CHARLES MAYNARD

v. Docket No. 94-27-047

MERCER COUNTY BOARD OF EDUCATION

DECISION

The grievant, Charles Maynard, is employed by the Mercer County Board of Education (Board) as a classroom teacher and basketball coach at Spanishburg High School (SHS). He filed a grievance at Level I October 6, 1993, protesting the Board's failure to appoint him to one of two posted Physical Education teaching positions at Pikeview High School (PHS). The grievant's supervisor was without authority to address the matter and the grievance was denied at Level II following a hearing held January 27, 1994. The Board, at Level III, apparently declined to consider the matter and appeal to Level IV was made February 9, 1994. The parties subsequently agreed to submit the case for decision on the record developed at the lower levels. The Grievant submitted proposed findings of fact and conclusions of law on March 22, 1994. The Board declined to submit proposals.

FACTS

The record is sparse and is only minimally sufficient for an inquiry into the grievant's claims. Testimony adduced at Level II supports the following findings.

1. In September 1993 the Board posted one Health and two Physical Education teaching positions at PHS. The postings apparently listed certification in the relevant field as the only minimum requirement for the positions. The grievant applied for both of the PE positions. Mr. Stauffer, (See footnote 1) another teacher employed by the Board, applied for all three. Teachers Drema Ball and Al Morgan also applied for the two PE positions.

2. PHS Principal Dan Zirkle headed a selection committee (See footnote 2) which assessed the applicants for the three positions and ultimately made recommendations to Superintendent of Schools Deborah Akers.

3. After reviewing personnel files and seniority rosters, the committee developed a "grid" for the Health position on which the applicants were assigned scores in the following seven 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; receivingan overall rating of satisfactory in evaluations over the previous two years; and seniority. (See footnote 3) An identical grid was used for both PE positions.

5. The selection committee assigned scores of 1 through 20 to each applicant in each category on the grids. Nearly all candidates for the PE positions received scores of twenty in appropriate certification and/or licensure, certification in the relevant field, the existence of teaching experience in the required certification area, and receiving an overall rating of satisfactory in evaluations over the previous two years. (See footnote 4) The applicant who had the greatest seniority received a twenty score in that category and the remaining applicants received scores of nineteen, eighteen, seventeen and so on. This scoring pattern was also followed on the categories, total amount of teaching experience and degree level in the required certification area. (See footnote 5)

6. The committee conducted interviews of the candidates to confirm their credentials as reflected in their personnel files.

7. At the conclusion of the interviews, the committee totalled the applicants' scores and determined that Mr. Stauffer had achieved the highest overall ranking on both the PE and Health grids. Given his choice of jobs, Mr. Stauffer chose the Health position.

8. Ms. Ball and Mr. Morgan, who were ranked second and third on the PE grid respectively, were awarded the PE positions. (See footnote 6)

ARGUMENT

The grievant does not contend that the committee's use of a 1 through 20 scoring process was, in and of itself, inconsistent with W.Va. Code §18A-4-7a, the statute controlling the selection of professional personnel. (See footnote 7) Rather, he asserts that by failing to remove Mr. Stauffer's name and scores from the PE grid once he had been selected for the Health position, the Board "skewed" the scores of the remaining applicants vying for the PE positions. The grievant maintains that the process was again distorted when the Board failed to remove Ms. Ball's scores from the PE grid once shewas awarded one of those positions. He asserts that by retaining the scores of the top two applicants, the Board was essentially forcing the other candidates for the remaining PE position to compete with "non-applicants." As relief, he asks that the Board conduct a new assessment of the candidates for the PE positions using separate grids for each.

The Board's position, as gleaned from the Level II decision, is that "although all applicants for the PE positions were evaluated using one score sheet, to remove one of the successful candidates and then reconsider the remaining applicants for the second position would not move Mr. Maynard to the top ranked slot for either position."

CONCLUSIONS

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

1. "If one or more permanently employed instructional personnel apply for a classroom teaching position and meet the standards set forth in the job posting, the county board of education shall make decisions affecting the filling of such positions 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 overallrating of satisfactory in evaluations over the previous two years; and seniority." W.Va. Code §18A-4-7a, ¶1. While licensure and satisfactory performance evaluations require only verification, an assessment of the remaining criteria necessitates a ranking of the candidates.

2. W.Va. Code §18A-4-7a contemplates, and obviously so, that county boards of education should assess only viable candidates for a professional position and that once an applicant has withdrawn his name from consideration, accepted other employment or has otherwise become ineligible for the position, his rankings on the various criteria listed in the statute should have no bearing on the scores of the remaining candidates.

3. The Board's failure to remove Mr. Stauffer's scores from the PE field of applicants and recalculate the scores of the remaining candidates once he had been selected for the Health position was violative of W.Va. Code §18A-4-7a. Its failure to delete the rankings of the second highest scorer and conduct another reassessment of the remaining candidates was likewise violative of the statute.

4. 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).

5. While the grievant presented evidence establishing that his overall score for at least one of

the two PE positions would have been higher had Mr. Stauffer and Ms. Ball been eliminated from further consideration once they were selected for other positions, that evidence is insufficient to establish that he would have at any point been the high scorer of the eligible applicants or that the relative rankings for all the applicants for either position might have been different. Thus, he has failed to meet his burden in the case.

Accordingly, the grievance is **DENIED.**

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: November 16, 1994

Footnote: 1The record does not reveal Mr. Stauffer's first name.

Footnote: 2The record does not reveal the names or positions of the remaining members.

Footnote: 3Since "one or more permanently employed instructional personnel" applied for the position, consideration of these factors was mandated by W.Va. Code §18A-4-7a, ¶1. The statute also requires that "Consideration shall be given to each criterion with each criterion being given equal weight." Whether or not the Board's selection process for the position(s) in issue complied with these mandates is the focus of the inquiry.

Footnote: 4This was based on the committee's determination that since the candidates possessed these qualifications, they were essentially "tied" in those categories.

Footnote: 5Although the parties utilized the grids at the Level II hearing, primarily by the grievant's representative, no request was made that they be admitted into evidence. The failure to have them included in the record is of considerable significance since much of the information contained thereon was not adequately adduced through the examination of witnesses.

Footnote: 6The committee of course only made recommendations to Superintendent Akers whose ultimate recommendations to the Board were accepted.

Footnote: 7At the Level II hearing, the grievant's representative, during his questions to Mr. Zirkle, remarked that it appeared improper to assign points in the "specialized training" category when no such training was contained in the PE teacher job description. This matter was not raised again during the hearing and it is not mentioned in the grievant's proposed findings of fact and conclusions of law at Level IV. Accordingly, to the extent that the issue was ever properly raised, it is considered abandoned.