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JOAN SAVILLA

v.

Docket No. 89-40-546

PUTNAM COUNTY BOARD OF EDUCATION

D E C I S I O N

Joan Savilla has been regularly employed by Respondent Putnam County Board of Education for several years. On July 12, 1989, she initiated the following grievance:

Grievant, a Secretary III, applied for a position of Executive Secretary. Grievant did not receive the position and subsequently alleges a violation of. . .[W.Va. Code] §18A-4-8b(b). Grievant requests instatement to the position, retroactive back wages, benefits and seniority.

After waiver at Level I,¹ denial at Level II² and waiver at Level III,³ Grievant advanced her claim to Level IV, where it was the subject of a November 3, 1989, hearing. The parties requested and were allowed until November 30 to submit proposed findings of fact and conclusions of law. Both Grievant and Respondent met this deadline and the case is thus mature for disposition.

During Fall 1988, Ms. Jennie Hall, who served Respondent as Executive Secretary to then-Superintendent Stephen Baldwin, retired. Respondent posted the vacancy twice, in October and November 1988, but the position was not filled.⁴ Also during this time, apparently all secre-

¹ This Level I treatment was appropriate only if there was no authority there to grant the requested remedy and if Grievant's immediate supervisor agreed in writing to waive. See Bumgardner v. Ritchie Co. Bd. of Educ., Docket Nos. 89-43-222/etc. (June 12, 1989). It will be assumed these prerequisites were met, although the record includes a memorandum from Respondent's Superintendent Sam Sentelle, i.e., Level II, which purports to approve Grievant's request "to waive a Level I hearing."

² The Level II transcript is part of the record at Level IV and has been reviewed and considered herein.

³ See W.Va. Code §18-29-4(c).

⁴ In October, there were no applicants, and in November, there were eight, one substitute secretary in Respondent's employ and seven individuals not then working for the Putnam County Board of Education. Since W.Va. Code §18A-4-8b(b) appears to require the filling of posted service positions within twenty working days of the posting if any applicant is even eligible therefor per §18A-4-8b(b), a question arises as to whether any of the eight November applicants should have been successful. At Level II, Dr. Sentelle merely states "there were no applicants that were

(Footnote Continued)

taries in Respondent's central office, where the vacancy was located, were given the opportunity, in some certain order, to "bump up" to the job;⁵ none cared to take advantage of this option. According to testimony at Level IV, this "bump up" procedure is standard policy in the Putnam County system.⁶

Ms. Sandra Christy,⁷ a Clerk II/Secretary I regularly employed by Respondent in its central office, was one of those who declined the chance to "bump up." Mr. Baldwin, understandably frustrated at the continuing vacancy, enlisted the aid of a number of central office secretarial personnel to assist him until his resignation, which was

(Footnote Continued)

suitable." T. 21. However, the propriety of circumstances surrounding the November posting will not be further addressed in the context of this case.

⁵ It is not absolutely clear from the record whether this survey of central office secretaries occurred before, during or after either or both of the postings.

⁶ Without more information, the undersigned must assume this policy is based loosely on W.Va. Code §18A-4-15(4), which permits, under certain conditions, the use of regular employees who are "in the same classification category" as an absent staff member to fill in during the hiatus. At Level II, Grievant explained, "I know at the county office or on any job site when someone retires or leaves, if you do not call a sub in. . . , you can allow someone at the job site to go in on that to gain experience." T. 14.

Clearly, any policy which would allow persons to "bump up" to vacant positions on a permanent basis would be invalid. See Code §18A-4-8b(b).

⁷ Her surname is spelled "Christie" in some of the documentation surrounding this grievance. The other appears more frequently and so has been adopted for use herein.

effective shortly after January 1, 1989.⁸ Mr. James McGehee, an Assistant Superintendent, was appointed Interim Superintendent upon Mr. Baldwin's leaving. At some point, Mr. McGehee solicited Ms. Christy to assume the duties of the Superintendent's secretary effective early 1989,⁹ and after consideration, she agreed to do so. Although there is no indication that this arrangement was meant to be permanent, or anything more than an employee's assisting her employer with a critical need on an interim basis, a substitute was hired to fill Ms. Christy's original slot for the remainder of the 1988-89 school term.¹⁰

On May 2, 1989, Dr. Sam Sentelle became Respondent's Superintendent. On May 15, the position of "Executive Secretary, Superintendent" was again posted, this time with an "Effective Employment Date" of June 6.¹¹ Both Grievant and Ms. Christy applied, along with at least one other person, Ms. Barbara Southern. Dr. Sentelle interviewed both

⁸ Since his departure from Putnam County, Mr. Baldwin has served as Superintendent of Greenbrier County, West Virginia, Schools.

⁹ Ms. Christy may have performed some of the superintendent's secretarial duties in late 1988; however, the precise timing is of no consequence to the outcome herein.

¹⁰ The record does reveal that this slot was taken by another regular employee starting with school year 1989-90.

¹¹ At Level II, May 22 was identified as the date of the posting. This is in conflict with the posting document itself, Gr. Ex. 1, which lists May 15 as the relevant date.

Grievant¹² and Ms. Southern, and, since he considered himself familiar with Ms. Christy and her work through their daily association, he did not formally meet with her.

Although it is not precisely clear when, at some point, Dr. Sentelle became convinced that the posting, which has never been rescinded, T. 28, was in error since Ms. Christy was already in the position of Executive Secretary. At Level II, T. 21, he states, "The posting. . .should not have been made. I think if the job had been filled through the posting and through a seniority procedure that Mrs. Christy herself would have had a grievance." His basis for Ms. Christy's potential complaint is this excerpt from W.Va. Code §18A-4-8: "The county boards [of education] shall review each service personnel employee job classification annually and shall reclassify all service employees as required by such job classifications." Respondent also argues that it tried, unsuccessfully, to fill the Executive Secretary job twice during Fall 1988; it further implies "something had to be done," i.e., the placement of Ms. Christy which resulted in her misclassification. Ms. Christy was recategorized as an Executive Secretary effective June 26, 1989. T. 27.

¹² According to Grievant's testimony at Level II, Dr. Sentelle advised her during this interview that he did not intend to alter a work relationship that was going well, i.e., his with Ms. Christy, and encouraged her, Grievant, to apply for other jobs, which she did. She was the successful applicant for one of these.

It is, of course, true that service employees are entitled to annual evaluation of their duties to ensure proper classification. However, this protection is not intended to extend to employees who knowingly enter an agreement to provide supply duty in a vacant position, even on an extended schedule.¹³ Nor does it offer a county board of education a means of circumventing the Code §18A-4-8b(b) mandates that "all job vacancies" be posted and that they be filled "on the basis of seniority, qualifications and evaluation of past service."¹⁴

As a practical matter, the original placement of Ms. Christy into the Executive Secretary's role is understandable. The county superintendent's office needed a secretary, particularly during the multiple-transition period in question. It is also understandable that Superintendent Sentelle did not wish to disturb a working arrangement that was going well, and it is even laudable that he sought to follow education personnel law as he believed it applied,

¹³ Ms. Christy's work as Executive Secretary is repeatedly referred to as a "mutual agreement" in the record. See, e.g., T. 21.

¹⁴ As an aside, the record does not reveal either Grievant or Ms. Christy to have had service with Respondent under the "Executive Secretary" categorization prior to the May 1989 posting. If this indeed is true, neither would have had "seniority," see Basham v. Kanawha Co. Bd. of Educ., Docket No. 89-20-581 (Nov. 21, 1989) per Code §18A-4-8b(b) save for that statute's proviso, "The executive secretary class title shall be included in the same classification category as secretaries."

i.e., the protections against staff misclassification. However, actions based on a misinterpretation of law, even a well-intentioned one, cannot stand if incorrect. Steele v. Wayne Co. Bd. of Educ., Docket No. 89-50-260 (Oct. 19, 1989).¹⁵

It is not controverted that Grievant's relevant seniority with Respondent, see n. 12, is greater than Ms. Christy's. See Gr. Ex. 2. Further, it is stipulated that Grievant is qualified for the job of Executive Secretary. T. 22. Finally, it is undisputed that her past performance evaluations are quite good. See T. 11.

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

FINDINGS OF FACT

1. The position of secretary to Respondent's Superintendent of Schools, which is classified as Executive Secretary, became vacant during Fall 1988.

2. The vacancy was posted twice that Fall but not filled.

¹⁵ It is not clear just how long Ms. Christy would have to have performed the duties of Executive Secretary, or what other contingencies would need to have been met, before Respondent's reclassification action might have been more justified. However, suffice it to say the statute requires "annual" evaluations, and Ms. Christy had been working in the superintendent's office roughly only three to four months when the May posting was effected.

3. Sometime shortly after the beginning of 1989, Mr. James McGehee, who had just become or was about to become Interim Superintendent, convinced Ms. Sandra Christy, a central office secretary in Respondent's employ, to assume the duties of superintendent's secretary on a temporary but extended basis.

4. The position was again posted in May 1989, shortly after Dr. Sam Sentelle became Superintendent. On this occasion, Grievant and Ms. Christy were among the applicants for the job. Neither had applied during the previous two postings.

5. Dr. Sentelle and Respondent determined that the May posting was in error since Ms. Christy had been in the position for several months, and since W.Va. Code §18A-4-8 makes provision for a position's reclassification based on the actual duties its incumbent employee performs. Attendant to this, Respondent reclassified Ms. Christy to Executive Secretary status effective late June 1989.

6. The May posting, which lists June 6, 1989, as the "Effective Employment Date," was never rescinded by Respondent and was never the basis for the Executive Secretary position's being filled.

7. Grievant has been regularly employed by Respondent under the classification of secretary since November 1974. Ms. Christy has so worked since February 1980.

8. All formal evaluations of Grievant's past performance in Respondent's service have rated her quite favorably.

CONCLUSIONS OF LAW

1. "Boards [of education] shall be required to post. . . notices of all [service] job vacancies. . . for all school service employees to observe. . . ." W.Va. Code §18A-4-8b(b).

2. "A county board of education shall make decisions affecting promotion and filling of any service personnel positions of employment or jobs occurring throughout the school year that are to be performed by service personnel. . . on the basis of seniority, qualifications and evaluation of past service." Id.

3. "The county boards [of education] shall review each service personnel employee job classification annually and shall reclassify all service employees as required by such job classifications." Code §18A-4-8. This provision is intended to protect employees but not to extend to situations where an employee has entered into an agreement with her employer that, on a temporary basis, she will perform the duties of a vacant position outside her classification. To hold to the contrary would be to allow that employee and her employer to circumvent the selection-process standards of Code §18A-4-8b(b), see Conc. Law. 2.

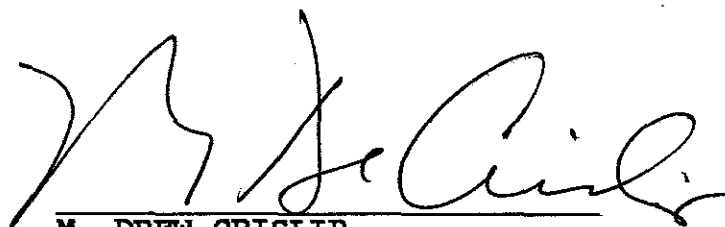
4. Actions of a county board of education or its authorized agent which, even though well-intentioned, are in contravention of the law, cannot stand. Steele v. Wayne Co. Bd. of Educ., Docket No. 89-50-260 (Sept. 22, 1989).

5. Grievant has greater seniority than Ms. Christy, Finding of Fact 6; is qualified to be an Executive Secretary, see Code §18A-4-8b(b); and has only high past performance ratings, see Finding 7.

Accordingly, this grievance is **GRANTED**. Respondent is ordered to instate Grievant into the position of Executive Secretary to its Superintendent of Schools forthwith, and to provide her with all attendant back-pay and -benefits commencing June 6, 1989.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Putnam 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.

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

M. DREW CRISLIP
Hearing Examiner

Dated: December 21, 1989