CHARLES SHELTON

v. Docket No. 96-DOP-353

WEST VIGINIA DIVISION OF CORRECTIONS

and WEST VIRGINIA DIVISION OF PERSONNEL

DECISION

The grievant, Charles Shelton, is employed by the West Virginia Division of Corrections (CORR) as a Correctional Officer II assigned to the Anthony Correctional Center (ACC). He filed a grievance at Level I, on or about May 21, 1996, protesting a determination by the West Virginia Division of Personnel (Personnel) that he was ineligible for a Correctional Officer IV post. The grievance was denied at the lower levels and appeal to Level IV was made August 14, 1996. The parties subsequently agreed to submit the case for decision on the record developed at Level III. The agencies declined to submit proposed findings of fact and conclusions of law. (See footnote 1) The grievant submitted written legal argument by December 5, 1996.

Background

There is no dispute over the facts of the case. Consistent with Personnel's specifications for the position of COIV, CORR's April 1, 1996 announcement for the post in issue listed the following minimum requirements:

> **Training**: An Associate Degree in criminal justice or a related field from an accredited college or university.
>
> **Substitution**: Full-time or equivalent part-time paid experience as a correctional officer may be substituted for the required college training on a year-for-year basis.
>
> **AND**
>
> Graduation from a standard high school or the equivalent, plus successful completion of a fundamental training course for correctional officer, police officer, military police officer, probation/parole officer, or related area **AND** the Correctional Officer Apprenticeship Program.

OR

Graduation from a standard high school or the equivalent plus successful completion of a fundamental training course as described above **AND** four years of full-time or equivalent part-time paid experience as a correctional officer, police officer, military police officer, probation/parole officer, or in criminal justice or related field.

Substitution: Successfully completed study from an accredited college or university in corrections, criminal justice or related field with a minimum of two semester hours in corrections, criminal justice or related field may substitute at the rate of thirty semester hours for each year of experience.

Experience: Three years of full-time or equivalent part-time paid experience as a correctional officer, police officer, probation/parole officer or related experience.

Substitution: Successfully completed study from an accredited college or university in corrections, criminal justice or related field may substitute at the rate of thirty semester hours for each year of experience.

Note: All appointees must successfully complete the Correctional Officer Apprenticeship Program within two years of appointment.

The grievant, who had then served as a CO at ACC for three and one-half years, but had no college education or other applicable experience, made a timely application for the job. Personnel ultimately determined that he had insufficient experience to qualify for consideration. The grievant and CORR were notified of the rejection on or about April 22, 1996.

Argument

All parties agree that the job posting, particularly the placement of the “ands” and “ors,” is confusing, and that the requirements listed are susceptible to differing interpretations. The grievant apparently focuses on the last paragraph, and interprets the announcement as requiring only three years of CO experience. Personnel construes it as requiring five years of correctional field experience for applicants without college education. CORR essentially avers that it had no control over the application of Personnel's regulations.

Findings and Conclusions

Fortunately, it is not necessary, and perhaps not possible, to decipher the language of the posting or discern precisely how Personnel reaches its particular translation. If Personnel's job specifications, developed and implemented per its authority to do so under W. Va. Code §29-6-10, (See footnote 2) are ambiguous, its interpretation is entitled to considerable deference unless it is “clearly wrong.” Dept. of Health and Human Resources v. Blankenship, 431 S.E.2d 681 (W.Va. 1993). The rule is particularly applicable here, where the specifications seem designed to confuse.

The unrebutted testimony of Assistant Director of Staff Services Max Farley establishes that shortly after the requirements for the COIV post were developed, Personnel also devised methods and/or rules for interpreting them. There was no evidence presented to contradict Mr. Farley's assertions that the agency had never deviated from these rules, and the grievant's rejection wasentirely consistent with all previous certification reviews of COIV applicants. The grievant did not show that he had been treated any differently than other candidates. The record suggests that he was aware of Personnel's interpretation of the specifications for the job when he made his application.

Regardless of whether the grievant's interpretation is the more reasonable or Personnel's interpretation is clearly wrong, it cannot be ignored that to adopt the grievant's view would be to give him a benefit not afforded other applicants. It is understandable that he seeks the advantages of a logical reading of the language in question, but it is not unfair to find that, by adhering to its interpretive rules, Personnel has, in effect, incorporated them into the specifications. Personnel should either announce and make these rules available to potential applicants or design specifications and job postings which do not require them.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the circuit court of the county in which the grievance occurred 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 appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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JERRY A. WRIGHT

Administrative Law Judge

DATE: July 9, 1997

Footnote: 1

Personnel's legal position, as set forth herein, is gleaned from its representative's opening statement at the Level III hearing. Since it had no control over the action complained of, CORR is a nominal party.

Footnote: 2

The statute authorizes Personnel to promulgate rules and regulations for the "[E]stablishment of eligible lists for appointment and promotion within the classified service, upon which lists shall be placed the names of successful candidates in the order of their relative excellence in the respective examinations." Personnel adopted the standards for the COIV position on December 12, 1995. They are embodied in the job description for the position, which contains the same language as the job posting set forth above.