

HOBERT UNRUE, SR.

v. DOCKET NO. 95-DOH-287

WEST VIRGINIA DIVISION OF HIGHWAYS

DECISION

Grievant, Hobert Unrue, Sr., has been employed by the West Virginia Division of Highways (Respondent) for over 18 years and is currently a Storekeeper II. Grievant filed his grievance on June 8, 1994, alleging that:

Following my job interview for the position of Warehouse Storekeeper III, at the Equipment Division, I asked my supervisors, Henry Lilly and Debra Ferrell, if a selection had been made. They stated that due to Mr. Bob Garton's 5 years experience as an assistant manager at Hardees fast food restaurant, he was more qualified than I to hold this position.

As relief, Grievant desires to be instated to the Warehouse Storekeeper III position, instead of Mr. Garton, the successful applicant and an employee of Respondent. Grievant's immediate supervisor denied relief, at Level I, on June 14, 1994, and Grievant appealed his case to Level II that same day. At Level II, the grievance was denied on June 21, 1994, and Grievant appealed to Level III on June 23, 1994. At Level III, hearings were held on November 18, 1994, and December 1, 1994. [\(See footnote 1\)](#) At Level III, the three member evaluation panel rendered the following decision:

A careful and accurate review and evaluation of the skills and experience of both Mr. Garton and Mr. Unrue shall be performed by the Human Resources Division aided by the Division of Personnel and the EEO Division. Verification of any purported supervisory experience for either applicant and its pertinence to work in the warehouse shall be performed as well. Should it be determined by this review and evaluation that the Grievant is in fact more qualified and/or skilled than Mr. Garton, then the relief sought by the Grievant in his original signed statement shall be granted. If it is determined that Mr. Garton is more qualified and/or skilled, then he shall retain the position he currently holds. (Emphasis in original.)

At Level IV, an evidentiary hearing was held at the Grievance Board's Elkins Office on December 4, 1995. [\(See footnote 2\)](#) The case became mature on January 3, 1996, the deadline for postmarking

briefs. [\(See footnote 3\)](#)

The following findings of fact are properly made from the record.

FINDINGS OF FACT

1. Grievant is currently employed by the Respondent as a Storekeeper II, and has held that position since 1983.
2. The Equipment Division advertised to fill a vacancy for a Warehouse Storekeeper III.
3. On May 16, 1994, Grievant applied for the position of Warehouse Storekeeper III.
4. On May 17, 1994, Bob Garton submitted an application to fill the same vacancy.
5. In June or July 1994, Mr. Garton was selected by Henry Lilly and Debra Ferrell, Grievant's supervisors, to fill the Warehouse Storekeeper III vacancy.
6. Grievant does not meet the minimum requirements for the Warehouse Storekeeper III position.

DISCUSSION

In a case such as this where the issue is the non-selection of Grievant for a position, "the grievance procedure set forth in W.Va. Code §29-6A-1, et seq., is not intended to be a 'super interview,' but rather, allows for a review of the legal sufficiency of the selection process. Furthermore, an agency's decision as to which candidate is most qualified will be upheld unless shown to be arbitrary or capricious or clearly wrong." Thibault v. Div. of Rehabilitation Services, Docket No. 93-RS-489 (July 29, 1994). However, even before one analyzes whether Respondent's actions were arbitrary or capricious or clearly wrong, it is important to determine whether Grievant satisfies the requirements for the position in question. In this case, the position in question is that of Warehouse Storekeeper III. The experience requirements for that position are as follows:

Four years of full-time or equivalent part-time paid experience as a stock clerk, or in a clerical capacity in connection with large-scale warehouse operations, or in handling materials, one year of which included supervisory responsibility.

At issue is whether Grievant has one year of supervisory experience. Grievant in his application for the Warehouse Storekeeper III position listed a prior position that he held with Respondent from April 1984 to April 1985, [\(See footnote 4\)](#) in which he maintains that he supervised three [\(See footnote 5\)](#) people who held the title Mechanic II, and also ordered the parts that these mechanics needed.

However, Respondent introduced a letter from Mr. Charles Mullenex, Grievant's supervisor during

the time in question, which stated that Grievant was not the supervisor of the three Mechanic IIs. Regarding these three Mechanic IIs, Grievant testified, at Level III, that he: (1) did not do any performance evaluations, (2) did not sign their payroll sheets, and (3) did not sign their sick or annual leave slips.

Therefore, after careful examination of all of the evidence presented, the undersigned finds that Grievant did not prove by a preponderance of the evidence, that he held a supervisory position from April 1984 to April 1985; and consequently, Grievant did not meet the minimum requirements for the Warehouse Storekeeper III position. Thus, no violation has been shown in the non-selection of Grievant for the position since he was not qualified.

In order for Grievant to pursue the second part of his grievance, whether the selection of Mr. Garton was proper, he must show he was "adversely affected" by the employment decision being challenged. Weaver v. Mason Co. Bd. of Educ., Docket No. 94-26-028 (Oct. 25, 1994); and Mullins v. Kanawha Co. Bd. of Educ., Docket No. 94-20-364 (Dec. 29, 1994). Since Grievant is not qualified for the position in question he does not have standing to challenge the selection process. Mullins, *supra* at 11.

In addition to the foregoing findings of fact and narration, it is appropriate to make the following formal conclusions of law.

CONCLUSIONS OF LAW

1. In non-disciplinary matters the grievant must prove all of the allegations constituting the grievance by a preponderance of the evidence. Crow v. W.Va. Dept. of Corrections, Docket No. 89-CORR-116 (June 30, 1989); Bonnett v. W.Va. Dept. of Highways, Docket No. 89-DOH-043 (Mar. 29, 1989).

2. Grievant failed to prove by a preponderance of the evidence that he had one year of supervisory experience or that he is entitled to the position in question as a matter of law.

3. Given that Grievant was not minimally qualified for the position, he lacked standing to complain about alleged improprieties in the selection of another individual for the vacancy as he has not shown that he has "adversely affected" by the employment decision being challenged. Weaver, *supra*; Mullins, *supra*.

Accordingly, the grievance must be DENIED.

DATED: 1/22/96 JEFFREY N. WEATHERHOLT, ADMN. LAW JUDGE

[Footnote: 1](#)

The second hearing was held because a subpoenaed witness, Mr. Bob Garton, reported sick the morning of the November 18, 1994, hearing.

[Footnote: 2](#)

At that time, Mr. Jeff Black, Director, Human Resources Division, reported that both applicants had been declared ineligible because neither Grievant nor Mr. Garton meet the minimum requirements for the position in question, in that neither applicant possessed one year of supervisory experience. Mr. Black further presented evidence that Mr. Garton was demoted effective December 16, 1995, from the Warehouse Storekeeper III position to his original position.

[Footnote: 3](#)

Grievant's brief was hand delivered on January 3, 1996, and Respondent chose not to file a brief.

[Footnote: 4](#)

At the Level IV hearing, Grievant testified that the dates on his application were approximate dates, and that he held this position until August 1985. The record is also unclear as to what Grievant's job title was during that period of time. Grievant's application for the Warehouse Storekeeper III position fails to specify a title for that period of time, while Grievant's representative says that Grievant has been a Storekeeper II since 1983, a letter introduced by Grievant states that his title was Parts Expeditor, during the period in question.

[Footnote: 5](#)

A letter introduced by Grievant states that Grievant supervised four mechanics.