MASON WORRELL,

Grievant,

v. **DOCKET NO. 94-27-054**

MERCER COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

This grievance was initiated August 17, 1993, by Mason Worrell ("Grievant") against the Mercer County Board of Education ("MBOE"), alleging:

> Based on criteria 18A-4-7a, I was more qualified than the successful applicant. Board refused to award me the position in question.

Grievant's claim is that he should have been hired for the position of music teacher at Princeton Senior High School instead of the successful applicant, Suzanne Lowry. The remedy sought is that Grievant be placed in the music teacher position.[1]

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[1] Grievant waived Level I, and a Level II hearing was held October 18, 1993. The grievance was denied at Level II, and was likewise denied at Level III, on the Level II record. Grievant appealed to Level IV on January 6, 1994, and a hearing was scheduled. Thereafter, on June 14, 1994, the parties agreed to submit this matter for decision on the Level II record, supplemented by proposed findings of fact and conclusions of law. (continued...)

[1](...continued)
This case became mature for decision on December 8, 1994, with the submission of the lower level record.

Grievant's sole argument is that W. Va. Code §18A-4-7a ("7a") was erroneously applied when Mrs. Lowry was assigned a higher score than Grievant in 7a's criterion number four (degree level in the required certification area). If Grievant were correct, he would have received a higher total score than Mrs. Lowry after application of the 7a criteria, and should have been recommended for the position. The undersigned finds that Grievant has not met his burden of proof in this case, and the grievance must be denied.

The facts are not in dispute, and are set forth in the following findings of fact:

Findings of Fact

1. Respondent, MBOE, posted the position of Music Teacher - Princeton High School, as part of administrative memo no. 32, dated May 7, 1993. The posting read as follows:

> Music Teacher - Princeton High School
>
> Minimum Qualifications: A valid West Virginia teaching certificate with endorsement in Music, grades K-12. Applicant having experience in choral activities and piano instruction preferred. (156)

Students from grades 10 through 12 attend Princeton High School. T. 15-17[2]; Board Exhibit No. 1.

2. Four applicants for the music teacher position at Princeton High School, including Grievant and the successful

[2] All references to the transcript of the Level II hearing held October 18, 1993, are made as follows, with the page number appearing in the blank: "T. ___."

applicant, were interviewed by George Keatley, Assistant Superintendent, Mercer County Schools. All four interviewees met the minimum requirements of the posting. T. 3-4, 6.

3. Both Grievant and the successful applicant were permanently employed instructional personnel, and the position was a classroom teaching position. Mr. Keatley applied the "second set of criteria" set forth in W. Va. Code §18A-4-7a, in deciding which applicant should be selected to fill the position. All seven 7a criteria were considered by Mr. Keatley, and the seven were equally weighted, with a maximum of twenty points possible for each. T. 5, 25, 33.

4. Grievant did not submit a resume at any time during the application or interview process. Grievant did not make known to Mr. Keatley that he held a Masters of Science Degree in Guidance from Radford University, with a minor in music, consisting of approximately 21 hours in music out of 45 total graduate hours. T. 14, 20, 23, 34, 40-41.

5. Mrs. Lowry submitted a resume to Mr. Keatley, which he referred to in evaluating her qualifications for the position. Mrs. Lowry's resume stated that she held a Bachelor of Music in Music Education and Applied Piano Pedagogy, K-12, from Queens College, Charlotte, North Carolina; and a Master of Arts in Teaching, with 21 hours in graduate music education classes, from the University of North Carolina at Chapel Hill ("UNC"). Mrs. Lowry's Masters was one of three types of music related Masters offered by UNC, and the 21 graduate hours in music represented the

majority of her total graduate hours earned at UNC. The remainder of her graduate hours were in education classes. T. 14, 28-29; Board Exhibit No. 3.

6. Grievant has taught elementary music 22 years in Mercer County, with a total of 29 1/2 years of teaching experience. Prior to moving to the Mercer County School system, Grievant taught music at the secondary level for six years in Tazewell County, Virginia, and for some additional period in Maryland. T. 33-38.

7. Grievant did not make known to Mr. Keatley that he had attended several secondary level music workshops offered by the West Virginia Music Educators Association. T. 14, 34.

8. Mrs. Lowry has taught music 20 years, all in Mercer County. Prior to her appointment to the instant position, Mrs. Lowry was music teacher for 15 years at Princeton Jr. High School. She previously taught music at the elementary level three years, and K-12 two years. Mrs. Lowry's resume reflected numerous appearances, awards, and superior and excellent ratings received by the choral group she directed at Princeton Jr. High, "Encore", from 1983-1993. Her resume also stated that she had attended numerous music workshops, and included, among her numerous activities and honors, guest conductor for the Greenbrier County and the Putnam County All-Junior High Choirs. T. 25-26, 29-30; Board Exhibit No. 2.

9. Mr. Keatley awarded Mrs. Lowry 20 points in the fourth criterion of 7a, "degree level in the required certification area." Grievant was awarded 19 points in this category, indicating that

Mrs. Lowry's degree level in the required certification area exceeded the level attained by Grievant. T. 5, 11, 19-20, 23.

10. After evaluating the background and experience of each applicant in applying the seven criteria of 7a, Mr. Keatley determined that Grievant and Suzanne Lowry had each accumulated 138 points. Mr. Keatley broke the tie by considering which of the two had the most teaching experience in secondary music instruction, and also took into consideration Mrs. Lowry's success in the field. Mr. Keatley determined that Mrs. Lowry was the most qualified for the position, and the MBOE acted on his recommendation to award the position to Mrs. Lowry. T. 5-14, 18-19; Board Exhibit No. 2.

Discussion

County boards of education have substantial discretion in matters relating to the hiring of school personnel. The exercise of that discretion must be within the best interests of the schools, and in a manner which is neither arbitrary nor capricious. See Hyre v. Upshur County Bd. of Educ., 412 S.E.2d 265 (W.Va. 1991). With regard to the hiring for a classroom teaching position, boards of education must exercise their discretionary authority by considering the "qualifying factors" set forth in W. Va. Code §18A-4-7a (1992). That Code Section requires that each factor be weighted equally.

The arbitrary and capricious standard of review of county board of education decisions requires a searching and careful inquiry into the facts; however, the scope of review is narrow, and the undersigned may not substitute her judgment for that of the

board of education. See generally, Harrison v. Ginsberg, 286 S.E.2d 276 (W.Va. 1982). The Grievance Board cannot perform the role of a "super-interviewer" in matters relating to the selection of candidates for vacant positions. Stover v. Kanawha Co. Bd. of Educ., Docket No. 89-20-75 (June 26, 1989); Harper v. Mingo Co. Bd. of Educ., Docket No. 93-29-064 (Sept. 27, 1993). Generally, a board of education's action is arbitrary and capricious if it did not rely on factors that were intended to be considered, entirely ignored important aspects of the problem, explained its decision in a manner contrary to the evidence before it, or reached a decision that is so implausible that it cannot be ascribed to a difference of view. Bedford County Memorial Hosp. v. Health and Human Serv., 769 F.2d 1017 (4th Cir. 1985).

W. Va. Code §18A-4-7a[3] sets forth, among other things, the criteria to be used by county boards of education in evaluating the

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[3] The "second set of criteria" found in 7a is applicable to this case, and reads as follows:

> 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 overall rating of satisfactory in evaluations over the previous two years; and seniority. Consideration shall be given to each criterion with each criterion being given equal weight.

candidates for classroom teaching positions. Grievant and Mrs. Lowry received the following scores for each of the 7a criterion:

		Grievant	Lowry
1.	Appropriate certification and/or licensure	20	20
2.	Total amount of teaching experience	20	19
3.	Teaching experience in the certification area	20	20
4.	Degree level in the required certification area	19	20
5.	Specialized training directly related to the performance of the job as stated in job description	19	20
6.	Overall rating of satisfactory in evaluations over past two years	20	20
7.	Seniority	20	19
	Total scores	138	138

As noted above, Grievant's sole argument is that Mr. Keatley erred in his application of the 7a criteria, by giving Mrs. Lowry a higher rating than Grievant in the criterion "degree level in the required certification area". The posted certification area was "teaching certificate with endorsement in Music, grades K-12". Apparently, Grievant's argument is that Mr. Keatley erred when he gave Mrs. Lowry credit for a Masters Degree, because the title of her Masters is not "Masters in Music". Grievant believes that without a degree entitled "Masters in Music", Mrs. Lowry would have scored lower than Grievant when all scores were tallied, and he would have been recommended for the posted teaching position.

Mr. Keatley's decision to award Mrs. Lowry credit for a Masters Degree in the required certification area is not erroneous. Mrs. Lowry's Masters in Education with 21 hours in music, was one of three music degrees offered in the masters program at UNC. Grievant's literal reading of the Masters title is not supported by the statutory language or the facts. Mrs. Lowry holds a Masters Degree in the required area of certification.

Grievant does not argue that Mr. Keatley should have also given him credit for a Masters Degree. Grievant did not tell Mr. Keatley that he held a Masters Degree, and there was no showing that this information was in Grievant's personnel file, or that Mr. Keatley should otherwise have been aware of this information. Therefore, this was not part of the information relied upon by Mr. Keatley in making his decision, and is not part of this Board's review of the decision-making process. This Board has held that an applicant has a duty to inform the person making job recommendations of his experience or credentials pertinent to the position, and that the failure of an applicant to do so cannot be considered a flaw in the selection process. See Stover v. Kanawha County Bd. of Educ., Docket No. 89-20-75 (June 26, 1989); Green v. Mason County Bd. of Educ., Docket No. 91-26-176 (July 26, 1991).

Grievant has not proven by a preponderance of the evidence that the MBOE erred in its determination that Grievant was less qualified for the posted classroom teaching position than Mrs. Lowry. Grievant has failed to demonstrate that Mr. Keatley

incorrectly applied the seven criteria of 7a, or otherwise that there was a significant flaw in the selection process.

Conclusions of Law

1. County boards of education have substantial discretion in matters relating to the assignment of school personnel, so long as they act reasonably, in the best interests of the school, and in a manner which is not arbitrary and capricious. See Hyre v. Upshur County Bd. of Educ., 412 S.E.2d 265 (W.Va. 1991).

2. Grievant has failed to prove by a preponderance of the evidence that Respondent, Mercer County Board of Education, or any agent thereof, violated, misinterpreted or misapplied W. Va. Code §18A-4-7a, or abused its discretion, in the selection of Suzanne Lowry for the position of music teacher at Princeton Senior High School rather than Grievant.

Accordingly, this grievance is **DENIED**.

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

BRENDA L. GOULD
Administrative Law Judge

Dated: February 24, 1995