BILLIE J. SLONE,

Grievant,

v. DOCKET NO. 95-06-055

CABELL COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Billie J. Slone, at the time this grievance arose, was employed by Respondent Cabell County Board of Education as a 1/2-time Cook at Spring Hill Elementary School. She filed the following appeal to Level IV: (See footnote 1)

> Violation of WV Code 18A-4-8b in regard to the 1/2 time cook position in which the particulars of the posted job position were lacking, causing the grievance's (sic) misinterpretation regarding conditions of employment. Relief sought is for grievant to be compensated, less full days worked, for half days she lost due to the lack of time particulars on the job posting.

The material facts are not in dispute and are summarized in the following findings.

Findings of Fact

1. Grievant, at all relevant times, was employed by Respondent as a 1/2 time Cook at Spring Hill Elementary School. Grievant worked from 10:00 a.m. - 1:30 p.m, the "afternoon shift."

2. At the end of the 1992-93 school year, Respondent properly reduced in force (RIF'd) a 1/2 time cook position from Beverly Hills Middle School. Later that summer, after assessing the student count and the needs of the school, it was determined that the 1/2 time cook position was needed at Beverly Hills.

3. Respondent subsequently posted several vacancies from July 23 to July 29, 1993, including four vacancies for Cook I and II. The first vacancy on the posting was for a full-time cook at

Barboursville Middle School, which provided the salary schedule, period of employment, and a description of the duties which would be required of the position.

4. Three 1/2 time cook positions at Altizer Elementary, Beverly Hills Middle, and Milton High Schools, followed this listing, also providing salary schedule, period of employment, and under the description category, stated "Same as above description", referring to the Barboursville position. Following the notation "same as above description" on the vacancy for Milton High School, the description also stated "HOURS: 9:30 a.m. - 1:00 p.m." Level II, Jt. Ex. 2.

5. Grievant saw this posting and was particularly interested in the Beverly Hills 1/2 time Cook position. Grievant assumed the starting and ending times for the Beverly Hills position were from9:30 a.m. - 1:00 p.m., the "afternoon shift", because she was aware that the individual who had held this position before being RIF'd worked from 9:30 a.m. - 1:00 p.m. Level II Tr., Slone, p. 20.

6. Based upon this assumption, Grievant did not apply for the position at Beverly Hills because she did not wish to simply trade her existing position at Spring Hill for the Beverly Hills job. Level II Tr., Slone, p. 20.

7. The Beverly Hills 1/2 time Cook position was awarded to Monica Johnston.

8. After the position had been filled and the posting taken down, Grievant called the office of the Manager of Service Personnel, because she knew Ms. Johnston already had a 1/2-time, afternoon shift, cook position at Beverly Hills. Grievant then learned that the vacancy was from 6:30 a.m. - 10:00 a.m., and Ms. Johnston was able to fill that position without it interfering with her afternoon shift. Level II Tr., Slone, p. 22.

9. There is no dispute that Grievant is more senior than Monica Johnston and would have been offered the position had she applied.

10. Grievant and three others subsequently filed this grievance. (See footnote 2)

Arguments

When the position of 1/2-time Cook position at Beverly Hills was posted, Grievant did not apply for the job and it is not contested that the person who did apply and receive the job met the posted requirements and was otherwise qualified for the position. Grievant alleges that the Cabell County Board of Education acted improperly in posting the position with no specifically identified starting and ending times. It is her contention that this action by the Board misled her as to the true nature of the

position and discouraged her, and other qualified employees, from making application. Grievant also alleges that the Board is guilty of favoritism in adjusting the work schedules at Beverly Hills to enable Monica Johnston to receive the 1/2 time cook position.

The Board responds 1) that there is no West Virginia Code provision requiring it to post any position with specific starting and ending times, and 2) it did not abuse its discretion nor show favoritism in awarding the position to Ms. Johnston, the most-senior individual who applied for the position.

Discussion

West Virginia Code § 18A-4-8b states, in pertinent part:

> Boards shall be required to post and date notices of all job vacancies of established existing or newly created positions in conspicuous working places for all school service employees to observe for at least five working days. The notice of such job vacancies 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.

There is no statutory provision in W. Va. Code § 18A-4-8b which requires the board to set a specific contract term for a position. Smith v. Lincoln County Bd. of Educ., Docket No. 22-87-112-3 (Mar. 18, 1988). Further, W. Va. Code § 18A-4-8b does not expressly mandate that service personnel positions be posted as shift-specific. Ennis v. Ohio County Bd. of Educ., Docket No. 93-35-516 (May 31, 1994). Thus, the Board did not violate W. Va. Code § 18A-4-8b by not posting starting and ending times for the 1/2 time Cook position at Bevery Hills listed on the posting. (Cf. Weaver v. Mason County Bd. of Educ., Docket No. 94-26-129 (Nov. 22, 1994), where it was held the board violated Code posting requirements by not including the "period of employment" in the posting, as specifically mandated by the statute.)

Indeed, Grievant testified that, in the past, when applying for Cook positions, she often called the Principal of the school or the Head Cook to determine what shift was being advertised before deciding whether to apply. Grievant did not make such inquiry in this case until after the position was filled. LIII Tr., Slone, pp. 39, 70.

Grievant's favoritism allegation stems from the fact that Monica Johnston was employed at Beverly Hills as a 1/2 time Cook and worked the 10:00 a.m. to 1:30 p.m. shift, similar to the shift

Grievant worked. Grievant alleges that Ms. Johnston must have had special information about the starting and ending times of the vacancy, or else, presumably, she would not have applied for the position, either. Grievant's assumption that the starting andending times for the vacancy were 9:30 a.m. - 1:00 p.m. rests on the fact that the individual who previously held that position before it becoming vacant worked those hours. Grievant's argument appears to be that it was improper for the Board not to fill the vacancy exactly as it had been, and is guilty of favoritism by changing it to the morning shift, which allowed Ms. Johnston to receive the position.

Bill Adams, Respondent's Manager of Service Personnel, testified that when the position was posted, it was to fill a vacancy that existed, but it was within the discretion of the Principal and Head Cook at Beverly Hills to determine the needs of the school and what shift the cook would work. They informed him that they needed the cook on the morning shift. LIII Tr., Adams, p. 64.

Grievant cites no authority to support her position and the undersigned is aware of none that prohibits a county board of education, when presented with a vacancy, to assess the needs of the students and the school, and to change the shifts of certain positions before posting the vacancies. Principals have some latitude when assigning duties to like-classified service personnel within their schools. Ennis, supra; See also, Gemmer v. Wood County Bd. of Educ., Docket No. 91-54-274 (Dec. 23, 1991). Thus, it was not improper for the Principal of Beverly Hills, when assessing the needs of the students and the school for the upcoming school year, to decide there was a need for a cook on the morningshift, despite the fact that the position which was vacated had been an afternoon position the previous year.

Finally, Grievant has presented no evidence to support her assertion that Respondent is guilty of favoritism in adjusting the work schedules at Beverly Hills to enable Ms. Johnston to receive the 1/2 time cook position. Simply put, Ms. Johnston applied for the position and Grievant did not. Thus, Grievant is not similarly situated to Ms. Johnston, one of the essential elements of a favoritism claim. See e.g., Wyatt v. McDowell County Bd. of Educ., Docket No. 92-33-312 (Apr. 21, 1993). It is undisputed that, had Grievant applied, she would have received the position. There is no evidence, and Grievant does not suggest, that anyone discouraged her from applying for the 1/2 Cook position at Beverly Hills. LIII Tr., Slone, p. 33.

Conclusions of Law

1. Grievant is required to prove the allegations in her complaint by a preponderance of the evidence. Runyon v. Mingo County Bd. of Educ., Docket No. 93-29-481 (Apr. 4, 1994).

2. There is no statutory provision contained in W. Va. Code § 18A-4-8b which requires the board to set a specific contract term for a position. Smith v. Lincoln County Bd. of Educ., Docket No. 22-87-112-3 (Mar. 18, 1988).

3. W. Va. Code § 18A-4-8b does not expressly mandate that service personnel positions be posted as shift-specific. Ennis v. Ohio County Bd. of Educ., Docket No. 93-35-516 (May 31, 1994).

4. Principals have some latitude when assigning duties to like-classified service personnel within their schools. Ennis; See Gemmer v. Wood County Bd. of Educ., Docket No. 91-54-274 (Dec. 23, 1991). Grievant has failed to prove that Respondent showed favoritism in awarding the position to Ms. Johnston.

According, this grievance is **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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MARY JO SWARTZ

Administrative Law Judge

Dated: July 24, 1995

Footnote: 1 *Adverse decisions were issued at the lower levels on February 22, 1994 and January 26, 1995, respectively. The matter was advanced to Level IV on February 1, 1995, and submitted on the record. Grievant submitted proposed findings of fact and conclusions of law on June 16, 1995; no submissions were received from Respondent.*

Footnote: 2 *It was determined at the lower levels that Grievant was the most senior of the individuals who grieved and, as such, was the individual who would have received the 1/2-time cook position at Beverly Hills Middle School had she applied. The other grievants were dismissed at Level III.*