OMER WOODS

v. Docket No. 96-BOT-277

BOARD OF TRUSTEES/WEST VIRGINIA UNIVERSITY

D E C I S I O N

Grievant, Omer Woods, employed by West Virginia University (Respondent) as a Laborer, filed a level one grievance on March 5, 1996, when he was denied a transfer into the position of Campus Police Officer II. Following denials at levels one and two, the grievance was advanced to level four on July 1, 1996. An evidentiary hearing was conducted on October 29, 1996, and the matter became mature for decision with the filing of proposed findings of fact and conclusions of law by Respondent on November 18, 1996. (See footnote 1)

The following facts are undisputed.

1. Grievant was first employed by Respondent as a Laborer in March 1994. In January 1995 he transferred to the position of Building Service Worker, and in April 1995 he transferred to the position of Laborer, Roads and Grounds Service, his current assignment.

2. Respondent posted a “Jobs Bulletin” dated January 18, 1996, which included the position of Campus Police Officer II.

3. The requirements for the position were stated on the “Jobs Bulletin” as:
HS Diploma/GED. 2 yrs. Law enforcement or military training or 2 yrs. of college training in criminal justice. Must qualify for, attend, & complete West Virginia's Basic Law Enforcement Academy. The Academy requires the applicant to pass a physical examination & be within a certain height & weight range. Must acquire & maintain a CPR certification. Must be bondable. Must be able to maintain law enforcement office certification. Must have & maintain a valid West Virginia driver's license.

4. Grievant was one of six applicants interviewed on February 8, 1996, by Robert E. Roberts, Director of Public Safety & Parking, Captain Arthur Mathess, Assistant Director, and Sergeant Ricky L. Jackson, of the Department of Public Safety.

5. Grievant was not selected for the position of Campus Police Officer II.

6. By memorandum dated February 14, 1996, Mr. Roberts advised Kathy Trickett,

Supervisor/Employment Services in the Department of Human Resources, that the three internal candidates interviewed on February 8, were “not competitive with other candidates” in that they did not possess the experience or training typically required of a Campus Police Officer. Mr. Roberts stated that he had significant concerns whether they could perform the duties of a sworn officer, and recommended that they not be sent for future interviews until such time they improved their skills through training or related college course work.

Grievant argues that he meets the minimum qualifications for the position, and Respondent's failure to grant the transfer was in violation of W.Va. Code §18B-7-1(d) which provides that nonexempt classified employees who meet the minimum qualifications for a job opening at the institution where they are currently employed, whether the position be a lateral transfer or a promotion, shall be awarded the position before a new person is hired, unless the hiring is affected by either an affirmative action plan or the Americans with Disabilities Act. Respondent asserts that Grievant did not meet the minimum qualifications in that he lacked the two years law enforcement experience or military training, or two years of college training in criminal justice. Although Grievant did list two years of military service on his resume, Mr. Roberts stated at hearing that Grievant's assignment had been as a truck driver while the relevant training for this position was in the military police.

Mr. Roberts stated that he also discounted Grievant's experience as a correctional officer for the Marion County Sheriff's Department (1982-84) and his part-time work as a police patrolman in the city of Farmington, during the same time period. Neither did he consider Grievant's work as a security officer for Southern Coal Company (1984-1992) to be qualifying. Mr. Roberts testified that he considered both the security guard and correctional officer experience as irrelevant because they dealt with “after the fact” situations, whereas police work was of a “preventative” nature. He noted that while other schools employ security guards or watch guards, WVU has an armed, sworn police department, the sixth or seventh largest force in the state. He did not consider Grievant's part-time work as a patrolman to meet the two-year criteria.

Upon careful consideration of the record in its entirety, it cannot be determined that Grievant has proven that he was minimally qualified for the position of Campus Police Officer II. The facts of this situation illustrate a need for the qualifications to be stated in a more precise fashion on the job posting. If Respondent wants an employee to have experience in the military police, as opposed to

generic military experience, it should be so stated. Grievant's military experience driving a truck would not prepare him for Campus Police Work, yet a literal interpretation would deem him qualified.

Grievant's work as a security guard and correctional officer, while generically related, does not constitute law enforcement assignments. As a security guard, Grievant was protecting his employer's property from intruders. Correctional officers manage individuals incarcerated for criminal violations. Law enforcement, of course, deals primarily with individuals who have broken, or are about to break the law, and the preliminary processing in the criminal justice system. The record establishes that Grievant does not possess two full years' experience in law enforcement, and therefore, he is not minimally qualified for the position.

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

Conclusions of Law

1. In non-disciplinary matters the grievant bears the burden of proving the allegations by a preponderance of the evidence. Gwilliam v. Preston County Bd. of Educ., Docket No. 95-39-255 (Dec. 22, 1995).

2. Grievant has failed to prove that Respondent acted in an arbitrary and capricious manner by determining that he was not minimally qualified for the position of Campus Police Officer II. See Bush v. Bd. of Directors/SWVCC, Docket No. 94-BOD-1137 (May 15, 1995).

3. Having failed to prove that he met the minimum qualifications of the position, Grievant has failed to prove that he was entitled to the position of Campus Police Officer II under the provisions of W.Va. Code §18B-7-1.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Monongalia County and such appeal must be filed within thirty (30) days of receipt of thisdecision. 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.

Date: February 6, 1997 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1 *Grievant elected to not file post-hearing proposals.*