

THOMAS AGLINSKY

v.

Docket No. 96-BOT-160

BOARD OF TRUSTEES/WEST VIRGINIA UNIVERSITY

D E C I S I O N

____Grievant Thomas Aglinsky is currently employed by Respondent West Virginia University (WVU) as a parking lot attendant. He has approximately five years of seniority with the institution. He filed this grievance when a non- employee was selected instead of him for a Campus Police Officer II position with WVU's Public Safety and Parking Management unit. According to him, the selection of an external candidate was violative of W.Va. Code §18B-7-1(d), since, by his reasoning, he was qualified for the position. Following adverse decisions at the lower grievance levels, Grievant appealed to level four and requested a decision based on the record below. ([See footnote 1](#)) The case became mature for decision on July 17, 1996, the agreed-upon last day for the parties to file fact/law proposals. It is not necessary at this juncture to detail any specifics about Grievant and the successful applicant with respect to the contested position. Grievant's representative framed the issue in this case at the May 7, 1996 level two hearing. ([See footnote 2](#)) Essentially, he stated the issue to be decided was not whether Grievant was the "most qualified" applicant. Rather, the question was whether Grievant was minimally qualified and, thus, pursuant to W.Va. Code §18B-7-1(7), entitled to the position over an external applicant.

The short answer to the question posed was readily found in this record and elsewhere. W.Va. Code §18B-7-1(7) provides, in part, that

[a] nonexempt classified employee, including a nonexempt employee who has not accumulated a minimum total of one thousand forty hours during the calendar year or whose contract does not extend over at least nine months of a 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

In a prior, recently-decided grievance over the non-selection of Grievant for some

officer positions within Public Safety at WVU, it was determined Grievant was not minimally qualified for the position of a Public Safety Officer, and that, therefore, W.Va. Code §18B-7-1(7) did not apply. Aglinsky v. Bd. of Trustees/W.Va. Univer., Docket No. 95-BOT-387 (Jan. 31, 1996) (Aglinsky I). At the time of his prior grievance, Grievant lacked relevant and/or recent training and experience in law enforcement, criminal justice, military training, or as a public safety officer, and was deficient in other areas relevant to modern law enforcement work. [\(See footnote 3\)](#) As was exceedingly clear from the present record, when Grievant applied for the job at issue in this grievance, he relied on the same credentials he presented with respect to the positions at issue in Aglinsky I, and he had not updated his skills by appropriate training or related college course work in the interim.

Unfortunately for Grievant, while it is also clear from the record that he is sincerely interested in police-type work, he does not presently possess the requisite background, training or experience to qualify minimally for the job at issue in this grievance. For this reason, Grievant cannot prevail.

In addition to the foregoing, the following findings of fact and conclusions of law are made.

Findings of Fact

1. On or about January 25, 1996, Grievant, a parking attendant at WVU, applied for a posted campus police officer position. 2. Approximately forty years ago, from January 1956 until December 1957, Grievant served in the military for twenty-two months, and he "pulled guard duty" at unspecified times. EX 4.

3. Nearly twenty years ago, from 1977 to 1980, Grievant served as a policeman in Star City, West Virginia (near WVU), in a governmental sponsored and funded "CETA" work-training program. Grievant patrolled the streets, generated reports, made a few arrests that required his appearance in court, and attended weekly training sessions of undefined durations. However, many aspects of law enforcement, including training requirements for police officers, has changed significantly over the years. Further, the CETA program in which Grievant was enrolled

did not offer any type of certification as a trained public safety officer upon successful completion of the program.

4. Grievant has never received any formal training in law enforcement, in the military, at a police academy, via police-sponsored seminars, or through relevant college courses.

5. Grievant has neither participated in any formal law enforcement training nor updated and/or renewed any skills he may have acquired as a CETA- sponsored policeman following his departure from that position sixteen years ago.

6. The credentials Grievant presented for the job at issue in this case were the same he offered for similar positions previously.

Conclusions of Law

1. W.Va. Code §18B-7-1(7) provides that certain classified employees within public institutions of higher education have a preferred status for transfer and promotion to a vacant position within the institution over external candidates, if the employee-applicants are minimally qualified for the position.

2. Grievant was not minimally qualified for the position of Campus Police Officer II, as he had no recent, relevant training or formal education in law enforcement or related areas; therefore, W.Va. Code §18B-7-1(7) is not applicable in this case. See Aglinsky v. Bd. of Trustees/W.Va. Univer., Docket No. 95-BOT-387 (Jan. 31, 1996).

3. Grievant failed to show a violation of Code §18B-7-1(7) or any other policy, regulation or law, relative to his non-selection for the contested police officer position at WVU.

4. Grievant failed to establish he is entitled to the position at issue as a matter of law.

Accordingly, the grievance is **DENIED**. Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Monongalia 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

Senior Administrative Law Judge

Date: July 18, 1996

[Footnote: 1](#)

The record includes the transcript and exhibits of the May 7, 1996 level two hearing.

[Footnote: 2](#)

It is noted that Grievant Exhibit 8 was a tape recording he made during his February 8, 1996 interview for the contested position. The tape was not submitted with the other level two exhibits. Rather, a transcript of the tape, apparently prepared by the court reporter, was appended, along with all the other documentary evidence, to the hearing transcript. This transcript was helpful, because the undersigned does not have equipment to listen to a standard, two-track recording.

[Footnote: 3](#)

The job posting for the Campus Police Officer II position listed required "Experience" as follows: "Two years law enforcement or military training or two years of college training in criminal justice." It might help prevent misunderstanding if, in the future, WVU included language to indicate the type of law enforcement or military training desired, and to require that any training be current or updated.