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**JAMES RICHARDS**

**v.**

**DOCKET NO. 89-BOR-515**

**FAIRMONT STATE COLLEGE**

**DECISION**

Grievant, James Richards, has been employed at Fairmont State College (FSC) for approximately ten years and is assigned to the maintenance department. Mr. Richards filed a level four grievance appeal on August 30, 1989 when the position of assistant stores supervisor was awarded to another applicant. The matter had previously been denied at levels one and two and the grievant exercised the option to bypass level three. A level four hearing was conducted on November 3, 1989 and proposed findings of fact and conclusions of law were filed by FSC on November 20, 1989.

A notice of vacancy for the position of assistant stores supervisor was posted on May 8, 1989. The notice stated the function of the position was to operate central receiving, central stores, warehousing, delivery and inventory control under the direct supervision of the Supervisor

of Central Receiving, Stores, Warehouse and Purchasing.

Specific responsibilities of the assistant supervisor were

receiving, unpacking, inspecting, storing and/or delivery of materials shipped to the College; direct and supervise persons assigned to assist in carrying out functions of job; correlate material received with College purchase orders, freight bills, etc., and document discrepancies; report damaged material received to carrier; issue materials from and maintain current inventory in central stores, maintain the College equipment inventory, including tagging of items received, completing inventory documentation, recording equipment shipped off campus for return, repair or disposal, and keeping inventory file current; maintain receiving area, central stores, and warehouse in an organized, efficient, and clean manner; keep necessary documentation and records; and perform related duties as assigned.

The minimum qualifications required were stated to be

high school graduation; supervisory experience; prior experience in receiving, stores, inventory, or warehousing; driver's license; math and clerical skill (some typing desirable); ability to lift, climb ladders, and operate a fork lift.

The applicants were given a test to measure their clerical and math skills and were interviewed by a committee whose members assigned numerical values to selected criteria. In addition to the skills test and the interview, references were also considered. After comparison of their notes and observations relating to the test scores, interviews and references, the committee awarded the position to Shirley Collins.

At the level four hearing the grievant testified that he has worked in the supply room nine years and has performed nearly all of the duties of the assistant stores supervisor on an informal, as-needed basis when other

personnel were outside the office.<sup>1</sup> Although not explicitly stated, the grievant appears to assert that this experience made him more qualified than the successful applicant who, he noted, could not drive a fork lift or lift heavy weights as required by the position posting and who did not know her job or the grievant's. The grievant also alleged that he has not been treated fairly by Ken Dillon, the physical plant administrator, who, the grievant believes, has developed the idea that the grievant and other employees should be kept where they are due to his perception that they have low mentality levels. The grievant testified that he had previously been told he was capable of doing the job but that a better man had been found. Yet when that individual did not accept the position it was offered to a third person even though he, the grievant, had been told he was the second choice.

The grievant stated that he had also been advised that he had not been selected for the position because he had shown no interest in the job and no initiative in learning. He argues that this statement was untrue because he had applied to take a computer class which would be useful in that the office was to become computerized; however, Mr. Dillon declined to approve his request based on a

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<sup>1</sup>This could be for a few minutes or for as long as two weeks according to the grievant.

determination that the grievant did not need the class at that time.

FSC concedes that the grievant has performed some of the assistant stores supervisor's duties when the previous position holder was absent due to illness or vacation; however, Mr. Dillon noted that the duties of the position had been upgraded.<sup>2</sup> Mr. Dillon testified that Ms. Collins was determined to be the most qualified applicant based upon her work experience at Gee Bee's, a local department store, where she had been employed as a receiving manager, a position similar in nature to the assistant stores supervisor. While at Gee Bee's Ms. Collins had supervised four or five employees, had unloaded and stocked merchandise and had been responsible for the completion of the attendant paperwork. Although she could not operate a forklift, Ms. Collins indicated a desire to learn and, while she could not lift as heavy a weight as the grievant, she could move a reasonable amount for her size.

Mr. Dillon denied that he harbored any ill will toward the grievant, with whom he had no close personal interaction. He also explained that he had denied the grievant's request to take the computer course based upon his policy not to approve attendance for daytime classes which were offered in the evening because the release of employees

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<sup>2</sup>There is no indication as to when the upgrade occurred or to what extent the duties have been changed.

during their shifts is counter-productive to the primary mission of the institution and the physical plant.

The grievant does not specifically allege a violation, misapplication, or misinterpretation of any statute, policy, rule, regulation or written agreement under which he works. While he argues that he was the most qualified applicant, there appears to be no specific or express requirement that institutions of higher learning hire the most qualified applicant, or even an applicant who is already employed at the institution. Howard v. West Virginia University, Docket No. 89-BOR-083 (July 31, 1989); Smith v. West Virginia University, Docket No. BOR-88-079 (Dec. 7, 1988). Although the grievant perceives a feeling of ill-will from his department administrator, that individual denies that it exists. FSC cites only Affirmative Action and Equal Opportunity guidelines as controlling factors in the hiring of new employees.<sup>3</sup> Absent any showing of entitlement or violation of a specific statute, rule, regulation, or policy, the grievance cannot be granted.

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<sup>3</sup>The Affirmative Action and Equal Opportunity Policies generally provide for equal employment opportunities by prohibiting discrimination and requiring additional efforts to recruit and promote qualified members of designated groups including veterans of the Vietnam era, persons between the ages of 40 and 70, members of racial minorities, and women; thus FSC was in compliance with these policies.

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 FSC and is assigned to the maintenance department.

2. In May 1989 FSC posted a notice of vacancy for the position of assistant stores supervisor.

3. The applicants, including the grievant, were given a clerical and math skills test and were interviewed by a committee.

4. After considering the test scores, interview results and recommendations, the committee awarded the position to Shirley Collins who they determined to be the most qualified applicant based in part on her experience in a similar position of receiving manager at a local department store.

5. The grievant has performed some, and perhaps all, of the duties of assistant stores supervisor on an as-needed basis during the absence of the former assistant supervisor.

6. Neither the grievant nor the successful applicant met all of the minimum qualifications listed on the job posting. The grievant was found to be deficient in typing skills, inventory management, and record keeping while the successful applicant could not operate a forklift.

## Conclusions of Law

1. It is incumbent upon a grievant seeking relief pursuant to W.Va. Code §18-29-1 et seq. to prove all of the allegations constituting the grievance by a preponderance of the evidence. Durrett v. Fairmont State College, Docket No. 89-BOR-122 (Feb. 20, 1990); Romeo v. Harrison County Board of Education, Docket No. 17-88-013 (Sept. 30, 1988).

2. The grievant has failed to prove by a preponderance of the evidence that he was more qualified than the successful applicant or that FSC violated any statute, rule, policy, or procedure in the filling of the vacancy.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Marion County or to the Circuit Court of Kanawha 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: March 29, 1990

Sue Keller  
SUE KELLER  
SENIOR HEARING EXAMINER