RONZEL RICHARDSON,

Grievant,

v.

DOCKET NO. 97-40-189

PUTNAM COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Ronzel Richardson, filed the following grievance against the Putnam County Board of Education ("Board") on January 29,1997:

> Violation of WV Code 18A-4-8b in regard to not posting the position of locksmith. The grievant had passed the locksmith's test. Another employee has been filling the position on a so-called temporary basis for an extended period of time. Grievant and his representative met and inquired on numerous occasions. Relief sought is to be awarded the position and any compensation and benefits due. (See footnote 1)

The grievance was denied at level one, and a level two hearing was held on March 6, 1997. The grievance was again denied by decision of Harold Hatfield, on April 10, 1997, following which Grievant by-passed level three and appealed to level four on April 17, 1997. Hearing was held in the Grievance Board's Charleston, West Virginia, office on June 14, 1997, and this case became mature for decision on July 12, 1997, the deadline for the filing of proposed findings of fact and conclusions of law.

SUMMARY OF EVIDENCE

Joint Exhibit

Ex. 1 -

Grievance documents.

Grievant's Exhibits

Ex. 1 -

Putnam County Schools Pay Scale - 1996-97

Ex. 2 -

Vacancy Bulletin dated May 16, 1996 for Heating/AC Mechanic/General Maintenance

Ex. 3 -

Board minutes of May 6, 1996

Ex. 4 -

Sample Work Orders

Ex. 5 -

Sample Invoices

Ex. 6 -

List of materials transferred from Joe Fisher to James Cook

Ex. 7 -

List of maintenance department personnel with page and truck numbers.

Board's Exhibits

R. Ex. 1 -

Job Description - Maintenance Employee, effective April 24, 1985.

R. Ex. 2 -

Sample Work Orders

Testimony

Grievant testified on his own behalf, and presented the testimony of Diana Randolph, Joe Fisher, Jack Lewis, Charles McAllister, Eleanor Edwards, James Cook, and Harold Hatfield. The Board presented the testimony of Jack Coyner.

FINDINGS OF FACT

I find, by a preponderance of the evidence, the following facts.

1. A school service personnel position of “locksmith/carpenter” existed in the maintenance department of the Board, and was held by Jack Lewis.

2. In May 1996, Mr. Lewis informed the Board he was going to retire effective the end of the 1996-97 school year. Jack Coyner, Assistant Superintendent/Administrative Services, reviewed the needs of the maintenance department and decided there was no longer a need for a locksmith/carpenter. However, there was a need for additional heating and air conditioning (“HVAC”) personnel. 3. Mr. Coyner recommended Mr. Lewis' position be eliminated, and the Board affirmed that recommendation at its May 6, 1996 meeting. At the same meeting, on Mr. Coyner's recommendation, the Board voted to create a new position of “heating/air conditioning/general maintenance”. G. Ex. 3.

4. Thereafter, the Board posted the HVAC/general maintenance position on May 16, 1996. G. Ex. 2. Mr. James Cook bid on and received the position.

5. All service personnel in the maintenance department are multiclassified as general maintenance plus something else, be it plumber, carpenter, electrician, HVAC, mechanic, etc. Those employees are classified as “CG”, or pay grades C through G. The general maintenance classification is paid at pay grade C. If the employee has another classification with a higher pay grade, he or she is paid at the higher pay grade, in accordance with W. Va. Code §18A-4-8.

6. Grievant, a general maintenance/mechanic, is paid at the F pay grade, or mechanic's pay grade. HVAC technicians are paid at either the E or G pay grades, depending on their skill level. The locksmith/carpenter position was paid at the G pay grade, or locksmith pay grade.

7. Upon Mr. Lewis' retirement, Mr. Joe Fisher, a general maintenance/HVAC, employee assumed a considerable portion of the locksmith/carpenter duties. Charles McCallister, a general maintenance/plumber employee, also assumed some of the locksmith duties. Neither of these

gentlemen has taken a competency test for locksmith.

8. Mr. Fisher and Mr. McAllister consented to assume the locksmith/carpenter duties, with no additional compensation. 9. When Mr. Cook, the new HVAC employee arrived, Mr. Fisher transferred some of his HVAC tools and equipment to him. G. Ex. 6. Mr. Cook performs general maintenance/HVAC duties for the Board.

10. Grievant has taken and passed the locksmith/carpenter competency test. He has not passed the HVAC competency test.

DISCUSSION

Grievant alleges that after Mr. Lewis' retirement, the Board filled the locksmith/carpenter position with another employee, Joe Fisher, without posting the position, in violation of W. Va. Code § 18A-4-8b. In other words, Grievant alleges the “true vacancy” was the locksmith/carpenter position, and not the general maintenance/HVAC position, which was posted.

The Board determined, after Mr. Lewis announced his retirement, that the position of locksmith/carpenter was not needed and eliminated that position by Board action on May 6, 1996. The Board assigned some of the duties performed by Mr. Lewis to Joe Fisher and Charles McCallister, classified as general maintenance/HVAC and plumber, respectively, with their consent and at no additional pay. The Board also determined there was a need for an additional HVAC position and posted that position. Mr. Cook was hired for that position, and performs the duties of a general maintenance/HVAC employee.

CONCLUSIONS OF LAW

1. School law requires that a board of education post notices of position vacancies and openings, but there is no requirement to do so when a legitimate vacancy does not occur. Payne v. Fayette County Bd. of Educ., Docket No. 94-19-144 (Sept. 28, 1994); Terek v. Wetzel County Bd. of Educ., Docket No. 52-86-122-2 (Aug. 25, 1987). 2. County boards have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. Nevertheless, this discretion must be excercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious. Dillon v. Bd. of Educ. of County of Wyoming, 351 S.E.2d 58 (W. Va. 1986).

3. A board of education has the discretion to determine the number of jobs for and the employment terms of service personnel. When a board of education seeks to reduce employment costs, the board may decide that the schools' best interests requires the elimination of some service personnel jobs. See Lucion v. McDowell County Bd. of Educ., 446 S.E.2d 487 (W. Va. 1994).

4. The Board did not act in an arbitrary and capricious manner when it decided that it was in the school's best interests to eliminate the position of locksmith/carpenter upon the retirement of Mr. Lewis.

5. The Board had no obligation to post a vacancy for locksmith/carpenter position when that position no longer existed.

6. Grievant has failed to establish by a preponderance of the evidence that the Board violated W. Va. Code § 18A-4-8b in eliminating the locksmith/carpenter position and assigning the duties of that position to Mr. Fisher and Mr. McCallister, with their consent and at no additional pay.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Putnam 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.

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MARY JO SWARTZ

Administrative Law Judge

Dated: October 15, 1997

Footnote: 1

The relief requested was amended at level two to seek posting of the position.