

WANDA SICKLES,

Grievant,

v. DOCKET NO. 96-30-207

MONONGALIA COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

When this grievance was filed, Wanda Sickles (Grievant) was employed by the Monongalia County Board of Education (Respondent) as a substitute service employee. Grievant alleges that she:

applied for a secretarial position at Central/Wiles Hills Elementary [S]chools. The Respondent awarded this position to Beverly Osborne, a less senior substitute secretary. Grievant alleges a violation of West Virginia Code §18A-4-8b.

As relief, she "seeks instatement into this position and wages, benefits and regular employment seniority retroactive to the date of the filling of the vacancy."

Grievant filed this grievance at Level II, because she was a substitute employee. Assistant Superintendent Jacob Mullett denied the grievance at that level. Pursuant to W. Va. Code §18-29-4(c), Grievant waived a hearing at Level III, and appealed directly to Level IV on May 28, 1996. An evidentiary hearing scheduled for August 14, 1996, was continued for good cause. The hearing was rescheduled, and held on September 18, 1996, at the Grievance Board's office in Elkins, West Virginia. On October 15, 1996, the case matured upon receipt of the parties' post-hearing submissions.

The following Findings of Fact were derived from the record.

FINDINGS OF FACT

1. Grievant is employed as a substitute secretary and aide by Respondent. Her substitute seniority

dates are December 20, 1988, and October 1, 1991, respectively.

2. Grievant's general practice was to call the hotline and write down the available posted positions. In this case, she completed bid sheets for several positions. [\(See footnote 1\)](#)

3. Grievant made copies of the bid sheets at Dairy Mart and her husband drove her to the central office. Her husband remained in the vehicle, while Grievant entered the central office at approximately noon. She did not speak with anyone once inside.

4. Grievant intended to apply for a vacant secretarial position at Central/Wiles Hill Schools (CWHS).

5. When Respondent's personnel office reviewed the bid sheets for the secretary position at CWHS, they did not have a copy of Grievant's bid sheet.

6. Grievant is more senior than the successful applicant.

7. Respondent, through a competitive bidding procedure, awarded the position to the most senior substitute secretary who submitted a bid sheet for the position.

8. Grievant produced a copy of her bid sheet for the position in question. However, it did not contain any markings designating it was received by Respondent.

9. Grievant did not place a bid sheet for the position with Respondent.

DISCUSSION

The Grievance Board has dealt with the problem of employees not being considered for positions for which they claim they applied on at least three different occasions. Merritt v. Kanawha County Bd. of Educ., Docket No. 91-20-439 (Feb. 5, 1992), and Mills v. Doddridge County Bd. of Educ., Docket No. 90-09-402 (Nov. 26, 1990), involve cases in which the application or bid sheet was mailed. Both Merritt and Mills relied upon Delaney v. Harrison County Bd. of Educ., Docket No. 89-17-352 (Sept. 25, 1989).

In Merritt, the grievant claimed that her application for an extended summer secretarial position was never considered, and was either lost or misplaced by the board. She had mailed the application via the school's intra-school mail system. In denying the grievance, the Administrative Law Judge held:

It is the responsibility of the applicant who is applying for an employment position to not only completely fill out the information on the application but also to ensure that the application is submitted to the proper personnel

in charge of reviewing the application. See, Delaney v. Harrison County Board of Education, Docket No. 89-17-352 (Sept. 25, 1989).

Merritt at 8.

In Mills, the grievant complained that she had filed a letter of application for the position of Home Economics Teacher with the board, and then was never considered for the position. Her grievance stated, "I have been informed and allege that the letter in question, mailed on July 26, 1990 may have been lost or misplaced in the office of the Doddridge County Board of Education." In Mills, the grievant testified that she sent the application by regular United States Mail but did not certify or register it. The Administrative Law Judge, quoting Delaney, held:

Generally speaking, it is the responsibility of a job applicant "to ensure that his interest in a given position is clearly made known and his application therefore adequately completed."

Mills at 9.

Delaney was decided on the record developed at Level II. In Delaney, the board awarded a principal position to the grievant, and then decided to re-post the position because another "applicant", Mr. Guido, contended that he hand-delivered a bid sheet to the board's central office. Respondent's certification coordinator even testified that she recalled receiving the envelope and placing it in a file for principalship bids. However, the Administrative Law Judge noted that "[i]nterestingly, Mr. Guido did not appear on Respondent's behalf at Level II to give testimony or

be cross-examined. The information on his actions, as recounted herein, was offered by other witnesses and by Respondent's Exhibit 2, a letter written by Mr. Guido." Id. at 3. Further, the Administrative Law Judge in granting the grievance, and precluding the re-posting of the position, made the following finding:

Ben L. Guido, also on administrative transfer, claimed to have submitted a bid sheet for the Lumberport post. Respondent at no time has been in possession of Mr. Guido's alleged application for this job.

Id. at 4.

In this case, Grievant testified she placed her bid sheets into a wall file holder Respondent maintains in its board office for that purpose. Even though Grievant saw personnel in the office, she

testified that no one saw her deposit the bid sheet. Grievant also failed to have her bid sheets "stamped in" by office personnel. [\(See footnote 2\)](#) No corroborative evidence was offered. [\(See footnote 3\)](#) Grievant did not offer sufficient evidence to prove her case by a preponderance of the evidence.

Furthermore, there was not any evidence that Respondent acted improperly, or arbitrarily or capriciously. There were no allegations of favoritism or preferential treatment toward the successful applicant, or of any bias toward Grievant. Dr. Hlad, application evaluator, testified at Level II that Grievant has excellent evaluations, and is a good and dependable worker.

In addition to the foregoing findings of fact 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 her case by a preponderance of the evidence. Gwilliam v. Preston County Bd. of Educ., Docket No. 95-39-255 (Dec. 22, 1995).

2. It is the responsibility of the applicant who is applying for an employment position to not only completely fill out the information on the application, but also to ensure that the application is submitted to the proper personnel in charge of reviewing the application. Merritt v. Kanawha County Bd. of Educ., Docket No. 91-20-439 (Feb. 5, 1992). See, Mills v. Doddridge County Bd. of Educ., Docket No. 90-09-402 (Nov. 26, 1990); Delaney v. Harrison County Bd. of Educ., Docket No. 89-17-352 (Sept. 25, 1989).

3. Grievant failed to offer sufficient evidence to prove by a preponderance of the evidence that she should prevail in this grievance. Therefore, Grievant has not meet her burden of proof.

Accordingly, the grievance is **DENIED**.

Any party may appeal this DECISION to the Circuit 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 intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

DATED: 10/30/96

JEFFREY N. WEATHERHOLT
ADMINISTRATIVE LAW JUDGE

[Footnote: 1](#) The other bid sheets Grievant completed were received and properly considered by Respondent.

[Footnote: 2](#) Grievant testified that after this incident she learned that Respondent would "stamp in" the bid sheets and make a stamped copy for the applicant's retention.

[Footnote: 3](#) Grievant did offer a copy of a completed bid sheet for the position in question, but that does not corroborate the time and date it was left in the wall file, if it was left at all.