CHRISTINE ZIRKLE, et al.

v. Docket No. 95-15-073

HANCOCK COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievants are employed by Respondent Hancock County Board of Education (HCBE) as regularly-employed bus operators. They advanced the following complaint to level four for a decision based on the record adduced below:

By not posting and bidding Bus Runs as full-time positions instead of [sic] leave of absence in which they are not. This prevents a person from bidding into and holding a regular position. It also prevents regular person[n]el from bidding on a regular position to improve their working cond[i]tion. This is [a] violation of WV Code 18A-4-8b. We would just like to have full-time vacancies posted and bid as such.

The case became mature for decision on June 14, 1995, the cut-off day for the submission of fact/law proposals.1

_____

1In addition to Christine Zirkle, the other named grievants are Valerie Tibbs, Pamela Smith, Betty Colvin, Thomas Falter, and Joanne McClain. Adverse decisions on this grievance were rendered at levels one and two on December 20, 1994 and February 3, 1995, respectively.

The issue in this case is whether HCBE violated the posting and hiring requirements of W.Va. Code 18A-4-8b when it deter mined that certain vacancies were temporary rather than perma nent vacancies, and posted them as temporary jobs.2 Grievants

claim their "rights have been violated" because HCBE posted certain vacancies as leave of absence (LOA) jobs instead of as regular vacancies. Grievants request that the jobs be posted as regular vacancies so "they can bid upon them and feel secure that these jobs will be there for them." T.5.

HCBE denies any violation of Code 18A-4-8b. It contends it properly posted and filled some jobs in Fall 1994 as tempo rary vacancies in order to preserve jobs and work for bus operators on approved LOA.

Grievants have the burden of proving their case by a preponderance of the evidence. Rupich v. Ohio County Bd. of Educ., Docket No. 89-35-719 (June 29, 1990); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). Grievants Zirkle, Tibbs and Smith testified as to their knowl edge of certain bus routes which had been posted as temporary jobs or LOA jobs, in particular, Route Nos. 32, 36 and 41, and of the operators who had previously held those jobs. Despite

---

2Code 18A-4-8b states, in pertinent part:

Boards shall be required to post and date notices of all job vacancies or established existing or newly created positions in conspicuous working places . . . for five working days. The notice . . . shall include the job description, the period of employment, the amount of pay and any benefits and other information that is helpful to the employees to understand the particulars of the job.

their claims that they knew these jobs were not LOAs, or should not be LOAs, they offered nothing in the way of substantiation.

See T.7-22.

On the other hand, HCBE Assistant Superintendent Ronald Daugherty testified convincingly that the jobs in question were properly posted and filled as temporary or LOA jobs. See T.24-35. Moreover, Grievants did not refute Mr. Daugherty's representations. While Grievants may have a strong desire for the jobs in question to be posted as regular jobs, they offered no basis in fact or law that HCBE improperly posted and filled those jobs as temporary, LOA assignments.

Based on all matters of record, the following formal findings of fact and conclusions of law are properly made.

Findings of Fact

1. HCBE posted a number of temporary, LOA bus driving assignments in Fall 1994.

2. In December 1994, Grievants, regular bus operators with full-time contracts, objected to the manner in which the jobs were posted, and filed a grievance.

3. During the level two hearing, Grievants specified that they objected to the posting for bus Route No. 32, Route No. 36 and Route No. 41, as temporary, LOA assignments.

4. Grievants, as regular bus operators, had hiring priority over substitute bus operators for bus Route Nos. 32, 36 and 41.

5. Grievant Pamela Smith was the only Grievant who bid on the three runs; however, she declined to accept any of the positions once offered to her. At that time, and during the level two hearing, she already occupied a LOA position upon which she had previously bid.

6. Since no regular bus operator bid on and/or accepted the bus runs in question, the runs were ultimately awarded to

substitute bus operators.

7. While Grievants asserted that LOA status should not apply to the runs in question, they failed to explain why they had not sought those jobs if they believed no one existed who could return and claim them.

8. HCBE established that there are seven bus operators on approved leaves of absence and that, therefore, seven positions, including bus Route Nos. 32, 36, and 41, must be secured as LOA assignments in the event of the LOA workers' return.3

Conclusions of Law

1. Grievants have failed to present any evidence in support of their allegation that the positions for bus Route Nos. 32, 36 and 41 are illegally posted as temporary, LOA assignments.

2. Grievants failed to establish that HCBE should post and fill the positions for bus Route Nos. 32, 36 and 41 as permanent vacancies.

3Actually, HCBE produced evidence that eight bus operators are on LOA, Brenda Helmick, Maxine Mills, Carmen Tice, Tonya Shenton, Donna Gaston (1/2 day employee) Patricia Pugh, Harry Rowe, and Jayell Froats.

3. Grievants have failed to demonstrate any violation of W.Va. Code 18A-4-8b with respect to the manner in which HCBE posted the positions for bus Route Nos. 32, 36 and 41.

Accordingly, this grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Hancock 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 appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate Court.

_____

NEDRA KOVAL

Administrative Law Judge

Date: June 15, 1995