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SHARON RIFFLE/KATHERINE HANCOCK¹

v.

Docket No. 89-H-053

WV DEPARTMENT OF HEALTH/LAKIN STATE HOSPITAL

D E C I S I O N

Sharon Riffle and Katherine Hancock, employees of Respondent West Virginia Department of Health stationed at Lakin State Hospital, initiated this complaint,

[g]rieving the placement of J. Michael Gandee in Supervisor I position. . . as being unfair and discriminatory and possibly fraudulent in qualifying requisites presented, and seeking "[f]urther and true assessment of all qualifying applicants with a mind for reconsideration and possible placement change."

After denials at Levels I, II and III,². Grievants advanced their cause to Level IV on February 9, 1989, where hearing was

¹ Grievant Hancock withdrew from this matter at Level IV. See body of this Decision, infra.

² The decisions rendered at Levels II and III and the Level III hearing transcript are part of the record at Level (Footnote Continued)

scheduled April 10, 1989.³ On that date, Grievants' representative announced that Ms. Hancock, who had by then resigned her position with Respondent and moved away from the immediate area, wished to abandon the case. Her motion to withdraw was granted, and this grievance is now formally DISMISSED only insofar as it relates to Grievant Katherine Hancock. Hearing proceeded on April 10 on Grievant Riffle's concerns only; at the conclusion of the hearing, the parties agreed to a responsive post-hearing submissions schedule ending May 31. Respondent's proposed findings of fact and conclusions of law were submitted on or around May 22, and Grievant has waived the filing of such information.⁴

The Supervisor I job in question, which has the in-house title of Activities Director (AD), involves coordination of resident recreation and entertainment. The incumbent AD retired, and Respondent utilized on-site posting to announce the position as vacant; the notice stated applications would be accepted

(Footnote Continued)

IV. There is no direct reference to Level I in that record; it will be presumed that there was no authority at that plane to grant the relief requested herein and that written acknowledgement of this was obtained by Grievant, since bypass of a lower administrative level is precluded unless these two criteria are met. W.Va. Code §§29-6A-3(c), 29-6A-4(a).

³ Two previous hearings were continued upon Grievants' motions, to which Respondent did not object.

⁴ At the Level IV hearing, Grievant's union representative, Mr. Al Bacon, advised that Larry Harless, Esq., would be filing a brief and/or proposed findings of fact and conclusions of law. However, neither Mr. Harless nor Mr. Bacon offered any such material on Grievant's behalf.

October 18-28.⁵ Grievant, an LPN I at Lakin since July 1987,⁶ completed and submitted her application October 24.

Grievant was interviewed by Program Director W. Keith Stouffer "sometime during the week after October 28." She related that Stouffer asked why she was interested in the job; how she thought she was qualified; and if she had any questions.⁷ She added that he described the duties and characterized them as different from "working on the floor" since the Supervisor I needed to make decisions "on his or her own." Grievant testified that she was upset with that statement since Stouffer is the

⁵ At Level IV, it was revealed that Respondent also advertised the vacancy in a bulletin distributed statewide, which indicated the application period was October 31-November 11. Resp. Ex. 1. While Mr. Gandee did not actually assume the position until mid- to late November, his selection was revealed by memorandum from W. Keith Stouffer, Program Director at Lakin, dated November 7, 1988.

Six individuals, including Grievant, Gandee and three other Lakin staff members, and one person not previously employed at the Hospital, applied to become AD. All six applied on or before the on-site application deadline of October 28. Respondent's Personnel Officer, David Ross, testified that if another application had been received between November 7 and 11, it would have been given consideration and might have resulted in the cancellation of Mr. Gandee's appointment. He conceded, however, that this would not have been desirable and that filling the position prior to the end of the statewide application deadline was an ill-advised occurrence. He did say that he was unsure that Respondent's central office had informed Lakin administration of the extended date, however.

The procedural faux pas is harmless, inasmuch as no applications were received by Respondent beyond October 28.

⁶ Shortly prior to the Level IV hearing, Grievant received a promotion to LPN II.

⁷ Apparently, her only question at the time concerned funding for activities, which Stouffer answered to her satisfaction.

Lakin administrator charged with ultimate responsibility for the Activities Department and thus someone she felt the AD should be able to "fall back on." She opined that the AD and the Program Director should have a working relationship similar to that of an LPN and RN.

Grievant continued that Stouffer commented on the penmanship on the job applications for Supervisor I, noting that neat handwriting was an important qualification since the position requires the completion of several forms. Later, she learned that the successful candidate had typed his application, writing only his signature. Grievant added that she could have typed hers too, but filled out her application at Lakin's Personnel Office by hand on October 24 and turned it in that day. She said that Lakin Personnel Officer David Ross "thought it was satisfactory."⁸

The following interchange also occurred at Level IV:

Grievant's Representative BACON: When you were interviewed for the job, did you have the impression that the job was filled?

GRIEVANT: Well, I could barely hear Keith speak, he speaks in a low monotone. It was hard to hear him, and I think I was probably the last or next-to-last one interviewed because of my day's scheduling, and I felt like it could have been a better interview.

⁸ All five applications submitted from in-house employees were attached to the Level III transcript. It is noted that Grievant's, like some of the others, was not particularly neat and contained misspellings. Grievant, like all job candidates, had the burden of "selling herself" and cannot reasonably use Personnel's mere acceptance of her application as a reason why Respondent should not have considered her poor penmanship, whether or not such was a requirement of this specific position.

BACON: But when you were interviewed for the job, did you have the impression that the job was filled?

GRIEVANT: Yes.

BACON: Why do you say that?

GRIEVANT: He just didn't seem to be interested in what I had to say.

Grievant testified that she has just under twenty years' background in nursing. She has worked with a variety of populations and medical specialties, and many of her positions have required her to perform supervisory or administrative duties. She stated she also has several years' participation in the community service organization "4-H" and experience as a Sunday School teacher, although she did not represent that this information was available to Respondent when the AD post was filled.⁹ She conceded that the job may include some clerical duties she is unfamiliar with and that she has never worked on "patient care plans,"¹⁰ but opined that she is familiar enough with the patients and the Activities Department that she is well-qualified to be an effective AD.

⁹ It is settled that the grievance procedure is not a "super-interview" for unsuccessful applicants, but rather a forum for reviewing hiring determinations as of the time they were made. Stover v. Kanawha Co. Bd. of Educ., Docket No. 89-20-75 (June 26, 1989).

¹⁰ Each patient at Lakin has such a "plan" which is revised at least once every three months. The facility's Activities Department is included in the creation and updating of the plans, since individual social and recreational needs and/or desires are covered thereby.

In addition, Grievant testified that to her knowledge, Gandee's work as a carpenter did not generally involve him with the residents, except when a task brought him "onto the floor" and she would see him "wanting someone to get patients away."¹¹ She did say Gandee might have been involved with residents on a volunteer basis, as other Lakin workers were, but she had never observed him in this role. She related that it was not until Level III that Mr. Stouffer explained that Gandee had been selected over her for reasons including his outgoing personality, his work with Hospital Day¹², and his musical talent. At Level IV, Grievant said that the AD job description did not include musical inclination as a prerequisite, although she was aware that the residents loved music and it had always been a significant component of Lakin's activities programming.

Mr. Ross testified that all five in-house applicants, including Grievant, were at least minimally qualified for the AD job.¹³ He explained that this determination, which was based upon

¹¹ This declaration has been afforded little weight herein. It is clearly self-serving as made, and was not verified or supported by any other evidence. Furthermore, even if Mr. Gandee did make such a statement, it is easily imagined that it might have been in the context of his work and out of concern for patient safety.

¹² This event is an annual function for Lakin residents, held outdoors on the grounds of the hospital. Musical entertainment and various special-interest booths are among the features.

¹³ It is stipulated that Grievant's performance evaluations were good and that she has never been reprimanded by her superiors at Lakin.

an application review and a reference check, left it up to Mr. Stouffer, as Supervisor, to select the person he felt best matched the position's needs.

Mr. Stouffer appeared at Level IV and stated that with Mr. Gandee's advent to AD, additional responsibilities were added to the position. He explained that his own job duties had increased, and he was thus forced to delegate some other tasks to the AD and other subordinates.¹⁴ He admitted that Mr. Gandee was the successful candidate because of his volunteer work in the Activities Department; his musical abilities; his easy and friendly manner; his observed interaction with Lakin residents; and his public speaking and group dynamics skills. According to Mr. Stouffer, he, as soon as the decision was made, issued an advisory memorandum to all other applicants. He added that none of those applicants, including Grievant, had contacted him regarding reasons for their non-selection, although "I gave them every opportunity to do so."¹⁵ He expressed the opinion that Grievant could have performed effectively in the AD position, but that he did not

¹⁴ At one point, Grievant seemed to be suggesting that Mr. Gandee had been pre-selected for the AD position and that its job requirements had been changed to fit him. This appears to have been pure conjecture on her part and was not established to any degree.

While the official job description was not altered until a month after Mr. Gandee's promotion, Mr. Stouffer explained that he knew of the changes before the interviews and geared those meetings and the questions he asked accordingly.

¹⁵ At Level III, Grievant said that Mr. Stouffer had afforded her the opportunity to discuss the matter at the time.

consider her greater client contact experience as more pertinent thereto than Mr. Gandee's creativity and active "people person" demeanor.¹⁶

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

FINDINGS OF FACT

1. Grievant applied for the position of Activities Director (AD), Lakin State Hospital. Since July 1987, she has been employed at the facility, which is operated by Respondent West Virginia Department of Health, as a Licensed Practical Nurse.

2. The successful applicant, Mr. J. Michael Gandee, had been employed by Respondent as a Carpenter at Lakin since Spring 1987.

3. Both Grievant and Mr. Gandee, and all other applicants, were at least minimally qualified for the AD job.

¹⁶ Mr. Stouffer further explained that nursing personnel's contact with residents is largely custodial care, an area in which Activities Department staff is not involved.

Evidence that Mr. Gandee has performed well in the AD position was offered but is clearly irrelevant. See n. 9. However, Grievant attempted to show that he was not doing well at AD by reference to a memorandum issued by Lakin's Assistant Nursing Director regarding lower patient attendance at Activities Department functions. Mr. Stouffer explained that the memo was prepared and distributed at his request and was an attempt to obtain more cooperation from Lakin's nurses in encouraging resident participation.

4. All candidates were interviewed, and their applications fairly evaluated, by Mr. Keith Stouffer, Program Director at Lakin, who serves as the AD's immediate supervisor. In choosing Mr. Gandee, Mr. Stouffer took into consideration his musical abilities, outgoing personality, and other personal skills and attributes.

5. The AD job description, before and after revision, included tasks such as "[l]ead and direct the patients in the assigned activities," "[p]rovide individual or small group activities," and "[p]erform other related work as required." Resp. Ex. 4, 5.

CONCLUSIONS OF LAW

1. "[A]bsent extenuating circumstances, promotions and the selection of individuals to fill vacant positions are management prerogative," so long as those individuals are qualified and able to perform their respective jobs. Hart v. W.Va. Dept. of Health, #632 (W.Va.Civ.Svc.Comm. Oct. 20, 1988).

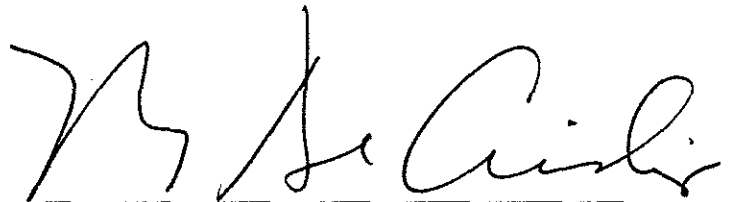
2. In order to prevail, a grievant is obligated to prove the allegations of her complaint by a preponderance of the evidence. Payne v. W.Va. Dept. of Energy, Docket No. ENGY-88-015 (Nov. 2, 1988).

3. Grievant has failed to establish that Respondent's selection of Mr. Gandee was in any way discriminatory, arbitrary,

capricious, or improper. In this regard, Mr. Gandee's qualities, see Finding of Fact 4, were reasonable means for Mr. Stouffer to measure him and his application against the stated job requirements for AD.

Accordingly, this grievance is DENIED.

Either party or the West Virginia Civil Service Commission may appeal this decision to the Circuit Court of Mason 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 named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate Court.



M. DREW CRISLIP
Hearing Examiner

Date: July 21, 1989