



IN THE EDUCATION LABOUR RELATIONS COUNCIL HELD IN CAPE TOWN

Case No PSES 249-06/07WC

In the matter between

M.A.Myners

Applicant

And

Western Cape Education Department

Respondent

ARBITRATOR: Arthi Bhoopchand

HEARD: 8 November 2006

DELIVERED 17 November 2006

ARBITRATION AWARD

Details of Hearing and Representation

1. The hearing took place on the 8 November 2006 at the offices of the Western Cape Education Department (WCED) in Cape Town. Applicant was represented by D.Heradien, a representative of the Union SADTU, and the WCED was represented by V.Phillips.

Background to the Dispute

2. Ms Myners is currently employed as an educator by the WCED. She applied for a Deputy Principal's post at J.S.Klopper School, Post No.0215 of vacancy list 1 of 2006. She was shortlisted, interviewed and nominated for the post by the School Governing Body. She was informed of her nomination on the 24 June 2006, but was thereafter informed by the WCED that the post was being re-advertised, and accordingly her nomination to the post would be set aside.
3. Ms Myners applied for the post once again when it was re-advertised, but also lodged a dispute regarding the setting aside of her nomination .

Issue in Dispute

4. The dispute was referred as an unfair labour practice in terms of Section 186 of the Labour Relations Act. Applicant alleges that there were no procedural flaws in the filling of the post to justify a re-advertisement of the post. Accordingly applicant requests that her nomination to the post be upheld.
5. The WCED indicated that the only reason for its decision to re-advertise the post is that it had been found that there were procedural flaws in the manner in which post had been advertised in the first instance.

Summary of Evidence

6. Applicant presented the evidence of three witnesses, namely, J.Steyn, Norma Adonis and Ms Tito. Ms Steyn testified under oath, that as the Principal of JS.Klopper School, she was involved in the process for the filling of the Deputy Principal's post. She was not happy about the post being re-advertised as proper procedure had been followed. Senior Management at the school had discussed the establishment of the school and a needs analysis had been done, but the advertisement for the Deputy Principal's post was not specifically mentioned. She had spoken to the SGB about the requirements for the school. There had not been any complaints about the advertisement. Grievances had only been received after the nomination had been made. The Botha had requested her to re-advertise the post, but he had not given her any reason for this. The advertisement was then changed and some of the applicants to the post were part of the process . The advertisement was also discussed with the SMT.
7. Under cross examination she testified that the advertisement had been formulated by herself and the SGB. The SGB had tasked a smaller team of SGB members to attend to the final advert. The needs of the school had not changed by the time the final advert was placed.
8. Norma Adonis, testified that the SMT had discussed the needs of the school on two to three occasions but they did not speak specifically about the advertisement. They spoke about the need for another teacher for technology and other needs of the school. The advertisement was finalized with the Principal and the SGB. The full SGB decided that a smaller group should work on the advert. Botha informed them that the post had to be re-advertised but he did not give any reasons for this. Botha met with the staff and

complimented them on their work. Mrs Becker, the circuit manager told them that there was nothing wrong with the process. The department told them that new information had come to light. Botha said he had spoken to the grievants and had found out that they had not been part of the process.

9. Under cross examination she testified that the needs of the school had not changed by the time the advertisement was placed. Two grievances were lodged by LB Pillay and N.Marinus after the nomination was made. Pillay had been shortlisted and Marinus was not shortlisted because he did not have a SACE certificate
10. The WCED presented the evidence of Ms Tito, a co-opted member of the SGB. She testified that she had been involved in the advertisement after a needs analysis was presented to them by the principal. The whole body of the SGB tasked a smaller group to place the advert. The SGB did not see the final advertisement that was drafted by the group.
11. The WCED presented the evidence of one witness, Arthur Pullen, Deputy Principal of JS Kloppe. He testified under oath that he was not involved in the drawing up of the advertisement. A needs analysis had been done for the school but not for the post. They had never discussed the criteria for the Deputy Principal's post. The advertisement had addressed only some of the needs of the school. Botha asked them to re-advertise the post because the SMT had not been involved in the advertisement.
12. Under cross examination he testified that applicants to a post should not be part of the process.

Analysis of Evidence and Argument

13. Applicant contends that the nomination process conducted by the School Governing Body was fair, that her nomination should stand, and that failure by the WCED to promote her as per the recommendation of the SGB amounts to unfair labour practice. The WCED on the other hand maintains that the process was flawed in that guidelines for the advertisements of posts were not followed. It is apparent that the WCED has endorsed the process in all other respects.
14. In terms of Chapter B of the Personnel Administration Measures, the WCED is required to satisfy itself that agreed upon procedures are followed. However, this does not mean that any minor lapse in procedure would warrant a repeat of the entire process. The nature and gravity of the procedural lapse is of essence. The issue of prejudice to applicants is also a consideration.
15. I am persuaded by the version of applicant that a needs analysis was done. It did emerge during testimony that the advertisement for the Deputy Principal's post was not specifically mentioned during the meetings in which the needs of the school was discuss. It is nevertheless clear that the advertisement was not placed randomly, but only after the needs of the school had been clearly established. I view the fact that the advertisement was not mentioned during these meetings as a mere technicality particularly because neither any applicant nor the school appears to have been prejudiced in any way. On the contrary, the principal as well as the SGB are satisfied that the advertisement addressed the needs of the school. I am satisfied that the placement of the advertisement was not flawed in any material way. Two grievances had been lodged regarding the filling of the post but it was evident that they did not relate to the advertisement.

16. Applicant's nomination to the post was the result of a fair process. The conduct of the WCED in repeating the process is unfair to applicant.

Accordingly I make the following award:

AWARD

1. Applicant's nomination to the post must be upheld.
2. There is no order as to costs.

Arthi Singh Bhoopchand
Arbitrator/ ELRC Panelist
17 November 2006