ARNOLD TAYLOR

v. Docket No. 93-27-534

MERCER COUNTY BOARD OF EDUCATION

DECISION

The grievant, Arnold Taylor, is employed by the Mercer County Board of Education (Board) as a driver education teacher at Spanishburg High School. He filed a grievance at Level I October 7, 1993, protesting his non-selection for the position of driver education teacher at Pikeview High School (PHS). The grievant's supervisor was without authority to grant relief at Level I and the grievance was denied at Level II following a hearing held November 30, 1993. (See footnote 1) The Board, at Level III, upheld the level II decision and appeal to Level IV was made December 22, 1993. A hearing was held March 7, 1994 and the Board submitted proposed findings of fact and conclusions of law on April 11, 1994. The grievant declined to submit proposals.

FACTS

The record developed at Levels II and IV supports the following findings.

1. The Board posted the job in question on May 27, 1993. "Proper endorsement in Safety Education" was the only requirement listed in the posting.

2. Five persons, including the grievant, made timely applications for the position.

3. PHS Principal Dan Zirkle and a committee (See footnote 2) conducted interviews of all applicants and completed a matrix sheet in which each candidate was assigned a score from 1 to 20 in the following categories: appropriate certification and/or licensure, total amount of teaching experience, the existence of teaching experience in the required certification area, degree level in the required certification area, specialized training directly related to the performance of the job as stated in the job description, receiving an overall rating of satisfactory over the previous two years, and seniority.

4. In reviewing the grievant's personnel file, Mr. Zirkle and the committee discovered an April 1, 1993 evaluation on which he was rated unsatisfactory in two of the six areas assessed. He was rated "Satisfactory-Performance is consistently adequate and acceptable" in the remaining four areas. Mr.

Zirkle concluded that the evaluation was overall unfavorable and the grievant should,therefore, be awarded no points in the "Receiving an overall rating of satisfactory over the previous two years" category.

5. The grievant did not file a grievance over the evaluation.

6. The evaluation form used in the April 1 assessment is unusual in that it does not call for the evaluator to assign the employee an overall rating and does not allot any particular weight, numerical or otherwise, to the various performance indicators therein. The form simply requires the evaluator to review specific performance indicators within the broad categories, "Programs of study, Classroom climate, Instructional management system, Student progress, Communication, and Professional work habits" and rate the employee as satisfactory or unsatisfactory in each category.

7. Mr. Zirkle and the committee also concluded that although the grievant had a masters degree, it was a degree in the mining safety field and not as directly relevant to the duties of the position as a masters degree in safety education. For this reason, the grievant was assigned a score of 18 in the category, "Degree level in the required certification area."

8. The grievant's score in the evaluation category effectively precluded him from consideration for the position. He received a score of 20 in each of the remaining five categories for a total score of 118, the lowest rating of all the applicants. (See footnote 3)

9. The committee and Mr. Zirkle determined that applicant Cyrus Jeffries held a masters degree in safety education and that he was entitled to a score of 20 in the "Degree level in the required certification area" category. Mr. Jeffries was given a rating of 18 in the Seniority section (See footnote 4) of the matrix and a score of 20 in each of the remaining five categories for a total of 138, the highest rating of all the applicants.

10. Superintendent of Schools Deborah Akers accepted the committee's recommendation that Mr. Jeffries be awarded the position and the Board ultimately accepted her recommendation to that effect.

___The record does not reflect what rating the grievant achieved on his 1991-92 evaluation. (See footnote 5) For the reasons hereinafter discussed, his rating for that year is of considerable importance.

ARGUMENT

The grievant, appearing pro se, asserted at the Level IV hearing that his April 1, 1993 evaluation

was neither fair noraccurate and should not have been used in the assessment for the position in issue. He also contended that the Board erred in its determination that Mr. Jeffries' masters degree was superior to or more relevant to the position than his. (See footnote 6) The Board responds that since the grievant did not file a formal protest over the evaluation within the time frames set forth in W.Va. Code §18-29-4(a)(1), the evaluator's findings must be deemed accurate. The Board avers that the selection process was otherwise conducted in accordance with the mandates of W.Va. Code §18A-4-7a.

CONCLUSIONS

After a careful review of the parties' positions, the applicable statute and the foregoing findings of fact, the undersigned makes the following conclusions of law.

1. Assessments of a school board employee's performance which are not grieved or otherwise protested within the time frames allowed in Code §18-29-4(a)(1) must be accepted as accurate in subsequent proceedings involving those assessments. Simmons v. Greenbrier County Bd. of Educ., Docket No. 91-13-470 (Jan. 19, 1993). Thus, the grievant herein is precluded from challenging the validity of his April 1, 1993 evaluation.

2. When one or more permanently employed instructional personnel make application for a classroom teaching position and meet the standards set forth in the job posting, the county boardof education must fill the position on the basis of the following criteria: Appropriate certification and/or licensure; total amount of teaching experience; the existence of teaching experience in the required certification area; degree level in the required certification area; specialized training directly related to the performance of the job as stated in the job description; receiving an overall rating of satisfactory in evaluations over the previous two years; and seniority. Each criterion must be given equal weight. W.Va. Code §18A-4-7a.

3. The language of Code §18A-4-7a regarding the applicants' evaluations over the previous two years refers to school and not calendar years. Rakes v. Raleigh County Bd. of Educ., Docket No. 93-41-448 (March 17, 1994). Thus, in the present case, the Board was obligated to review and consider the applicants' evaluations for school years 1991-92 and 1992-93.

4. The Board erred in its determination that the grievant's April 1, 1993 evaluation was overall unsatisfactory. Clearly, satisfactory ratings in four of six performance areas which were not assigned any particular weight or priority dictates that his service for school year 1992-93 was overall

satisfactory within the meaning of W.Va. Code §18A-4-7a.

5. That portion of Code §18A-4-7a which requires a county board to consider whether an applicant for a teaching position has received "an overall rating of satisfactory in evaluations over the previous two years" contemplates that the board will review andconsider all evaluations of the applicant for the two school years preceding the job posting.

6. Absent evidence concerning the grievant's 1991-92 evaluation(s), it is not possible to determine what score he should have received in the selection committee's ranking system in the evaluation category.

7. If a grievant, protesting his nonselection for a professional position, demonstrates that the selection process was flawed to the point that the outcome might reasonably have been different otherwise, he is entitled to a reassessment of his credentials and those of the successful applicant for the position. Stover v. Kanawha County Bd. of Educ., Docket No. 89-20-75 (June 26, 1989). The Board's erroneous determination that the grievant was evaluated as overall unsatisfactory for school year 1992-93 constitutes a substantial flaw in the selection process which could reasonably have affected the outcome of the process. He is, therefore, entitled to a reassessment of his credentials and those of Mr. Jeffries.

8. It was not a misinterpretation or misapplication of that portion of Code §18A-4-7a which requires a county board to consider an applicant's "degree level in the required certification area" for the Board to discount the grievant's masters degree. The posting called for certification in the safety education field and the record supports that while the grievant completed several college courses relevant to that field, he ultimately obtained his masters degree in occupational safety. Further, it establishesthat Mr. Jeffries' masters degree in the field of safety education was more relevant to the duties of the position.

Accordingly, the grievance is **GRANTED** to the extent that the Mercer County Board of Education is hereby **ORDERED** to conduct a reassessment of the credentials of the grievant and applicant Cyrus Jeffries consistent with the holdings herein.

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

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JERRY A. WRIGHT

CHIEF ADMINISTRATIVE LAW JUDGE

Dated: August 22, 1994

Footnote: 1 *The transcript of this hearing and attached exhibits are part of the record herein.*

Footnote: 2 *The record is silent as to the makeup of the committee.*

Footnote: 3 *The Board did not submit the original matrix sheet used by the committee. The sheet tendered was prepared by Mr. Zirklesubsequent to the filing of the grievance and merely reflects the scores of the grievant and the successful applicant. While it lists the names of the remaining candidates, it does not contain their scores. For this reason, it is difficult to discern the precise methodology of the committee in assigning a particular score.*

Footnote: 4 *The record does not reflect the total number of years Mr. Jeffries had worked for the Board. At the time of the posting, the grievant had been employed by the Board for twenty years.*

Footnote: 5 *At the hearing, the grievant, appearing confused over which evaluations were relevant to the inquiry, submitted only his evaluations for school years 1989-90 and 1990-91. The Board did not submit any documentation, and, thus, the 1991-92 evaluation was not introduced in evidence.*

Footnote: 6 *The grievant does not take exception with his ranking in any other categories. Thus, the conclusions reached herein are restricted to the issues of his rating in the evaluation and degree level sections.*