TERRY FARLEY, et al.,

Grievants,

v. Docket No. 96-50-272

WAYNE COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievants, Luther Marcum, Don Williamson, and Terry Farley, grieve the Wayne County Board of Education's ("WCBOE") failure to post a 20 day summer extension of a maintenance position. (See footnote 1) Grievants allege W. Va. Code §§ 18-5-39 and 18A-4-8b were violated. They request as relief that the position be posted. They also request retroactive wages, benefits, seniority, and interest for the individual grievant chosen as the successful applicant. This grievance was denied at Levels I and II, and waived at Level III. Grievants appealed to Level IV, and a hearing was held on September 26, 1996. This case became mature for decision on November 14, 1996, the deadline for the parties' proposed findings of fact and conclusions of law.

This case presents a somewhat unusual situation as the issue Grievants contest is the failure to post a general maintenance position extension, but Grievants are not classified as general maintenance workers. WCBOE argues Grievants were not qualified for the position, and thus cannot grieve the alleged improper posting. WCBOE also argues W. Va. Code § 18A-4-19(b) allows acounty board of education to alter the employment term of a 200 day employee without posting, as such alteration does not create a new position. Appropriate Findings of Fact are set out below.

Findings of Fact

1. At a June 1996 board meeting, WCBOE voted to grant Mr. Lacey Marcum a twenty- day extension of his regular contract. Mr. Marcum is multi-classified as a Custodian II or III (See footnote 2) /General Maintenance Worker. He has approximately eight years of seniority. The summer extension was for twenty days as a General Maintenance Worker. This extension was not posted.

2. Grievant Marcum is classified as a Custodian III, and has approximately sixteen years of seniority.

3. Grievant Williamson is classified as a Bus Operator and has twenty-one years of seniority.

4. Grievant Farley is classified as a Bus Operator and has approximately seventeen years of seniority. He is also classified as a Secretary with approximately two years of seniority.

5. Grievant Farley received Workers' Compensation at the end of the 1995-1996 school year, during that summer, and remains on Compensation at this time. Although he applied for several Bus Operator positions for the summer, and states he would have applied for the position at issue, he testified he would not have been able to fill the position as he was not released to return to work by his doctor.

Discussion

The first issue to resolve is whether Grievants have standing to contest the failure to post the twenty day extension. If they do not have standing, then this grievance is resolved at that point. Because Grievants are not classified as General Maintenance Workers, they are not minimally qualified for the position. They could not receive Mr. Lacey Marcum's extended summer position. Additionally, Grievant Farley was not able to fill the position, even if he had been properly classified, because he had not been released to return to work. This Grievance Board has repeatedly ruled that employees who are not qualified for a position do not have standing to grieve their non- selection or the selection process. Mullins v. Kanawha County Bd. of Educ., Docket No. 94-20-364 (Dec. 29, 1994). See also Weaver v. Mason County Bd. of Educ., Docket No. 94-26-028 (Oct. 25, 1994); Pomphrey v. Monroe County Bd. of Educ., Docket No. 94-31-183 (July 1, 1994). Likewise, Grievants cannot grieve the failure to post.

This ruling does not address the legality or ability of WCBOE to extend Mr. Marcum's position in the manner in which it did. That would be an issue that could be pursued in another grievance, if appropriate. Clearly, there is a potential for conflict between W. Va. Code §§ 18-5-39 and 18A-4-19(b), as § 18-5-39 requires posting of summer positions, and § 18A-4-19(b) allows county boards to alter and extend the employment contract of a 200 day service employee without posting. At times this alteration of an employee's contract could extend into the summer.

The above-discussion will be supplemented by the following Conclusions of Law.

Conclusions of Law

1. Grievants are not classified as General Maintenance Workers, and thus, are not minimally qualified to hold such a position. Grievants could not receive Mr. Lacey Marcum's extended summer position.

2. Employees, who are not qualified for a position, do not have standing to grieve their non-selection or the selection process. Mullins v. Kanawha County Bd. of Educ., Docket No. 94-20- 364 (Dec. 29, 1994). See also Weaver v. Mason County Bd. of Educ., Docket No. 94-26-028(Oct. 25, 1994); Pomphrey v. Monroe County Bd. of Educ., Docket No. 94-31-183 (July 1, 1994). Likewise, Grievants do not have standing to grieve the failure to post the position.

Accordingly, this grievance is **DENIED**.

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

JANIS I. REYNOLDS

Administrative Law Judge

Dated: February 28, 1997

Footnote: 1

As these grievances concerned the same issue, they were combined at Level IV.

Footnote: 2

The record is unclear as to Mr. Marcum's exact custodial classification. Whether he is a Custodian II or III has no bearing on the outcome of this grievance.