JESSE MULLINS

v. **Docket No. 94-20-364**

KANAWHA COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Jesse Mullins, grieves his non-selection by the Kanawha County Board of Education ("KCBOE") for the position of Program Manager, Regional Compliance Training Center. Mr. Mullins initiated this grievance on August 17, 1994, and on that same date Mr. Alvin Brown, Principal at Benjamin Franklin, stated he could not resolve the grievance at his level (See footnote 1). The grievance was denied at Level II and waived at Level III. A Level IV hearing was held on September 21, 1994 and this case became mature for decision on October 7, 1994.

Issues

Grievant makes two major arguments. First, he states he was "better qualified" for the position than the successful applicant ("SA") and second, he states that the SA was not properly certifiedfor the position and thus, he should receive this position. Respondent argues the Grievant does not meet the minimum qualifications for the position and the SA was better qualified for the position. Additionally, KCBOE states certification was not required in the posting because the position did not deal with school-age students, but rather adult learners from the work place.

Background

Dr. Diana Long, Coordinator of Services to Business and Industry, testified at both Levels II and IV. Dr. Long acts as a liaison with area companies to develop training programs. These programs utilize the vocational schools as training sites and Dr. Long finds instructors and resources for these programs. These programs are self-supporting.

Dr. Long identified a need for a training program in the local area and wrote a grant proposal to obtain start-up monies. She received funding from the Appalachian Regional Commission in

Washington, D.C. The goal of this grant was "to establish a generic regulatory compliance training center to assist manufacturers, contractors and workers by designing and implementing training programs that would provide regulatory compliance instruction at a centralized location in Kanawha County." Grievant's Exh. No. 6. In other words, this center would provide the training required by the Occupational Safety and Health Administration ("OSHA") and the Environmental Protection Agency ("EPA") to outside workers before they entered plants like Union Carbide. Because the training would be generic and agreed-upon bythe surrounding plants, these workers would attend only one training session a year, as opposed to a different one for each plant. Savings to businesses in terms of "down time" should be substantial.

This two-year grant called for two positions the first year, a director and an administrative assistant. The second year courses were to be offered, and the program was to become self-supporting by the third year. Dr. Long asked for and received permission to post the Director's position and the following vacancy notice was posted on May 17, 1994.

A vacancy will exist for the following administrator position for the 1993-94 school year. Minimum requirements are as follows:

1) Masters Degree in Vocational Education, Safety or Environmental Protection.

2) Six years work experience in related field.

3) Industrial training experience.

4) Knowledge of federal and state OSHA and EPA regulations.

5) Experience working with regulatory agencies.

6) Experience and knowledge of training program evaluations.

7) Demonstrated ability to manage projects.

8) Demonstrated ability to manage work teams.

9) Demonstrated ability in curriculum development.

10) Demonstrated communications skills (oral and written).

11) Willingess [sic] to work flexible hours.

The attached job description listed the above-identified requirements plus additional information:

TITLE:

Project Manager Regulatory Compliance Training Center

Division of Administration and Instruction

QUALIFICATIONS: (as previously listed at 3)

REPORTS TO:

Coordinator, Services to Business and Industry

SUPERVISES: Administrative Assistant

Clerk

Park-time instructors

SUPPORT RELATIONSHIPS:

Works cooperatively with vocational staff, Plant Managers, Policy Advisory Board, Advisory Committee and Users Committee to establish and operate GRCTC.

JOB GOAL:

Develop and implement general regulatory training compliance center.

PERFORMANCE RESPONSIBILITIES:

1.

Plan and implement a generic regulatory compliance training center according to project guidelines and work plans.

2.

Develop policies and procedures for program administration.

3.

Supervise development of curriculum.

4.

Manage budget in accordance with Kanawha County Schools policies' and procedures.

5.

Design tuition/fee structure to enable center to be 100% self sufficient after year two of the project.

6.

Responsible for administration of all aspects of the center.

7.

Evaluate programs.

8.

Establish class schedules.

9.

Interface with plant managers, contractors, small business owners and workers.

10.

In summary, (per WV State Board Policy 5310) the following teacher responsibilities are part of the [sic] this job description.

WVSB 13.1

implementing program of study,

WVSB 13.2

fostering a classroom climate conducive to learning,

WVSB 13.3

utilizing instructional management systems models which increase student learning,

WVSB 13.4

monitoring student progress towards mastery of instructional objectives and goals,

WVSB 13.5

communicating within the educational community, and

WVSB 13.6

meeting professional responsibilities.

TERMS OF EMPLOYMENT:

12 months [sic] basis, salary in accordance with established Director pay schedule.

EVALUATION:

Performance of this job will be evaluated in accordance with provisions of Board policy on evaluation of professional personnel.

JOB DESCRIPTION REVIEW:

This job description will be reviewed annually by the Superintendent.

All job descriptions will contain the information and facts considered essential to describing and evaluating job performance fairly and equitably. They should not be

construed as detailed statements of all the work required to be performed.

Grievant was one of several applicants for the position. After review of the initial resumes and applications, Dr. Long interviewed only two individuals, Beverly Jarrett, the SA, and Mr. William Kimble. She did not interview Grievant because she thought he did not meet the minimum qualifications for the position. Grievant did not demonstrate knowledge of or experience in OSHA and EPA regulations or work experience in related fields or working with regulatory agencies.

Grievant argued he should have been granted an interview so he could supplement his resumé and answer any potential questions. Additionally, Grievant stated he thought Dr. Long was aware of his abilities and qualifications because he had taught part-time in one of her community education programs for approximately two years.

Grievant taught classes for the South Charleston Stamping and Manufacturing Plant ("SCSMP") in the manufacturing orientation training program offered through Dr. Long's office and designed by her. The purpose of this two-week, forty-hour, evening training was to give potential employees an overview of what it is like to work in a manufacturing facility. Level II at 44. This program taught a variety of subjects with a focus on safety. Other topics were basic math and measurement, first aid, and an overview of welding, forklift operation and fluid power. A test wasadministered at the end of the course and utilized by the potential employer in employee selection.

Dr. Long testified that the curriculum submitted by the Grievant of this program had changed since she had designed it, was covering material not approved by her, and would not comply with any OSHA or EPA requirements in the safety area.

A review of Grievant's qualifications reveals he received a diploma in diesel mechanics in 1966, a Baccalaureate of Arts from West Virginia State College in 1988, and a Master of Science Degree from Marshall University in 1990. He is certified in vocational education and professional administration and has a salary class of Master's degree plus 45. He worked as a Shift Foreman in the military from 1966 to 1969 and was Engine Test Operator for a diesel manufacturer from 1969 to 1972. He taught diesel mechanics from 1972 to 1989 with Kanawha County Schools ("KSC") and has taught automobile technology from 1989 to the present time at Ben Franklin Career Center.

At both the Level II and Level IV hearings, the Grievant reviewed the eleven minimum qualifications in the job posting and discussed how he met them (See footnote 2). The key points from

his testimony are as follows:

1. Education: Grievant met this requirement with a Master's Degree in Vocational Education.

2. Related Work Experience: Grievant testified he had "worked 23 years in vocational education, safety." He further stated he dealt with EPA in 1966-1969 when he was in the military and he worked in a Detroit plant and was present when OSHA and EPA conducted numerous inspections of the plant. There was no indication he played a part in these inspections.

3. Industrial training experience: Grievant taught adult night, part-time classes for two years for the SCSMP. Many of these classes dealt with basic aspects of plant safety. Dr. Long testified that this program did not meet the strict OSHA and EPA requirements and was only a program to help a potential employer select viable employees.

4. Knowledge of Federal and State OSHA and EPA Regulations: Grievant stated he had taught some of these regulations at the SCSMP and some in vocational school. Dr. Long testified the course content of this part-time course would not comply with the OSHA and EPA requirements.

5. Experience Working with Regulatory Agencies: Grievant stated the State Fire Marshal visited his school three to four times a year, and that the insurance company for KSC made periodic inspections of his work area. Further, Grievant stated he had been out in the work area when OSHA and EPA had "run air samples and check everything out." Grievant did not participate in these inspections. Grievant also testified that he kept a copy of the OSHA regulations, and knew where the OSHA office was in Charleston.

6. Experience and Knowledge of Training Program Evaluations: Grievant stated he and his programs were evaluated every year. He testified he also evaluated his own programs.

7. Ability to Manage Project: Grievant stated he managed vocational education and this was like a "series of programs." Grievant also stated he managed programs in the military as a shift foreman and once managed the Welding Shop for nine or ten months.

8. Ability to Manage Work Teams: Grievant stated that while in the military he once oversaw a team of 33 people that cleaned up contaminated ice in Greenland. He was in charge of the loading and transportation of these materials.

9. Ability and Curriculum Development: Grievant has developed "an awful lot" of curriculum and constantly updates and modifies his courses.

10. Communication Skills: Grievant stated he had good communication skills, "it doesn't bother

me to speak," and he was "computer fluent."

11. Flexible Hours: Grievant was willing to work flexible hours.

A review of the SA's resumé, supplemented by Dr. Long's testimony, reveals she received a BA with an Emphasis in Communications in 1991, a Master of Science and Safety Management in 1992, and a Master of Science in Adult Technical Education with an emphasis in training and development in 1993. She worked from1976 to 1993 at the Rhone-Poulenc AG Company (See footnote 3). From 1976 to 1986 the SA worked as an Advanced Laboratory Technician. A portion of that position included conducting safety and job specific training of laboratory and operating personnel. From 1986 until she was hired for this position, she was the Training Administrator and a Safety and Training Consultant. In that position she conducted needs analysis to assess what type of safety training was needed and then coordinated and conducted this comprehensive safety training program plant-wide. She also developed safety policies and procedures, designed safety programs, conducted accident investigations, managed a departmental budget, and produced and directed in-house training videos. Grievant was also involved in employee relations, supervised office staff and served on committees. Grievant made sure her company's programs were in compliance with required governmental regulations and worked with the contractors this program was designed to serve.

After a thorough review of the minimum requirements of the position and a comparison of these with the qualifications of the Grievant, it is clear the Grievant does not meet the minimum qualifications for the position. Grievant, although obviously well qualified for his current position, does not possess the necessary industrial training experience, the necessary experience working with regulatory agencies, or the necessary knowledge of Federal or State regulations required for this position. Thus, no violationhas been shown in the non-selection of Grievant for the position as he was not qualified.

In order for Grievant to pursue the second part of his grievance, whether certification was required for the position, he must show he was "adversely affected" by the employment decision being challenged. Weaver v. Mason County Bd. of Educ., Docket No. 94-26-028 (Oct. 25, 1994); Pomphrey v. Monroe County Bd. of Educ., Docket No. 94-31-183 (July 1, 1994). Since Grievant is not qualified for the position in question he does not have standing to challenge the KCBOE's selection of the SA. Weaver, supra at 8.

In addition to the foregoing discussion the following findings of facts and conclusions of law are

appropriate to the disposition of this matter:

Findings of Fact

1. Grievant and the SA, among others, applied for the position of Plant Manager, Regional Compliance Training Center.

2. Grievant did not meet the minimum requirements for the position as listed in the posting and the attached job description.

Conclusions of Law

1. In a grievance alleging improper selection, Grievant has the burden of proving the allegations of his complaint by a preponderance of the evidence. Weaver, supra; Runyon v. Mingo County Bd. of Educ., Docket No. 93-29-481 (Apr. 4, 1993).

2. Grievant has not met his burden of proof and demonstrated he was qualified for the position.

3. Board's of education are not required to interview all applicants for a position. Floren v. Kanawha County Bd. of Educ., Docket No. 93-20-176 (July 14, 1993).

4. Given that Grievant was not minimally qualified for the position, he lacked standing to complain about alleged improprieties in the selection of another individual for the vacancy as he has not shown that he was "adversely affected" by the employment decision being challenged. Weaver, supra; Pomphrey, supra.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County 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 Administrative Law Judges is a party to such appeal, and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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JANIS I. REYNOLDS

Administrative Law Judge

Dated: December 29, 1994

Footnote: 1Prior to the initiation of this grievance, Mr. Mullins requested a statement of reasons why he was not selected pursuant to W. Va. Code, §18A-4-7a. Dr. Long responded on June 29, 1994 stating he did not meet the minimum qualifications and outlined the areas in which he did not meet the requirements. Level IV Exh. #4.

Footnote: 2Much of this information given at hearing was not included in the Grievant's resumé.

Footnote: 3This work record includes its predecessor company, Union Carbide.