RANDALL MILAM

v. Docket No. 96-41-419

RALEIGH COUNTY BOARD OF EDUCATION

DECISION

The grievant, Randall Milam, is employed by the Raleigh County Board of Education (Board) as a Heating and Air Conditioning Mechanic II/Electrician II. He filed a grievance at Level I, on August 8, 1996, protesting his non-selection for the post of Maintenance Department Electrical Crew Leader. His supervisor was without authority to grant relief, and the grievance was denied at Level II following a September 11, 1996 hearing. The Board, at Level III, declined to consider the matter, and appeal to Level IV was made October 2, 1996. A hearing was held January 14, 1997, and the parties submitted proposed findings of fact and conclusions of law by February 13, 1997.

Background

There is essentially no dispute over the facts of the case. The grievant was first hired by the Board as a bus operator in 1978. In 1993, he applied for and obtained a Heating and Air Conditioning/Electrician position headquartered in the Board's Maintenance Department. In Spring 1996, and perhaps earlier, Patricia Williamson, the Board's Food Director, and other Board administrators, became concerned that certain federal regulations regarding the delivery of federally-financed food services programs required the assignment of an employee whose services were primarily, if not wholly, dedicated to the repair and maintenance of food storage and preparation equipment. They elected to create such a position. It appears that the employee's salary would be paid for with federal funds.

In May 1996, the grievant obtained the new post either through a competitive bidding process or involuntary transfer. (See footnote 1) His transfer meant that he obtained a new supervisor, Ms. Williamson, and new work headquarters, the Board's Auxiliary Services Complex (ASC), a building located approximately six miles from the Maintenance Department. The grievant's new job required that he travel to various schools and maintain and/or repair kitchen equipment. He receives his assignments from Ms. Williamson, and works by himself most of the time. Occasionally, he requires

the assistance of a Plumber or other Electricians.

On June 24, 1996, the Board created and posted Carpentry, Electrical, Masonry and Plumbing Crew Leader positions. The announcement for the four positions indicated that they were "supplemental", and the successful applicants would receive $100.00 per month over and above their current salaries. The posting also advised that the jobs would be based in the Maintenance Department and that, if a review of the feasibility of the positions at the end of the 1996-97 school year were "negative," they would then be eliminated. An attached job description provided, among other things, that the incumbents would "assign all work orders in area of assignment, work directly with the head of the maintenance department when ordering supplies and materials, supervise all projects in assigned area, and assist in evaluating employees in assigned area." (Emphasis original). It appears that Board administrators anticipated that only Carpenters, Electricians, Masons and Plumbers already headquartered in the Maintenance Department would make applications. The record reflects that none of the applicants for any of the posts had ever held the Crew Leader classification.

The grievant made a timely application for the Electrical Crew Leader assignment. It was ultimately awarded to Mr. Charles Jones, an Electrician II in the Maintenance Department who had less overall seniority than the grievant, but more seniority within the Electrician classification.

The grievant subsequently requested reasons for his rejection from Superintendent of Schools Dwight Dials and Dr. Emily Meadows, the Board's Personnel Director. He was advised of Mr. Jones' greater Electrician seniority, and was told that, in any event, it was not possible, from a practical standpoint, for him to supervise Maintenance Department employees and perform his "federal program" duties. The Superintendent or Dr. Meadows may also have advised the grievant that Mr. Marvin Bostick, the applicant for the Carpenter Crew Leader assignment with the greatest overall seniority, was not selected for that post, because he also was not headquartered at the Maintenance Department.

Argument

The parties agree that W.Va. Code §§18A-4-8b and 18A-4-8g, governed the process for selecting the Crew Leaders, and appear to agree that, by virtue of his greater overall seniority, the grievant was entitled to the post sought, if it was feasible for him to supervise Maintenance

Department employees and adequately perform his food program-related duties. The grievant claims that it was, and the Board maintains that it was not.

Findings and Conclusions

Fortunately, it is not necessary to address the application of the cited statutes to Mr. Jones' appointment. Prior Level IV decisions hold that availability is an implicit requirement of all job announcements, and that, regardless of whether he would otherwise be legally entitled to it, a current employee seeking a second, additional assignment with a county board of education must be able to carry out the duties of both jobs to the board's satisfaction. Barber v. McDowell County Bd. of Educ., Docket No.94-33-405 (April 21, 1995). To prevail, an employee who is denied the additional assignment on the grounds that time or other constraints rendered him unavailable for the post, must demonstrate, by a preponderance of the evidence, that the county board's decision was arbitrary and/or capricious. Id. In accordance with the holdings in Dillon v. Wyoming County Bd. of Educ., 351 S.E.2d 58 (W.Va. 1986), the standard of review in such cases entails considerable deference to the county board's assessment of whether one job would conflict with the other. See, Walls v Wyoming County Bd. of Educ., Docket No. 95-55-157 (Aug. 29, 1995).

The evidence rather clearly demonstrates that the Board did not err in determining that the grievant could not carry out the most essential tasks of an Electrical Crew Leader and maintain an acceptable level of performance in his current post. Indeed, the record is so supportive of the Board's position that the grievant's claims appear frivolous. His own testimony reflects that while he might be able to perform several of the duties listed in the Crew Leader job description from his ASC base, he would have little, if any, time to even occasionally observe, much less direct, the work of Electricians based in the Maintenance Department. At Level II, he represented that the second assignment would “just require more time on [his] part,” but never explained how he would obtain it.

Moreover, even if it were accepted that the grievant could overcome the time constraints ofthe additional assignment, the record establishes that it would be almost coincidental if he and the Electricians he seeks to supervise would be working at the same schools on a typical day. Simply stated, the evidence presented convincingly demonstrates that the Board was looking for “hands-on” leaders for its Maintenance Department crews, and the grievant's current duties would, at best, permit him to provide limited, remote supervision. It would be a fair characterization to say that the grievant's appointment to the Electrical Crew Leader post would have created an unworkable, even absurd,

arrangement.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of the county in which the grievance occurred. Such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code §29-6A-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.

-

JERRY WRIGHT

Administrative Law Judge

DATE: June 9, 1997

Footnote: 1

The evidence is conflicting on this point. The record reveals that the grievant was given notice of transfer in Spring 1996, but it also reflects that the position was posted.