

BEVERLY CHAFIN

v. Docket No. 95-BOD-460

BOARD OF DIRECTORS/SOUTHERN

WEST VIRGINIA COMMUNITY AND TECHNICAL COLLEGE

DECISION

The grievant, Beverly Chafin, is employed by the Southern West Virginia Community and Technical College (SWVCTC) as an Accounting Assistant assigned to its Logan campus Central Administration office. She filed this complaint at Level I June 26, 1995, protesting the rejection of her application for an Accountant position. The grievant's supervisor, Business and Financial Affairs Vice President Oretha Baker, responded but was without authority to grant relief, and the grievance was denied at Level II following a hearing held September 25, 1995. The West Virginia Board of Directors (BOD), at Level III, declined to consider the matter, and appeal to Level IV was made October 23, 1995. The parties subsequently agreed that a decision could be issued on the record made at Level II. Proposed findings of fact and conclusions of law were received by February 2, 1996.

Background

Much of the factual background of the case is not in dispute. The position in question was vacated in January 1995, and on or about February 15, 1995, Ms. Baker, the supervisor of the division to which it was assigned, requested that Director of Human Resources Patricia Hank post it. Ms. Baker specifically requested that a bachelor's degree in Accounting be a minimum requirement. She also asked that the vacancy announcement include a requirement of one to two years of "Bookkeeping/Accounting and computer" experience and a preference for experience in preparing financial statements.

The West Virginia Board of Directors (BOD) job description for the Accountant position,

adopted January 1, 1994, specifies "Bachelor's degree in accounting, finance, or related field" under the heading "Education" and "one year of general business experience" under the heading "Experience." The description lists a number of "Knowledges, Skills, and Abilities" and further provides that they are "typically acquired through" the levels of education and experience noted. The description also provides, however, that "any equivalent combination of education and/or experience is acceptable which provides an applicant the listed knowledge, skills, and abilities and the capability to perform the essential functions of the job."

Ms. Hank determined that Ms. Baker's request for an Accounting degree minimum requirement was in keeping with the job description specifications, and posted the position with that requirement on March 24, 1995. The announcement further provided, "[o]ne year accounting experience required (Three years preferred). Must become computer literate with experience using data base, accounting, and spreadsheet software. Governmental or Higher Education accounting experience preferred."

A screening committee comprised of Joe Blackburn ([See footnote 1](#)), Ms. Hank, and Payroll Representative Carol Trent reviewed twenty-three applications, compiled a list of eight candidates who possessed the requisite degree, and individually advised Ms. Baker of their top choices among those candidates. The committee rejected the grievant's application on the basis that her bachelor's degree was in business administration and not Accounting. It appears that the grievant was the only SWVCTC employee who vied for the post.

Ms. Baker's first and second-ranked choices ultimately declined to accept the position, and by May 1995, it remained vacant. It appears that Ms. Baker advised the grievant on or about May 12, 1995, that she had not been chosen, and that the job would be reposted. The position was reannounced on or about July 17, 1995, but it had not been filled as of September 25, 1995.

It is undisputed that Cindy Whitlock held the position in issue for several months prior to the first vacancy announcement, and that she did not possess, and was not required to obtain, an Accounting degree. The college also concedes that the posting by which Ms. Whitlock applied for and was awarded the position, listed that degree as a minimum requirement. ([See footnote 2](#)) The record is otherwise unclear on the process by which Ms.

Whitlock received the job, but it does reflect that Ms. Hank and Ms. Baker were involved in her appointment, and that she had been employed by the college as a Financial Aid Counselor for approximately seven years.

Argument

The grievant's primary claim is that the Accountant job description constitutes official BOD policy and that its provisions on minimum requirements are binding on SWVCTC. She avers that since the description specifies that either of three degrees is acceptable and is otherwise flexible in its education/experience requirements, the college was without authority to impose an Accounting degree restriction on the job.

It is the grievant's position that had the college adhered to the description's requirements, she would have been entitled to the post per the following provisions of W.Va. Code §18B-7-1.

A non-exempt classified employee. . .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 or the requirements of the Americans with Disabilities Act. If more than one qualified, non-exempt classified employee applies, the best-qualified non-exempt classified employee shall be awarded the position. In instances where such classified employees are equally qualified, the non-exempt classified employee with the greatest amount of continuous seniority at that state institution of higher education shall be awarded the position.

The grievant also appears to allege impropriety in Ms. Whitlock's appointment to the position and her apparent exemption from the Accounting degree requirement. The claims on this issue are not well articulated, but the grievant at least implies that the disparity in treatment was unfair. For the purposes of the review herein, it is accepted that the grievant makes the broad allegation that the process by which the college established the minimum requirements for the position and rejected her application was both arbitrary and violative of BOD policy.

SWVCTC denies any wrongdoing in the matter and specifically contends that the job description is not binding personnel policy. The college maintains that an Accounting degree is directly related to the duties of the position, and that the degree was required, at least in part, because Ms. Whitlock had demonstrated an inability during her short tenure in the position, to adequately complete a large portion of those duties. [\(See footnote 3\)](#)

Discussion

A job description typically does not address whether or to what extent its provisions are binding on the employer. In the public sector, the legal effect of position specifications is usually determined by resort to the employer's written personnel policies and/or statute. See e.g., Brogan v. Dept. of Tax and Revenue, Docket No. 95-T&R-153 (Nov. 6, 1995); W.Va. Code §29-6-10. Mosko v. McDowell County Bd. of Educ., Docket No. 95-33-275 (Sept. 7, 1995) holds that unless they contain language which indicates otherwise, specifications in a job description, including those related to education/experience levels, do not, in and of themselves, constitute binding personnel policy.

W.Va. Code §18B-1-8(12) directs BOD to "[a]dminister a uniform system of personnel classification and compensation for all employees. . ." W.Va. Code §18B-9-2 defines the system as "the process of job categorization . . . by which job title, job description, pay grade and placement on the salary schedule are determined." The lack of reference in the definition to education and/or experience levels is rather conspicuous, and does not support that the purpose of the classification system was to establish policy on entry level qualifications for a particular post.

The parties appear to agree that there is no written BOD policy which defines the weight to be afforded education/experience provisions in job specifications. The description in issue supports that BOD did not intend to afford them policy status. The clear import of its language, particularly the portions cited above, is that it was to be a tool for classifying and compensating an identified group of duties and that BOD was not promulgating policy on hiring decisions. It is concluded that the grievant has failed to prove her claim that the description constitutes BOD personnel policy.

Moreover, assuming that the description is policy, it does not follow that its flexibility on education/experience levels must be interpreted as a restriction on a college's discretion to impose minimum requirements on a particular position. The more reasonable inference to be drawn from the specifications as a whole is that BOD was acknowledging and deferring to the college's ability to more accurately determine its particular personnel needs.

The record will not support that SWVCTC otherwise abused its discretion in imposing an Accounting degree minimum on the position. Significantly, there is no evidence of record that

the requirement was aimed at excluding the grievant from consideration. Further, while the college's refusal to afford the grievant the same exemption apparently given Ms. Whitlock suggests that it was acting arbitrarily, the record does not establish that it was. Ms. Baker's credible and largely un rebutted testimony establishes that the degree was directly related to the duties of the position and that while Ms. Whitlock was not remiss in her performance, she had considerable difficulty with those duties considered the most "accounting-related."

Accordingly, the undersigned concludes that the grievant has failed to show that SWVCTC was bound by regulation, policy, statute or rule of law to consider her business administration degree as meeting the requirements of the Accountant position in issue. Since a classified employee must meet the standards announced in a posting in order to obtain the preference in hiring provided by W.Va. Code §18B-7-1, the statute is not further implicated. See, Bush v. Southern West Va. Community and Tech. College, Docket No. 94-BOD-1137 (May 15, 1995).

In addition to the foregoing discussion, the undersigned makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1) The grievant, a classified employee of the Southern West Virginia Community and Technical College was an unsuccessful candidate for the posted position of Accountant. Her application was rejected on the basis that she did not have a bachelor's degree in Accounting as required in the posting for the position. The grievant holds a bachelor's degree in business administration.

2) The job description for Accountant, promulgated by the West Virginia Board of Directors, is very flexible in its education/experience specifications and does not designate any particular degree as being essential to the performance of the duties of the job.

3) On at least one occasion, the college has posted the position with an accounting degree requirement and awarded it to an applicant who did not possess that degree.

CONCLUSIONS OF LAW

1) Normally, a public sector job description is not afforded the authority of personnel policy unless statute, the employer's formal personnel policy or the description itself indicates

an intent to bind the employer to its terms. Mosko v. McDowell County Bd. of Educ., Docket No. 95-33-275 (Sept. 7, 1995). The grievant herein has failed to show that the college was prohibited by any authority from imposing an Accounting degree requirement on the position at issue.

2) The grievant has failed to prove by a preponderance of the evidence that the college otherwise acted arbitrarily in rejecting her application for the post.

Accordingly, the grievance is DENIED.

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

JERRY A. WRIGHT
ADMINISTRATIVE LAW JUDGE

Dated: March 31, 1996

[Footnote: 1](#)

The record does not identify Mr. Blackburn's position with the Respondent.

[Footnote: 2](#)

It is difficult if not impossible to discern whether Ms. Whitlock had any formal finance-related education. She testified at Level II that she had a "Board of Regents" degree at the time and was not further questioned on the matter. The undersigned is aware that the West Virginia Board of Regents, the predecessor to the West Virginia Board of Directors, began a program by which certain students could obtain a bachelor's degree through a combination of college hours and employment experience, but is uninformed on the particulars of the program. Fortunately, the resolution of the case does not require more specific findings on Ms. Whitlock's background or the circumstances surrounding her promotion.

[Footnote: 3](#)

Because the college's fact/law proposals at Level IV do not address the grievant's allegations regarding the legal

effect of the job description, it was necessary to glean its position on that issue from the remarks of its representative at the Level II hearing.