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**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**
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JOSEPH DELANEY

v.

Docket No. 89-17-352

HARRISON COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, a teacher in the employ of Respondent Harrison County Board of Education, filed the following grievance at Level II on May 25, 1989:¹

Violation of. . .[W.Va. Code] §18A-2-2. I have a contract for a teaching position at Lumberport Elementary School. The Board of Education has notified me that. . .[it] intend[s] to repost the position. The relief I seek is to keep my position at Lumberport Elementary School for the 1989-90 school year.

After denial there and waiver at Level III per Code §18-29-4(c), Grievant advanced his claim to Level IV on July 12, 1989, for disposition on the record. With the

¹ Grievant bypassed Level I of the procedure, even though the record does not establish the requisites for such waiver: no authority to grant the relief requested, and written permission from Level I authorities. W.Va. Code §18-29-3(c); Bumgardner v. Ritchie Co. Bd. of Educ., Docket No. 89-43-222, etc. (June 12, 1989). However, due to the circumstances of this case, the error will be overlooked.

presentation of proposed findings of fact and conclusions of law ~~by Grievant~~ by September 19, the matter is mature.²

Most facts surrounding this controversy are not in dispute. Grievant, during 1988-89, was assigned to Hartman Elementary School, an institution targeted for closing at the end of that term. Accordingly, he was placed on administrative transfer³ and, pursuant to his bid therefor, was awarded, on May 1, 1989, a teaching job at Lumberport Elementary School for 1989-90. On or around May 10, Ben L. Guido, a principal in Respondent's employ whose post had likewise been eliminated effective 1989-90 due to a school closing, advised Respondent's personnel director that he, too, had submitted a "bid sheet" for the Lumberport post. Respondent was not aware of Mr. Guido's application at the time Grievant was hired at Lumberport, and decided "that in order to be fair to all parties the position should be reposted." Level II Decision.

Mr. Guido claimed to have hand-delivered to Respondent's central office three separate bid sheets, one of which was for the Lumberport vacancy and the others for

² Grievant filed proposed findings of fact and conclusions of law July 31, Respondent, September 18. The Level II transcript and its attendant exhibits were provided September 19. The parties were originally granted until September 26 to complete the record, but since this was accomplished earlier, the undersigned will proceed to decision.

³ Grievant has alleged no procedural impropriety in Respondent's handling of his transfer.

principal vacancies, in a sealed envelope. Specifically, he said that he gave the envelope to Sue Criss, Respondent's certification coordinator.⁴ Ms. Criss testified she recalled receiving the envelope and placing it in a file for principalship bids; she added, however, that an extensive search of the personnel office did not uncover Mr. Guido's alleged Lumberport bid.⁵

Robert A. Skidmore, Respondent's Administrative Liaison Officer, appeared at Level II and stated Respondent's established posting practices specified that the applicant was responsible for ensuring the receipt of bids by the central office. T.19. He further provided that Respondent has neither considered a "lost bid" claim in the past nor ever, to his knowledge, reposted a position due to a lost bid. T. 18-19.⁶

The remainder of this Decision will be presented as formal findings of fact and conclusions of law.

⁴ Interestingly, Mr. Guido did not appear on Respondent's behalf at Level II to give testimony or be cross-examined. The information on his actions, as recounted herein, was offered by other witnesses and by Respondent's Exhibit 2, a letter written by Mr. Guido.

⁵ When asked, "[W]ould it be possible that one [of four to five thousand bid sheets] could slip through the cracks somewhere?" Ms. Criss replied, "I don't know where it could have gone." Level II, T. 25.

⁶ It is not clear from the record whether Respondent had actually been faced with a lost bid scenario before the one that is the subject of this grievance.

Findings of Fact

1. Grievant, who was on administrative transfer, was the successful applicant for a 1989-90 teaching position at Lumberport Elementary School. He was awarded this job on May 1, 1989.

2. Ben L. Guido, also on administrative transfer, claimed to have submitted a bid sheet for the Lumberport post. Respondent at no time has been in possession of Mr. Guido's alleged application for this job.

3. Respondent advised Grievant that it intended to repost the position at Lumberport.

Conclusions of Law

1. Respondent must abide by practices it has correctly established. Powell v. Brown, 238 S.E.2d 220 (W.Va. 1977). Those practices include requiring a person to ensure that his interest in a given position is clearly made known and his application therefor adequately completed.

2. Grievant was awarded the position at Lumberport for 1989-90 and had been removed from the transfer list as of May 1, 1989. In these circumstances, he was not eligible for involuntary return to the transfer list for other placement during 1989-90. W.Va. Code §18A-2-7.

3. Respondent had presumably correctly placed Grievant in the Lumberport job, and further was without justification

for making an exception to its established policy for Mr. Guido.⁸

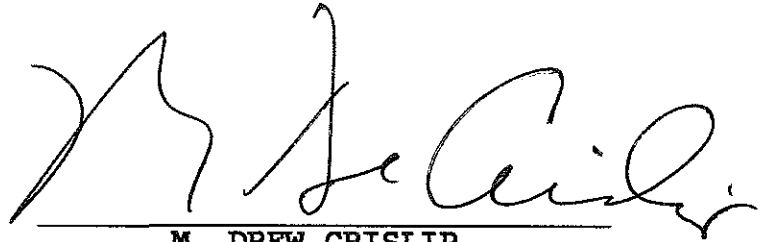
Accordingly, this grievance is **GRANTED**, and Respondent is precluded from reposting the Lumberport teaching job; further, Respondent is **ORDERED** to allow Grievant to assume that position immediately, with all back-pay and -benefits, less any appropriate offset.⁹

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Harrison County and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code §18-29-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Hearing Examiners is a party to such

⁸ A review of the Level II transcript and the written material submitted by Respondent at Level IV gives rise to the concern that seniority was granted inappropriate deference. See, e.g., T. 12, lines 4-5, and T. 30, lines 8-10. However, the point is not appropriate for further discussion herein.

⁹ The undersigned is aware that Respondent indeed did re-post the job and award it to Mr. Guido. However, the relief is stated in terms consistent with Grievant's statement of his case, at p. 1 of this Decision.

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.

A handwritten signature in cursive script, appearing to read "M. Drew Crislip", written over a horizontal line.

M. DREW CRISLIP
HEARING EXAMINER

DATED: September 25, 1989