

WILLIAM C. GROVES,

Grievant,

v. DOCKET NO. 95-42-542

RANDOLPH COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

William C. Groves, Grievant, filed a grievance on September 18, 1995, after learning that he had not received a Custodian IV position at Elkins High School (EHS), with the Randolph County Board of Education (Respondent), which he had bid on and was the most senior applicant. Grievant alleges that Respondent did not properly consider his seniority. As relief, Grievant desires to be instated to the Custodian IV position.

Grievant's immediate supervisor denied relief at Level I, on September 19, 1995. At Level II, the grievance was denied on November 16, 1995, by Respondent's Superintendent after a hearing on October 17, 1995. Following the adverse decision at Level II, this matter was waived to Level IV pursuant to W.Va. Code §18-29- 4(c). The parties agreed to submit this case for decision based on the record developed at the lower levels of the grievance procedure, with the right to file briefs. [\(See footnote 1\)](#) Upon receipt of Grievant's brief and lower level documents, the case became mature on February 13, 1996. [\(See footnote 2\)](#)

FINDINGS OF FACT

1. Grievant is employed by Respondent as a full-time Custodian III\Sanitation Plant Operator.
2. Grievant's seniority employment date is October 9, 1972.
3. On April 17, 1995, and June 2, 1995, Grievant was given unsatisfactory evaluations by his immediate supervisors.

4. On June 27, 1995, Grievant was placed on an improvement plan by his immediate supervisors.
5. Grievant was still on the plan of improvement at the time the Custodian IV position was posted and filled by Respondent.
6. Grievant was not awarded the Custodian IV position at EHS.
7. The successful applicant for the Custodian IV position was Dan Kirkpatrick.
8. Mr. Kirkpatrick's employment date is April 16, 1974. His June 1994 evaluation was above average.

DISCUSSION

This case revolves around the proper interpretation and application of W.Va. Code §18A-4-8b. In pertinent part, W.Va. Code §18A-4-8b provides, in pertinent part:

[a] county board of education shall make decisions affecting promotion and filling of any service personnel positions of employment or jobs occurring throughout the school year that are to be performed by service personnel as provided in section eight [§ 18A-4-8], article four of this chapter, on the basis of seniority, qualifications and evaluation of past service.

The Supreme Court of Appeals of West Virginia in Ohio County Bd. of Educ. v. Hopkins, 193 W.Va. 600, 604; 457 S.E.2d 537, (1995), in interpreting W.Va. Code §18A-4-8b provides, in pertinent part:

that seniority alone is not the sole factor to be considered is clear from the language of W.Va. Code, 18A- 4-8b [1990], to the effect that a county board of education must show valid cause why an employee with the most seniority is not employed in the position for which he applies.

In this case, "valid cause" was shown by Respondent in the Superintendent's September 6, 1995, response to Grievant's request for a statement of reasons for his non-selection states, in part:

As the candidates for the position [sic] were reviewed, it was evident that you were most senior. You also had proper qualifications, being that you were classified as a Custodian. However, you did not meet satisfactorily the third factor that must be given consideration; evaluation of past service.

As you are aware, you were placed on a Plan of Improvement by both of your supervising principals on June 27, 1995. Review of this period for improvement is not scheduled until early October. The plan outlines necessary improvement in the areas of being subordinate to supervisors, improving cleaning techniques, utilization of cleaning solutions and chemicals, and the display of initiative in accomplishing tasks.

As I evaluated your past service, not only was the existence of this Improvement Plan disturbing to me, but the fact that you refused to sign it during the evaluation process denoted to me that you do not have necessary respect for procedures by those who supervise your work.

Additionally, I am aware that you have had to make special arrangements in the past which allowed you to not report for work. Sometimes, you performed services outside of your regular school work schedule, rather than losing pay for being absent. This habit is not conducive to the dependability required of a Head Custodian for a school of almost 1,000 students. Problems in this regard existed in 1992-93, but were of particular concern in 1993-94.

In making a determination as to the suitability of an employee for a position, I must consider first the health and safety of the children and staff in the care of the employee. I had several reasons to question your abilities to perform satisfactorily in the role of a Head Custodian. I trust you will begin to examine the expectations of your supervisors, improve your performance and attendance patterns, and you can be assured of my support for future jobs you may desire. Please advise me if you have any additional questions.

Therefore, Respondent considered Grievant's seniority pursuant to W.Va. Code §18A-4-8b, but had reservations concerning his work performance in several areas outlined in his Improvement Plan. Respondent also properly responded with a statement of reasons to Grievant for his non-selection for the position. Grievant failed to prove that his seniority was not properly considered by Respondent.

In addition to the foregoing Findings of Facts and narration, it is appropriate to make the following conclusions of law.

CONCLUSIONS OF LAW

1. In a nondisciplinary action, Grievant has the burden of proving his case by a preponderance of the evidence. Gwilliam v. Preston County Bd. of Educ., Docket No. 95-39-255 (Dec. 22, 1995). 2. While W.Va. Code §18A-4-8b mandates that seniority is a factor to be considered, it alone is not the sole factor. Qualifications and past service evaluations of the service personnel applicant must also be considered. However, a county board of education must show valid cause why an employee with the most seniority is not employed in the position for which he applies. Ohio County Bd. of Educ. v. Hopkins, 193 W.Va. 600, 457 S.E.2d 537 (1995). See, Harrison County Bd. of Educ., 430 S.E.2d 331 (W.Va. 1993).

3. "Valid cause" for not selecting Grievant for the position was shown by Respondent.

4. Grievant failed to show a violation, misapplication or misinterpretation of any statute, policy, rule, regulation.

5. Grievant failed to prove by a preponderance of the evidence that seniority was not properly considered by Respondent or that he should have been selected for the Custodian IV position at EHS.

Accordingly, the grievance must be DENIED.

DATED 3/15/96 JEFFREY N. WEATHERHOLT, ADMN. LAW JUDGE

[Footnote: 1](#)

Respondent did not file a brief.

[Footnote: 2](#)

The record in this case consists of the following: (1) the grievance forms from Levels I, II and IV; (2) the Level I decision; (3) Grievant's two exhibits admitted at Level II; (4) Respondent's two exhibits admitted at Level II; (5) the Level II transcript; (6) the Level II decision; and (7) Grievant's brief. It should further be noted that the Undersigned has considered all of the above matters of record. However, two additional documents (a letter dated September 20, 1995 from Superintendent Prichard to Principal Pritt, and a hand written document dated September 1, 1995, 12:15 p.m.) were also forwarded to the Undersigned along with the above record, but were not considered because they were never introduced into evidence at any step of the grievance procedure.