

JAYELLE NESBITT

v.

Docket No. 96-15-384

HANCOCK COUNTY BOARD OF EDUCATION

DECISION

Jayelle Nesbitt (hereinafter "Grievant") is employed as a bus operator by the Hancock County Board of Education (hereinafter "HCBOE"). She contends that, based upon her seniority and qualifications, she was entitled to a posted position as a CPR/First Aid Instructor, which became available in April of 1996. HCBOE contends that Grievant was not qualified for the position. Grievant seeks "the position, any and all benefits derived by the employee(s) awarded any AE-FAI [Adult Education-First Aid Instructor] position during the time I held valid certification and more seniority." The grievance was denied at the lower levels, and the parties agreed to submit the case on the record at level four with proposed findings of fact and conclusions of law. HCBE elected to stand by its level two Findings and Conclusions, and the grievance became mature for decision on October 17, 1996.

The following findings of fact are based upon the transcript and exhibits forwarded from level two.

Findings of Fact

1. On or about April 2, 1996, HCBE posted a position for an "Adult Education- CPR/First Aid Instructor" on an "as needed" basis at a salary of \$12.00 per hour. The posting also listed, as requirements for the position, current certifications to teach American Red Cross - CPR and American Red Cross - Community First Aid. L2, Gr. Ex. 1.
2. Grievant completed a Community First Aid course at the Tucson, Arizona, Chapter of the Red Cross on August 14, 1994, which certification expired on December 31, 1995. L2, Gr. Ex. 5.
3. In order to be recertified as an instructor prior to the expiration date on the certificate, the Red Cross requires that a CPR/First Aid Instructor teach at least one class during the year of expiration. L2, HCBOE Ex. 1.
4. Grievant did not teach any CPR or first aid courses during 1995.
5. Prior to filling the position, Elbert Ellison, Transportation Supervisor, contacted the local

Weirton Chapter of the Red Cross regarding Grievant's certification; he was informed that Grievant had no current certification and that her previous certification had expired on December 31, 1995. L2, HCBOE Ex. 1.

6. On April 22, 1996, HCBOE hired another individual who possessed current certification in both of the required areas for the position of CPR/First Aid Instructor.

7. Grievant introduced an additional certificate entitled "Health and Safety Instructor Authorization" from the Red Cross with an expiration date of December 31, 1997. The certificate does not provide any date showing when it was issued. L2, Gr. Ex. 6. Grievant did not explain how, when or where she obtained this certificate, and she did not provide it to HCBOE when she applied for the posted position.

8. Grievant did not have current certification as a CPR or First Aid Instructor at the time of the April, 1996, posting.

Discussion

In her proposed findings of fact and conclusions of law, Grievant contends that she should have been placed in the CPR/First Aid Instructor position based upon W.Va. Code §§ 18A-4-8b and 18A-4-16(5). Code § 18A-4-8b states, in pertinent part:

A county board of education shall make decisions affecting promotion and filling of any service personnel positions . . . on the basis of seniority, qualifications and evaluation of past services.

This section goes on to describe how seniority is determined for service personnel positions. Code § 18A-4-16 is entitled "Extracurricular assignments." The specific portion relied upon by Grievant reads as follows: "The board of education shall fill extracurricular school service personnel as signments and vacancies in accordance with [§ 18A-4-8b]."

Regardless of whether this particular position is defined as a service personnel position or an extracurricular assignment, Grievant has failed to prove that she was qualified for the job. The posting specifically required current certification, and Grievant has simply not shown that her certification was valid and in force in April of 1996. The only evidence she has provided is a certificate that expired on December 31, 1995, and another certificate with no effective date of issue. The Weirton Red Cross chapter did not have any record of current certification for Grievant, and she could have taken steps to update their records if and when she did obtain additional or renewed

certification. L2, Adm. Ex. 1. Therefore, Grievant did not prove she was qualified for the position and has not shown by a preponderance of the evidence that she was entitled to it. This Board has previously held that, when certification is required for a position, only the applicant with certification at the time of the posting is qualified. Cyphers v. Marion County Bd. of Educ., 94-24-134 (October 31, 1994). However, some discussion of the seniority issue is merited; Grievant has raised the issue and should be familiar with it from her past grievances.

This Board has previously addressed the issue of whether CPR instruction is an extracurricular assignment for service personnel in a prior grievance filed by Grievant (previously known as Jayell Froats). It was determined in Froats v. Hancock County Bd. of Educ., Docket Nos. 93-15- 251/257 (Sept. 28, 1995), that an assignment involving adult instruction does not meet the definition of a service personnel position [§ 18-1-1(h)], so the § 18A-4-8b seniority provisions would not apply. The Administrative Law Judge also found that such a position does not meet the definition of "extracurricular" found in § 18A-4-16 and is not an "extra-duty" assignment, because it does not entail the usual duties of a bus operator. Froats did not address what factors would determine who should fill such a position, but only held that a vacancy for a paid position, whether for service or professional personnel, should be posted.

The issue of the applicability of the seniority rights provisions for service personnel was also addressed in Conner v. Barbour County Bd. of Educ., Docket No. 94-01-1108 (July 18, 1996). In a situation very similar to the instant grievance, Ms. Conner, a bus operator, applied for a posted position as a bus operator trainer, which required a separate trainer certification. Ms. Conner could not demonstrate that she held a valid certification at the time of the posting, and less senior employees received the positions. Relying largely upon Froats, supra, the Administrative Law Judge found that, because the position was not a classified service position ([See footnote 1](#)) nor an extracurricular assignment, it was not covered by any statute relative to the employment of school service personnel, and Grievant had no seniority-rights based entitlement to the trainer position. Conner, at 5.

Accordingly, the undersigned finds that the statutes relied upon by Grievant, namely § 18A- 4-8b and § 18A-4-16(5), do not apply to the position of Adult Education CPR/First Aid Instructor, and Grievant has demonstrated no seniority-based rights to the position. Grievant was not hired for the position because she provided no proof of current certification in the required areas and was,

therefore, not qualified for the position.

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

Conclusions of Law

1. It is incumbent upon a grievant to prove all the allegations constituting the grievance by a preponderance of the evidence. Rupich v. Ohio County Bd. of Educ., Docket No. 89-35-719 (June 29, 1990).
2. Grievant has failed to establish that Respondent violated any policy, statute, rule or regulation in not hiring her as an Adult Education CPR/First Aid Instructor.
3. Grievant was not qualified for the position of Adult Education CPR/First Aid Instructor, because she did not possess the required current certification in April of 1996.
4. Only the applicant with certification at the time of the posting is qualified. Cyphers v. Marion County Bd. of Educ., 94-24-134 (October 31, 1994).
5. Grievant failed to establish a violation of W.Va. Code §§ 18A-4-8b and 18A-4-16 with respect to Respondent's selection of another applicant for the CPR/First Aid Instructor position, a position not covered under the various statutes regulating the employment of service personnel. Conner v. Barbour County Bd. of Educ., Docket No. 94-01-1108 (July 18, 1996); Froats v. Hancock County Bd. of Educ., Docket Nos. 93-15-251,257 (September 28, 1995).

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.

Date: November 6, 1996

V. DENISE MANNING

Administrative Law Judge

[Footnote: 1](#)

Service personnel class titles are listed and defined in Code § 18A-4-8. The Adult Education CPR-First Aid Instructor position is not listed in this section.