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ELAINE KOONTZ

v.

Docket No. 25-89-001

MARSHALL COUNTY BOARD OF EDUCATION

D E C I S I O N

Elaine Koontz, grievant, is presently employed by the respondent Marshall County Board of Education as a school custodian. On or about January 3, 1989, she filed a level four grievance appeal in which she protested her non-selection for a position which was instead awarded to an individual not in the respondent's employ. Grievant had not prevailed on the grievance at levels one, two or three and requested a hearing on the matter, said hearing conducted February 1, 1989.¹ The parties agreed to submit proposed findings of fact and conclusions of law simultaneously on February 20, 1989.

¹A level two hearing was held October 24, 1988. Respondent filed the transcript (T2.__) with the Grievance Board and, at level four, its counsel stated that its position had been developed below and it would only offer additional testimony if necessary.

Grievant, a 15-year employee of the respondent board, appears to be very involved with self-improvement and growth for possible job advancement.² She holds a certificate in data entry/computer operator (1986) and an associate degree in business administration (1988), both from West Virginia Northern Community College. She is currently enrolled in a bachelor's program in human resource management at Wheeling College.³

At some point near the beginning of the present 1988-89 school term, grievant applied for several secretarial positions which had been posted by respondent. Her first application was for a vacancy at Boggs Run School and grievant was required to take a secretarial skills test when she arrived for what she thought was simply an interview and perhaps a routine typing test for that position (T2.12).⁴ Grievant stated she was not

²Grievant appeared at the level four hearing in apparel appropriate for a secretarial/business professional. She exhibited a comely demeanor and was composed and articulate at all times.

³Grievant also worked as a secretary "many years ago" after high school but had served only as a custodian during her tenure with respondent.

⁴While she could not recall the exact dates of the postings, grievant thought that she took the test September 3, 1988 (T2.7). The administrator who interviewed grievant stated that the several job openings were posted in July and August and grievant was tested August 4, 1988 (T4.____).

told by respondent she had to attain a score of 85 percent to qualify for the position.⁵

Grievant subsequently applied for a secretarial position at Moundsville Junior High School and, finally, a Secretary III/Switchboard Receptionist vacancy at the county office. She testified that school officials never advised her that she had not been selected for the openings she sought and she learned from newspaper accounts that others had been hired for the various positions. When she learned in that manner that another was awarded the junior high position, she contacted Stephen Bland, respondent's administrative assistant and treasurer, who administered the secretarial skills test, and inquired about her test score. According to grievant, Bland stated that she had attained a 70 percent but did not tell her at that time that she would not qualify for the remaining county office position (T2.10,11).

According to Debra McGurty, who had applied to respondent for a secretarial position in the past, she heard of the county office position vacancy from a neighbor and called Mr. Bland to ask if she could have an interview and take the secretarial test. She stated that her interview with Mr. Bland lasted about 10 minutes and he talked about what the job would require and

⁵Grievant opined that the test was more difficult than a mere competency test but she also stated that she had just completed her 6:00 a.m.-2:00 p.m. custodial shift before taking the one-and-one-half-hour test and that she may have been tired (T2.10,12,15).

salary and benefits (T4.___). After her interview, she took the test. Ms. McGurty said she received a letter a few days later advising that she scored 90.4 percent on the test and another letter that she received the position (T4.___).

Grievant faults respondent for not apprising her of the score necessary to pass the secretary skills test or of the score she attained after she tested. She takes exception with the 85 percent required to pass the test and contends that the test may lack validity. She argues that, while Marshall County Policy 4.14.1 provides for testing, it sets forth no standards or criteria for competency testing such as the score required to pass a test, and such personnel matters must be in writing and made known to employees.⁶ Based on her belief that the most senior employee should be hired,⁷ grievant seeks instatement to ~~the position at issue, secretary/receptionist at the county~~ office.

Respondent maintains that the skills test, uniformly administered to all, was properly developed by Mr. Bland and the business department staff at John Marshall High School and

⁶On her level four appeal (and Proposed Finding of Fact No. 9), grievant alleged her non-selection was reprisal on respondent's part because she exercised her grievance rights at earlier times on other matters. However, she did not pursue this charge at levels two or four with offer of any evidence on the matter, and it is therefore considered abandoned.

⁷Grievant cites Jervis v. Wayne County Board of Education, Docket No. 50-88-084 (November 2, 1988). Jervis is distinguished as the grievant therein had qualified by virtue of a test score while grievant herein did not.

persons who took the test and scored well found it to be relevant to a secretarial position and did not characterize it as overly difficult.⁸ It contends that the passing score was determined in order that skilled persons would qualify for the particular employment situation of secretary and, as such, bears no relationship to a school grading system. Respondent relies on a case decided in the Marshall County Circuit Court which basically held that the most senior service employee does not have an automatic right to promotion or job vacancies.

Discussion

The applicable law and the record herein ultimately favor respondent's position with respect to its determination that Debra McGurty be hired for the position in dispute. However, its overall treatment of grievant, a 15-year employee who admittedly "has received satisfactory evaluations of past job performance" (Respondent's Proposed Findings of Fact No. 2) is subject to question.

Mr. Bland testified as to his role in the process by which Ms. McGurty was hired: "My particular part was to inform her of the scores on each of the individual areas of the test and total proficiency score maintained there" (T4.__). Further, according to Ms. McGurty, she received a letter from Mr. Bland only a few days after she took the test informing her that she had attained a score of 90.4 percent on the test (T4.__). Because respondent

⁸The successful applicant testified at level four to this effect.

did not inform grievant that she had not passed the skills test to qualify as secretary after she took the test in early August, she unwittingly applied for the position at issue, posted August 16-22 according to Bland (T4.__), while not having a chance in the world of being selected for the position. Her request for retesting was denied because respondent had not yet fully developed alternative tests (T4.__).

It is clear from the record that grievant has not only fulfilled the demands of her custodial position during her 15-year tenure with respondent, but also devoted her time outside of the workplace to attain skills for job advancement. She deserves, at the very least, the same courtesy extended to non-employee applicants who are promptly apprised of their test results.⁹

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

⁹Selection procedures, including testing, must be administered uniformly to all applicants. It simply was not fair to interview and test grievant without apprising her of the nature and detail of the test, especially after she had completed a day's work. Further, inasmuch as respondent has established a system of proficiency testing to qualify its employees for out-of-classification positions and has had the secretarial test in place since 1987, it should complete and put into use those alternative tests it claims to be developing for periodic retesting opportunities of employees who remain interested in job advancement to the designated positions/classifications.

FINDINGS OF FACT

1. Grievant has been regularly employed by the respondent board of education as a school custodian for the past 15 years and has received satisfactory evaluations of her job performance.

2. For a number of years grievant has taken college courses at a local community college; she has earned a certificate in computer operator and an associate degree in business. She is currently enrolled in a bachelor's program in human resource management.

3. Respondent posted a Secretary III/Switchboard Receptionist (county office) position vacancy on or about August 17-22, 1988. Grievant made application for several "school-house" secretarial (Secretary II) positions beginning late July and also bid on the vacancy at the county office.

4. Pursuant to Marshall County Schools Policy 4.14.1, respondent administers a secretarial skills proficiency test to qualify all applicants for a secretarial position, including its own employee out-of-classification applicants "in accordance with the primary tasks to be assigned." According to the policy, an individual considered for employment "will demonstrate requisite skills such as filing, bookkeeping, typing, public reception, etc. by scoring acceptably on tests

5. The one-and-one-half-hour test in use by respondent was developed by school administrators and other relevant personnel. It consists of a written portion to test vocabulary, spelling, grammar and arithmetic skills and also includes a typing assignment. The testing procedure has been in place since 1987 and respondent requires a score of 85 percent of the testee in order to qualify as secretary.

6. The information provided in respondent's written policy about the secretarial skills testing and the nature, content and requirements of the secretarial skills test actually administered are inconsistent and may mislead a prospective testee.

7. In early August, grievant was called to come in for an interview and the school official's secretary told her "there would be some kind of test given." T2.13,14. Following interview of grievant, respondent then administered the proficiency test. Grievant was surprised about the content and length of the test and thought it difficult, but she had just finished her 6:00 a.m.-2:00 p.m. custodial shift and admitted she may have been tired. Grievant was disadvantaged in this situation because respondent did not tell her of the nature of the test prior to the day of testing or the qualifying score needed at the time of testing.

8. Respondent neglected to inform grievant of her test score or her eligibility status with respect to the various positions for which she applied. Grievant learned she had not been selected for the positions when she read from newspaper accounts that others had been hired.

9. Grievant eventually contacted school officials and was informed she had attained a 70 percent on the proficiency test. She believes that a score of 85 percent to qualify for secretary is unfair because that score would be considered passing in a school grading situation. However, she presented no expert testimony, law or policy to support her belief.

10. A non-employee, Debra McGurty, applied for the county office position and attained a score of over 90 percent. Respondent promptly sent McGurty her test results by mail and employed her. Respondent did not extend to grievant the common courtesies afforded the successful non-employee applicant.

11. Ms. McGurty, other testees and school staff who took the test and scored in the high ranges believed it to be reflective of a secretarial position and not overly difficult.

12. Respondent asserts that new tests are being developed to provide periodic retesting opportunities for out-of-classification employees who remain interested in secretarial

12. Respondent asserts that new tests are being developed to provide periodic retesting opportunities for out-of-classification employees who remain interested in secretarial qualification for job vacancies but alternative testing was not yet available for grievant who had bid on successive vacancies.

CONCLUSIONS OF LAW

1. A county board of education shall make decisions affecting the promotion and filling of service personnel positions on the basis of seniority, qualifications and evaluation of past performance. Qualifications shall mean that the applicant holds a classification title in the category of employment and must be given first opportunity for promotion and filling vacancies. W.Va. Code §18A-4-8b(b).

2. W.Va. Code §18A-4-8b(b) requires that when no regularly employed applicants hold a classification title for a vacant position, a school board must then consider out-of-classification employees who shall qualify by meeting the statutory definition of the job title.

3. A board of education may require competency testing for out-of-classification employees, Cook v. Wyoming County Board of Education, Docket No. 55-87-014 (May 14, 1987), and a basic skills test and other uniformly administered selection procedures are reasonable means by which to identify qualified

applicants for various positions. Moran v. Marion County Board of Education, Docket No. 24-88-178 (January 27, 1989).

4. State Board of Education Policy No. 5300(7) requires that all official and enforceable personnel policies be written and made available to county board of education employees, and school personnel laws and regulations must be strictly construed in favor of the employees they are designed to protect. Morgan v. Pizzino, 256 S.E.2d 592 (W.Va. 1979).

5. Inasmuch as respondent board has chosen to qualify out-of-classification applicants for certain service personnel positions via proficiency skills testing, it must comply with the provision of Policy No. 5300(7) and apprise all testees of requirements and results prior to and after testing.

6. A board of education may consider new service personnel (non-employees) for a position vacancy when certain categories/hierarchies of its own employees have not qualified for said position. W.Va. Code §18A-4-8b(b). Respondent's selection of the applicant for the position at issue is supported by the record as none of its employees qualified.

7. Notwithstanding respondent's inattention to detail regarding its testing policy and its lack of courtesy to grievant herein, its action did not prejudice grievant in

connection with the position at issue as she did not qualify via test score.

8. Grievant did not establish that she was entitled to the Secretary III/Switchboard Receptionist position at issue as a matter of law.

This grievance is accordingly **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Marshall 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 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:

February 28, 1989



Nedra Koval
Hearing Examiner