ROBERT SISK

v. **Docket No. 95-27-113**

MERCER COUNTY BOARD OF EDUCATION

DECISION

The grievant, Robert Sisk, is employed by the Mercer County Board of Education (Board) as a music teacher at Glenwood Elementary School. He initiated this grievance at Level I November 29, 1994, protesting his non-selection for the position of itinerant instrumental music teacher. His supervisor was without authority to grant relief and the grievance was denied at Level II following a hearing held January 18, 1995. The Board, at Level III, affirmed the Level II findings and appeal to Level IV was made March 15, 1995. The parties subsequently agreed that the case could be submitted for decision on the record developed at the lower levels. Proposed findings of fact and conclusions of law were received by May 2, 1995.

FACTS

There is no dispute over the facts of the case. The record developed at the Level II hearing supports the following findings.

1) On October 26, 1994, the Board posted the position in issue. The only "minimum qualification" listed in the posting was"A valid West Virginia teaching certificate with proper endorsement in Music, grades K-12."

2) Four persons, including the grievant, a sixteen-year employee of the Board, and Sherri Turner, a three-year employee, made timely applications for the job.

3) Per Board practice, Human Resources Director Roger Daniels developed a matrix in which the candidates were assigned points on a scale of 1 to 20 in the 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) Mr. Daniels reviewed the Board's central office personnel records and assigned points in

such areas as certification and seniority. The matrix was then forwarded to an interview committee consisting of five of the six principals whose schools would be served by the position. (See footnote 1)

5) The committee conducted interviews of the applicants for the purpose of verifying Mr. Daniels' point assignments and obtaining and/or clarifying information necessary to assign points in the remaining categories.

6) By letter dated November 17, 1994, Ramsey Elementary School Principal John Fleming provided Mr. Daniels the completed matrix.

7) Upon receipt of the completed matrix, Mr. Daniels noted that the committee had assigned applicant Turner 20 points and the remaining applicants 19 points in the "Degree level in the required certification area" criterion. He later determined that Ms. Turner, like all other applicants, possessed only a Bachelor's Degree in the music field and that her Masters Degree was in the unrelated field of Curriculum and Instruction. Accordingly, he altered the matrix by awarding all applicants 20 points in the category.

8) The final version of the matrix was as follows:

	Grievant	Turner	Fitzpatrick	Layne
Certification	20	20	20	20
Total teaching experience	20	19	18	17
Existence of teaching experience in certification area	20	20	20	20
Degree level in certification area	20	20	20	20
Specialized training	17	20	18	19
Evaluations	20	20	20	20
Seniority	20	19	18	18

9) The relative scores of the grievant and Ms. Turner in the "Specialized training" category

were based on the interview committee's determination that Ms. Turner had attended and/orparticipated in a considerable number of seminars, workshops, band festivals and clinics and that the grievant had engaged in few if any such activities since he was initially hired by the Board. There was no specialized training required in the job description for the position.

10) Superintendent of Schools Deborah Akers ultimately recommended to the Board that Ms. Turner, who achieved the highest total score of 138, be awarded the position. The Board accepted the recommendation on November 22, 1994.

ARGUMENT

The parties agree that since one or more of the applicants were regularly employed by the Board, the hiring decision was governed by the following portion of W.Va. Code §18A-4-7a.

> 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.

The grievant takes exception with the scores assigned in the "Specialized training" and "Seniority" categories. He asserts that there was no such training noted in the job description for the position and that consideration of any special skills or abilitiesof the applicants was precluded by the following portion of Code §18A-4-7a.

> Boards shall be required to post and date notices of all openings in established, existing or newly created positions in conspicuous working places for all professional personnel to observe for at least five working days. The notice shall be posted within twenty working days of such position openings and shall include the job description. Any special criteria or skills that are required by the position shall be specifically stated in the job description and directly related to the performance of the job.

The grievant further contends that "equal weight" was not afforded the "Seniority" category in that he was awarded 20 points for sixteen years of seniority and Ms. Turner was given 19 points for only three years.

The Board maintains that it was mandated by the first-cited portion of the statute to consider the specialized training of the applicants and that the record fully supports that the scores assigned in that area accurately reflected the actual skills and abilities of the applicants. The Board further contends that the scores in the "Seniority" area were accurate and that the category was given weight equal to that afforded the other criteria.

CONCLUSIONS

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

1) In a case such as this, the grievant has the burden of establishing the allegations in his or her complaint by a preponderance of the evidence. Black v. Cabell County Bd. of Educ., Docket No. 89-06-707 (March 23, 1990).

2) When one or more permanent employees apply for a posted vacancy, Code §18A-4-7a mandates a rather mechanical process for determining whether the regular employee should be permitted to transfer to the position or whether a "new-hire" should be selected. Basler v. Putmam County Bd. of Educ., Docket No. 93-40-215 (April 27, 1994).

3) Since there is no provision in W.Va. Code §§18A-1-1 et seq., which mandates that a county board of education include special training requirements in its job descriptions for a particular post, a board has the discretion to require such training. Accordingly, the provision in Code §18A-4-7a requiring consideration of "specialized training directly related to the performance of the job as stated in the job description" must be interpreted to mean that consideration of such training is only required when the county board has exercised that discretion. 4) The Board erred in assessing the specialized training of the applicants when there was none announced in the job description for the post in issue. If the category had been properly excluded from consideration, the grievant would have achieved the highest total score of all the applicants under the Board's scoring system.

5) Notwithstanding the error, the Board's scoring system did not fulfill the requirement in Code §18A-4-7a that the various criteria contained therein be afforded equal weight. There is nothing inherently unsound in using a 1 to 20 point scale to rankapplicants within a particular criterion, (See footnote 2) but the use of the candidates' total points rather than the total number of criteria "won" by each candidate to decide the outcome, effectively caused the margin by which an applicant outscored others in a particular criterion to be assessed and weighed a second time. Thus, the

grievant, who had achieved the highest possible score in all but the specialized training criterion was ultimately defeated in his bid for the post by the three additional points Ms. Turner achieved in that category. See, Basler, supra.

Accordingly, the grievance is **GRANTED** , and the Mercer County Board of Education is hereby **ORDERED** to instate the grievant to the instrumental music teaching position for which he applied.

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

ADMINISTRATIVE LAW JUDGE

Dated: September 25, 1995

Footnote: 1The members were John Fleming, Mona Poling, Sandra Puckett, Billie Moorefield and Terry Quesenberry. The principal of the sixth school was not available at the time of the interviews.

Footnote: 2Thus, the grievant's assertion that it was improper to award him 20 points for 16 years of seniority and Ms. Turner 19 points for 3 years is without merit. Depending on the number of applicants and their relative seniority, other ranking methods, including a 1 through 4 system, would have achieved a similar result.