PENNY BOOTH, .

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Grievant, .

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v. . Docket No. 94-BOT-066

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WEST VIRGINIA BOARD OF TRUSTEES .

at MARSHALL UNIVERSITY, .

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Employer. .

D E C I S I O N

Penny Booth (hereinafter Grievant) appealed to level four of the Grievance Procedure for Education Employees, West Virginia Code §18-29-1 et seq., on February 28, 1994, after having received an adverse decision on her grievance at level three from Marshall University (hereinafter Marshall). The level four hearing was held at Marshall's campus in Huntington, West Virginia, on April 13, 1994. After receipt of Marshall's post-hearing brief on May 11, 1994, the case became mature for Decision. Grievant claims that she was improperly denied an interview pursuant to W.Va. Code §18B-7-1 for an Administrative Assistant position which was posted andfilled by Marshall. The following findings of fact are deduced from the record developed at both levels three and four.

Findings of Fact

1. Grievant works as a Secretary III within Marshall's Community and Technical College, Office of Technology and Applied Science Technology Division. She has also been a part-time instructor

within Marshall's English Department.

2. A position of Administrative Assistant within the Enrollment Management Office was advertised on September 2, 1993. This position was both advertised on and off campus. The posting reads as follows:

> Administrative Assistant (Enrollment Management). Pay Grade 11, Salary $1536/monthly. Minimum qualifications: University graduation and two years of experience as a manager or in a supervisory capacity, preferably in an academic setting; knowledge or recruitment, retention, and graduation requirements; budgeting methods and techniques. Preference will be given to candidates with demonstrated experience in computer applications. Send cover letter and detailed resume to: Dr. Warren G. Lutz, Enrollment Management, Marshall University, 400 Hal Greer Blvd., Huntington, WV 25755. Application deadline: October 5, 1993.

3. The position at issue is a classified-exempt, professional position.

4. A three-member screening/search committee was formed to determine which candidates were minimally qualified for the position and to decide who would be interviewed for the position.

5. Approximately fifty-four applicants applied for this position.

6. Grievant applied by sending a resume to the address listed on the posting.

7. The search committee reviewed the candidates' resumes and cover letters looking for the following five areas: possession of a degree, administrative experience, computer experience, knowledge of enrollment concepts and knowledge of budgeting methods and techniques. As the candidates' materials were reviewed, the committee members used a sheet of paper to chart whether the candidates met each minimum requirement.

8. Of the fifty-four candidates, the search committee determined that only four met all five of the minimum requirements. Grievant was not determined to be minimally qualified as she was not deemed to have any administrative experience or knowledge of enrollment concepts.

9. The search committee then notified the Office of Affirmative Action that it had reviewed all of the candidates' credentials. It informed that office of its initial findings by submitting an Affirmative Action Applicant Flow Data Sheet. On this document, there is a space established for comments. The search committee used this area as a means of identifying who was to receive an interview.

10. On the Data Sheet discussed above, the secretary in the Affirmative Action Office added the notation "interview" on the comment line corresponding to two candidates not recommended for an interview by the search committee. The secretary performed this act because she believed that

the two individuals in question currently held the class title of Administrative Assistant, and therefore, were minimally qualified for the position in question. This employee's action was contrary to the established practice of the Affirmative Action Office.

11. The search committee interviewed the six applicants judged to be minimally qualified and offered the position to one of those applicants.

Discussion

Grievant contends that the selection process was flawed in two ways. First, she contends that she was minimally qualified for the position based upon her work experience and current position, and therefore, as an internal candidate she was entitled to an interview pursuant to Code §18B-7-1. Second, she avers that the selection process was flawed by the addition of two candidates to the interview list by the secretary in the Affirmative Action Office. As relief, Grievant requests that the selection process be conducted anew and that she be granted an interview for the position. Marshall contends that Grievant was not entitled to an interview because she was not minimally qualified for the position. It admits that the secretary within the Affirmative Action Office acted in a manner inconsistent with that Office's past practice; however, it avers that such action was harmless error given Grievant's request for relief, and based on the fact that neither of those candidates was hired. For the following reasons, the Undersigned must conclude that Marshall is correct in its stated positions.

W.Va. Code §18B-7-1(d), states, in pertinent part,

> A nonexempt classified employee, including a nonexempt employee who has not accumulated a minimumtotal of one thousand forty hours during the calendar year, who meets the minimum qualifications for a job opening at the institution where the employee is currently employed, whether the job be a lateral transfer or a promotion, and applies for same shall be transferred or promoted before a new person is hired unless such hiring is affected by mandates in affirmative action plans of requirements of Public Law 101-336, the Americans with Disabilities Act. . . . [Emphasis added].

There has been argument presented by both sides as to whether this statutory provision awards nonexempt employees preference over outside candidates for both nonexempt and exempt positions or whether such preference only applies to vacant, nonexempt positions. This question need not be answered in this case as the proper focus on the provision is with the language "who meets the minimum qualifications." Regardless of whether nonexempt employees have preference for positions

over outside applicants for both types of positions, a nonexempt employee cannot be granted preference for any position for which he/she is not minimally qualified.

In the instant case, Marshall was not bound to grant Grievant an interview for the position in question if she was not minimally qualified for said position. (See footnote 1) The only issue in this case iswhether the selection committee acted arbitrarily or capriciously in deciding that Grievant was not minimally qualified for the Administrative Assistant position. There is no evidence that would tend to lead one to the conclusion that such was the case.

It was reasonable for the selection committee to devise a method to screen the candidates so that it would not have to interview all fifty-four of the applicants. This was accomplished by a review of the candidates' resumes and cover letters submitted in response to the job posting which stated, "send cover letter and detailed resume to: Dr. Warren G. Lutz . . .." Further, the focus of the committee's initial review was upon the same preferred credentials expressly listed in the job posting.

Hiring decisions, such as in this case, are necessarily based upon a subjective analysis of various factors. The Undersigned cannot substitute his judgment for that of the decision-maker as that is not the proper standard of review. The Undersigned's proper review herein is to determine whether the members of the selection committee acted arbitrarily or capriciously in the mannerin which it made its determinations. Based upon a review of Grievant's resume, the information which the committee reviewed, it is reasonable to conclude that it does not contain reference to knowledge and experience in all five of the areas considered by the selection committee. There is some reference on her resume to responsibilities which could be related to budgetary matters and administrative experience; however, it does not seem unreasonable for the committee to have concluded from a careful review of said document that she does not have knowledge of enrollment concepts. Grievant asserts that she should have been considered minimally qualified for the position because she currently holds a secretary III classification. Even upon a review of the functional job description for Secretary III, there is no explicit reference to budgetary matters or enrollment related duties. This argument is not persuasive.

Although the selection committee had the obligation to act reasonably and to thoroughly and carefully consider the qualifications of the candidates, as exhibited by the materials they submitted, so did Grievant bear the burden to be precise in detailing her qualifications for the position so that the committee could make its determination. If Grievant possesses skills and abilities relating to the

qualifications for the position which she sought, but which she did not effectively communicate to the committee, she failed to met her obligation to be persuasive. See generally, Merritt v. Kanawha Co. Bd. of Educ., Docket No. 91-20-439 (Feb. 5, 1992). It is hereby determined that thesearch/selection committee did not act arbitrarily or capriciously in the matter at hand. Therefore, based upon the evidence of record, Grievant has failed to establish a violation of W.Va Code §18B-7-1(d). Further, assuming arguendo, it was improper for the two names to be added to the interview list by the secretary of the Affirmative Action Office, such error is deemed to be harmless given that Grievant has failed to establish that she was minimally qualified for the position in question.

The foregoing discussion of the facts of the case and of the law applicable to those facts is hereby supplemented by the following appropriate conclusion of law.

Conclusion of Law

Grievant has failed to establish by a preponderance of the evidence any violation of W.Va. Code §18B-7-1(d) on behalf of Marshall or any agent acting on Marshall's behalf with regard to the filling of an Administrative Assistant position posted on September 2, 1993.

Therefore, this grievance is hereby **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Cabell 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 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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ALBERT C. DUNN, JR.

Administrative Law Judge

July 25, 1994

Footnote: 1There is no language in Code §18B-7-1(g) giving an employee a right to an interview. Nonexempt employees who meet the minimum qualifications are entitled to consideration for a vacant position after each "internal" candidates' qualifications and seniority is compared and contrasted. No interview is mandatory, even though interviews are generally

recognized as a tool by which relative qualifications of applicants may be judged. Compare, Floren v. Kanawha Co. Bd. of Educ., Docket No. 93-20-176 (Jul. 14, 1993). However, Marshall has both adopted and broadened the mandates of this statutory provision within the Employment Procedures sectionof its Classified Staff Handbook. The applicable language of this provision from the Handbook reads as follows:

> *Marshall University employees (full or part time regular employees) are considered to be 'internal candidates' when applying for other staff positions at the University. Internal candidates are guaranteed an interview if they meet the minimum qualifications for the position and apply for the position in a timely manner by meeting the deadlines.*

Again, the focus of this provision, if applicable to the position at issue herein, is the phrase "if they meet the minimum qualifications."