucks and other heavy equipment. Mr. Cayton denied that he is close friends with the successful applicant or that he was influenced to give, or not give, the position to any individual.

Jimmy Heater, assistant supervisor, supported the testimony of Mr. Cayton in regard to the grievant's abusive use of leave time and his own inability to contact the grievant for snow and ice removal.

In rebuttal the grievant stated that he has never been disciplined for his ability to get along with work crews. He asserts that he responds to snow and ice removal calls but that his telephone is often out of order as he lives in the country. Regarding his excessive use of leave he states that when he filled out the leave slip no one told him he did not have enough earned time to cover the amount

requested. He explained that the unauthorized use of a state vehicle charge occurred when he had parked his truck on state property and went to the bank on his lunch break and that the reprimand for failure to maintain his vehicle resulted when he did not get it on the wash rack.

The grievant has failed to show that the position of Maintenance Crew Leader I was improperly filled. The evidence establishes that the applicants were evaluated using numerous factors: seniority, experience, training and past job performance. This criteria is objective, in compliance with Department policy and appropriately considered when making personnel decisions.

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

Findings of Fact

1. The grievant is employed by the Department of Highways as an Equipment Operator assigned to District Seven, Lewis County.

2. In August 1988 the grievant applied for the position of Maintenance Crew Leader I. Another applicant was promoted into the position in November.

3. Experience, training and job performance were considered by the county supervisor when filling the position.

4. There is no Department policy or statutory requirement that any criterion be more heavily weighted than others.

5. The grievant has been employed by the Department for approximately nineteen years and completed training in "Managing Highway Maintenance".

6. Grievant's job performance was detrimental to his promotion as he has been subject to discipline, has used sick and annual leave in a manner which indicates abuse, has refused to work overtime and does not make himself available for emergency snow and ice removal.

7. The successful applicant has used little leave time, consistently works overtime and for emergency snow and ice removal, has not been subject to discipline, has worked with heavy equipment and has experience in the capacity of foreman.

Conclusions of Law

1. It is incumbent upon a grievant to prove all the allegations constituting the grievance by a preponderance of the evidence. Nefflin v. Department of Human Services, Docket No. DHS-88-068 (Feb. 28, 1989); Harvey v. W.Va. Governor's Office of Community and Industrial Development, Docket No. CID-88-061 (Feb. 27, 1989); Payne v. W.Va. Department of Energy, Docket No. ENGY-88-051 (Nov. 2, 1988).

2. The grievant has failed to prove any violation of Department policy or statutory provision governing his employment.

3. The grievant has failed to prove that he was denied the promotion as a result of favoritism as defined in W.Va. Code §29-6A-2(h).

Accordingly, the grievance is **DENIED**.

Either party or the West Virginia Civil Service Commission may appeal this decision to the Circuit Court of Lewis County and such appeal must be filed within thirty (30) days of receipt of this decision. (W.Va. Code §29-6A-7) Neither the West Virginia Education and State Employees Grievance Board nor any of its Hearing Examiners is a party to such appeal, and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate Court.

DATED March 29, 1989

Sue Keller

SUE KELLER

HEARING EXAMINER