

PRISCILLA SUAN,

Grievant,

v. Docket No. 96-21-273

LEWIS COUNTY BOARD OF EDUCATION,

Respondent,

MICHAEL GOODWIN,

Intervenor.

DECISION

Grievant, Priscilla Suan, filed this grievance on April 12, 1996, alleging the Lewis County Board of Education ("LCBOE") violated W. Va. Code §18A-4-7 by its:

Failure to post position vacated by William White. The Superintendent and Board knew that I was interested, but didn't consider me.

Grievant requested as relief that the position be reposted, and she be allowed to compete for the position. At her Level II hearing, Grievant requested to amend her grievance to allege LCBOE purposely posted the position in an arbitrary and capricious manner to exclude her. Trans. Level II at 4. It was unclear from the transcript if this motion was granted, but the Level II Decision indicates the motion was granted. This grievance was denied at Levels I and II, and waived at Level III. Grievant then appealed to Level IV where a hearing was held on September 23, 1996. The case became mature for decision at that time, as the parties declined to submit proposed findings of fact and conclusions of law. At this juncture, the case is in an unusual procedural posture. Prior to the Level IV hearing, Respondent filed a Motion to Dismiss based on "lack of merit", "failure to state a claim", and "untimeliness". At the Level IV hearing, Respondent agreed that much of its motion was more on the order of a summary judgement motion, which this Grievance Board does not grant, but the issue of timeliness remained.

At the Level IV hearing, Grievant also made a Motion to Dismiss the grievance, stating that the grievance was moot, because the requested relief had been granted, and alleged the filing of the grievance had forced Respondent to repost the position; thus, Grievant had already received the

relief sought. Grievant refused to withdraw the grievance, because she "felt" she had already prevailed.

Respondent disagreed with this interpretation of events, and stated the position was reposted because the contract period for the prior posting had expired, and the position had to be reposted for the new school year.

Given this status of events, an outline of the facts in this case should be helpful.

Findings of Fact

1. During the 1995-1996 school year, Grievant was a business education teacher at Lewis County High School ("LCHS").

2. In January 1996, Mr. William White, a teacher at LCHS, requested a leave of absence ("LOA") from his position as a Social Studies 9-12/REAL (Rural Entrepreneurship through Action Learning) teacher. Mr. White taught social studies the majority of the time, but 1/7 of his time, one class period, was a REAL class. The REAL class teaches students the basics of how to operate a small business.

3. LCBOE granted Mr. White's request at the January meeting of the Board. 4. Grievant heard about the proposed LOA, and on January 16, 1996, discussed her desire to teach the REAL portion of the position with Mr. Gabriel Devono, Assistant Superintendent of Personnel and Vocational Director. He indicated he was unsure what would happen with the position, but directed her to write a letter stating her interest in the REAL portion of these teaching duties. Grievant wrote this letter on January 16, 1996.

5. Mr. White's position was posted on January 24, 1996, for the "remainder of the 1995-1996 school year." The announcement stated the position was for a Social Studies 9-12/REAL Instructor, and required certification in social studies, as 90% of the teaching duties were in the social studies area. Applications were due on January 31, 1996.

6. This position was posted at the central office and a posting was sent to all schools, including LCHS. This posting was placed in its usual position, and several witnesses testified to seeing it. [\(See footnote 1\)](#)

7. Grievant did not see the posting and did not apply for the position.

8. Even though Grievant did not officially apply for the position, she was considered for it

because of her January 16, 1996 letter to Mr. Devono. This fact is borne out by the written list of applicants reviewed by Superintendent Joseph Mace and Mr. Devono prior to recommending a candidate to LCBOE. Level II G. Exh. 3. The applicants were not interviewed for the position, but their credentials for the position were considered before the selection was made.

9. Grievant's name is also reflected in the Board minutes of the February 5, 1996 meeting as having been considered for the position. Level II R. Exh. 1.

10. Grievant is not certified in Social Studies, thus, she was not minimally qualified for the position.

11. Mr. Michael Goodwin, a certified LCHS social studies teacher with 26 years of experience, was chosen to fill the position at the February 5, 1996 meeting and began his duties in the position on February 7, 1996. He was the most senior candidate for the position.

12. At the time Mr. Goodwin was transferred from one position at LCHS to another position at LCHS, Grievant was also employed at LCHS.

13. Grievant initiated this grievance on April 12, 1996, after she received her RIF notice.

14. Respondent's posting of the LOA position, to include both the social studies position and the one REAL class, was appropriate, as Mr. White was entitled to return to this position after his LOA.

15. This position was posted as a permanent position in August 1996, after the contract for the 1995-1996 school year had expired, and after Mr. White had submitted his resignation. Mr. Goodwin applied for and received this position. (See footnote 2) 16. This subsequent posting of the position was not the reposting requested by Grievant in her statement of relief, rather it was the posting required by the expiration of the temporary contract, and the resignation of Mr. White.

Discussion

W. Va. Code §18-29-4(a) requires a grievance to be filed:

within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date on which the event became known to the grievant

Clearly, Grievant is outside the statutory time frame of fifteen days from the date the grievable event occurred. Grievant testified she detrimentally relied upon a statement from Mr. Devono when he called her in response to her January 16, 1996 letter. Grievant avers Mr. Devono called her on

approximately January 19, 1996, and told her a substitute teacher would be hired to fill Mr. White's position for the rest of the 1995-1996 school year. He directed her to check back about the position during the summer because he thought it would be posted then. Since Mr. Devono had given her this data, she states she did not check the postings for the position. Grievant's argument is answered by the West Virginia Supreme Court's ruling in Quintrell v. Lincoln County Board of Education, 465 S.E.2d 618 (W. Va. 1996). A county board is required to post position vacancies in "conspicuous" places, and the failure of an employee to receive actual notice cannot be used as the basis for a grievance. LCBOE posted the vacancy notice as required.

Grievant did not testify about when she became aware that Mr. Goodwin had been selected to fill the position. It is reasonable to assume, given the fact that both of the social studies positions were at the same school where Grievant taught, and given the fact Grievant's department was interested in the REAL position, that Grievant was aware of Mr. Goodwin's placement into the position long before she filed this grievance. Level II Trans. at 72 & 83. Further, two additional facts must be noted: 1) Grievant was considered for the position; and 2) Grievant was not minimally qualified for the position. This Grievance Board has repeatedly ruled that employees who are not qualified for the position do not have standing to grieve their non-selection or the selection process. Mullins v. Kanawha County Bd. of Educ., Docket No. 94-20-364 (Dec. 29, 1994).

The above-discussion will be supplemented by the following Conclusions of Law.

Conclusions of Law

1. W. Va. Code §18-29-4(a) requires a grievant to file her grievance within fifteen days of the event complained of, or within fifteen days of when the event became known to the grievant.

2. Grievant did not file this grievance within the time lines specified in the above- cited Code Section.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Lewis 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.

JANIS I. REYNOLDS

Administrative Law Judge

Dated: December 31, 1996

[Footnote: 1](#)

One of Grievant's original contentions was the position was not posted at LCHS, in a deliberate attempt to prevent her from applying for it. The evidence in this regard is clear; the position was posted at LCHS in the usual place and for the required amount of time.

[Footnote: 2](#)

Grievant indicated she had also filed a grievance on LCBOE's failure to select her for the position the second time. It is being held in abeyance pending the resolution of her separate RIF grievance.