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United States District Court, N.D. Illinois, Western
Division.

PEOPLE WHO CARE, et al., Plaintiffs,
v.

ROCKFORD BOARD OF EDUCATION, SCHOOL
DISTRICT # 205, et al., Defendants.

No. 89 C 20168. | July 23, 1991.

Attorneys and Law Firms

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Education.

Opinion

INTRODUCTION

ROSZKOWSKI, District Judge.

*1 On June 11, 1991, this court ordered the parties to submit to the court objective definitions of the terms used in § B.11 of the Second Interim Order entered in this case on April 24, 1991. The court recognized that total objective standards were not possible to define, but the court asked that the definitions be as objective as possible so that an impartial hearing officer could use the definitions in resolving any differences that may arise from time to time. The definitions were to be provided to the court, in writing, by July 18, 1991. If the parties could not agree on the definitions, the parties were to present themselves before this court at which time the court would aid the parties in arriving at definitions of the terms. Further, the court indicated to the parties that it would define the terms for the parties if the parties could not agree.

The parties to this cause of action have now represented to this court that they cannot agree on the definition of the terms in question. Plaintiffs and Defendant have submitted a joint proposal concerning the definitions and the procedures for implementing § B.11 of the Second

Interim Order. The Rockford Education Association (hereinafter “REA”), Intervenor in this case, have filed their proposal concerning the definitions and the procedures. Considering the proposals submitted to this court and following consultation with Dr. Eubanks, the court’s expert in this matter, the court adopts the following definitions.

BACKGROUND

Section B.11 of the Second Interim Order mandates that six elements be considered in determining qualifications for the making of staff assignments in those schools housing the educational improvement programs under § C.8, the alternative programs described in § C.3 and the magnet schools described in §§ C.5, C.6 and C.6A. These elements are: seniority, education, experience, attendance, prior evaluations and ability to work successfully with parents, staff members and students. The purpose of these elements is to enable Defendant to select, train and retain those staff who in the judgment of the Administration of the District are best trained for, and most capable of, providing the programs required under the Second Interim Order.

In evaluating those elements of qualification, and in determining which persons are “best trained for, and most capable of, providing the programs required,” the District should consider not only quantitative information, but also qualitative considerations that will contribute to effective and successful program implementation, such as:

- a. Interest in and commitment to the school or program;
- b. Personal qualities such as initiative, creativity and diligence; and
- c. Openness and ability to work with multi-cultural groups and with multiple-ability groups, including high expectation levels for such children.

Accordingly, the court adopts the following definitions of the elements set forth in § B.11 of the Second Interim Order. The court wants to emphasize at this point that there is no predetermined ranking of these six elements. All of the elements in § B.11 are to be ranked and treated equally.

DEFINITIONS

General Definitions

***2 Order**

Defined as the Second Interim Order entered April 24, 1991, by the United States District Court for the Northern District of Illinois, Western Division in Case No. 89 C 20168, People Who Care, et al. v. Rockford Board of Education.

Schools

Defined as those schools denoted as Community Academies and referenced in Section C.8 (pp. 43–48) of the Order.

Magnet Schools

Defined as those schools referenced in Sections C.5, C.6 and C.6A (pp. 38–42) of the Order.

Alternative Programs

Defined as those educational offerings referenced in Section C.3 (pp. 35–36) of the Order.

Staff Assigned To Special Programs

Defined as those certified staff members assigned to C.8 schools, magnet schools or alternative programs.

Relevant

Defined as “that which has a bearing on the matter at hand.”

In assessing the relevance, “bearing on the matter at hand” shall be viewed in the context of the unique set of circumstances presented by the Second Interim Order and the characteristics and purposes of the programs and remedies being implemented under that Order. Relevance shall also be viewed from the perspective of a reasonable educational practitioner responsible for complying with that Order and successfully implementing those programs and remedies.

Seniority

Defined by using the provisions of Article 12 (“General Employment Practices”) Section A (“Definitions”) of the parties’ Professional Agreement (1989–91, and as amended July 1, 1991). As a result, “seniority” shall be defined, in the first instance, as total continuous service in the employment of District No. 205. Ties in seniority, seniority for part-time teachers, and the effect of unpaid leaves of absence on seniority determination shall be likewise governed by Section A of the Professional Agreement.

Education

The definition of education encompasses the following:

1. Legal certification as determined under the *Illinois School Code*.
2. Legal qualifications as determined by reference to “State Board Document 1” of the Illinois State Board of Education, or by reference to other provisions established by the State of Illinois or the Illinois State Board of Education.
3. The amount of coursework completed by a teacher, provided the coursework is relevant to the vacancy to be filled or the staff assignment to be made;
4. The content of any coursework completed by a teacher, provided the content of the coursework is relevant to the vacancy to be filled or the staff assignment to be made;
5. Training, including non-college workshops, in-service activities, conferences and seminars, provided the same are relevant to the vacancy to be filled or the staff assignment to be made;
6. Degrees conferred (i.e. BA, MA, ED, PhD.), provided the degree is relevant to the vacancy to be filled or the staff assignment to be made.
7. Grades, awards or other assessments of competence in educational or training activity.
- *3 8. Certificates of completion or other recognitions with respect to training activities.

Experience

The definition of experience encompasses the following:

1. The nature and amount of prior teaching experience, either inside or outside District 205.
2. Any other employment that is relevant to the vacancy to be filled or the staff assignment to be made, either inside or outside District No. 205.
3. Any voluntary professional or community activity that is relevant to the vacancy to be filled or the staff assignment to be made.
4. Any other previous activity that is part of the person’s background of experience and that is relevant to the vacancy to be filled or the staff assignment to be made.

a. For example, if while a student at any level, the person participated in a program to tutor other students, such activity could be considered as a part of the person's overall experience.

b. For example, if a person engaged in activity not related to education or to previous employment, but such activity reflects characteristics which are desirable on the part of a teacher, such as diligence, ingenuity, consciousness of the problems facing disadvantaged students, etc., such activity may be considered as part of a person's overall experience.

5. In applying this factor, of primary importance shall be prior experience relating to the unique set or circumstances presented by the Second Interim Order and the particular characteristics and purposes of the subject vacancy or assignment in that context. Accordingly, the experience of the person shall be assessed in light of questions such as the following:

a. Has the person had experience in teaching and/or working with culturally diverse populations?

b. Has the person had experience in working with the development and implementation of innovative and new programs?

c. Has the person had experience with difference levels of student learners?

d. Has the person had experience with the development of curriculum that provided for alternative curriculums and methods of instruction, for culturally diverse learners?

e. Is the person an active and participating member of professional organizations in addition to a teachers bargaining association or union?

Attendance

The definition of attendance encompasses the following:

1. Information contained in Section II ("Professional Responsibilities"), Subparagraphs H and I of the District's Evaluation Plan, and any related Supporting Statement. The Administration shall consider each and all of the person's evaluations with respect to the specified items since July 1, 1987.

2. Whether the person regularly attends faculty and committee meetings in the building and/or the District, and actively participates as a member and/or leader of committees and in staff meetings.

3. Whether the person has a pattern of absence related to days before and after holidays and weekends.

4. Whether the person annually uses in excess of the allowed personal and sick leave.

Prior Evaluations

*4 The definition of prior evaluations encompasses the following:

1. Any and all evaluations received by the person since July 1, 1987, under the District's Evaluation Plan.

a. Consideration may be given to any and all ratings and Supporting Statements on individual evaluation items in the Plan, as well as to the overall performance rating.

b. It is understood that persons may not have comparable numbers of evaluations available for review.

2. Any other evaluations, performance assessments or recommendations relating to any of the person's education or experience that are relevant to the vacancy to be filled or the staff assignment to be made and that provide a basis for assessing the person's performance in those contexts.

a. For example, an evaluation, assessment or recommendation relating to relevant employment in a non-teaching position outside the District may be considered.

b. For example, a letter of recommendation concerning some aspect of the person's relevant experience of a non-employment nature may be considered.

3. In applying this factor, of primary importance shall be prior evaluations relating to the unique set of circumstances presented by the Second Interim Order and the particular characteristics and purposes of the subject vacancy or assignment in that context. Accordingly, prior evaluations of the person shall be assessed in light of questions such as the following:

a. Do the person's previous evaluations provide evidence that the person is a competent teacher with no pronounced weaknesses in the areas of student learning?

b. Do the person's evaluations indicate an above average ability to successfully provide instruction using a variety of instructional processes to promote understanding and higher thinking with a culturally diverse student population, including technology, manipulative, print media, teacher and student developed materials, games, simulations, small group learning and cooperative learning?

c. Do the person's previous evaluations demonstrate an

above average ability to develop and use culturally diverse instructional materials and curriculum?

d. Do the person's previous evaluations demonstrate an above average ability to develop positive classroom relationships with children so that they show development in the ability to become self disciplined and responsible for meeting their agreements?

e. Do the person's previous evaluations provide evidence that children under the person's leadership learn at a level and pace representing substantial progress in achievement, consistent with the school's improvement plans (if any), regardless of race, class or gender?

f. Do the person's previous evaluations indicate that the person is an initiator, can work independently and creatively, and consistently expresses concern for student welfare and development?

Ability To Work Successfully With Parents, Staff Members and Students

This definition encompasses the following:

*5 1. Consideration shall be given to evaluations made since July 1, 1987, under the District's Evaluation Plan. Any and all ratings and other information expressed in such evaluations may be considered that relate to the person's ability to work successfully with students, staff and parents, and that are relevant to the vacancy to be filled or the staff assignment to be made.

2. Any information arising from the person's education, experience, attendance or prior evaluations, or any other background information relating to the person's ability to work successfully with parents, staff, and students and that is relevant to the vacancy to be filled or the staff assignment to be made.

3. In applying this factor, of primary importance shall be prior experience relating to the unique set of circumstances presented by the Second Interim Order and the particular characteristics and purposes of the subject vacancy or assignment in that context. Accordingly, background information concerning the person shall be assessed in light of questions such as the following:

a. Is the person an active member of community, social or cultural organizations?

b. Does the person regularly make contact with family of students to develop positive relationships between school and family?

c. Does the person share, coach and learn from and with other teachers and staff in the District?

d. Does the person spend extra time advising, coaching, and assisting students outside of regular classroom activities?

e. Does the person sponsor a club, school activity, sponsor a class or student government, or work with students in some other capacity in addition to classroom assignments?

f. Is the participant an active member of a Parent, Teacher, Community organization?

GRIEVANCE PROCEDURES

On June 11, 1991, the court also ordered the parties and the intervenors to develop a procedure by which all individual grievances will be handled under § B.11. The procedure was to specify a neutral hearing officer or master who would review the individual grievances in order to determine if the staff assignment was, in fact, made in accordance with the principles specified in § B.11. Further, if the parties were unable to agree on a procedure, the parties were to present themselves before this court at which time the court would develop a procedure for the parties to follow. Again, the parties were unable to reach an agreement and so the court adopts the following grievance procedure by which all individual grievances will be handled under § B.11.

General Procedures And Principles

1. Selection and retention decisions under § B.11 will be made by the principal of the school in question, in consultation with senior administrators. This may include, as appropriate, the Director of Integration, the Assistant Superintendent for Instruction, and the Director of Human Resources (or their designees). With respect to each selection and retention decision, this group will be referred to as the "Administration."

*6 2. With respect to each selection and retention decision, the Administration shall consider information which is consistent with the definitions of the six § B.11 elements. The Administration must consider all such information without a predetermined priority of elements or sequential ranking of elements. The Administration shall not consider qualification criteria other than the six § B.11 elements.

3. The measure of the selection or retention process will be that the Administration can reasonably articulate the reasons for its decision, in terms of the purposes of § B.11, the position in question, and the permissible

information about the person in question as set forth in the Definitions.

4. The District will develop and implement a training program for principals and other staff concerning the purposes and effective use of the § B.11 selection and the requirements and limitations applicable to the process.

Procedures Applicable Specifically To The Selection Process

1. Advertisements for positions to be filled will contain sufficient information to inform potential applicants as to the nature of the position and the types of information which may be submitted by applicants.

2. The advertisement may contain, to the extent determined appropriate by the Administration, specific additional criteria appropriate for the position in question. (Any such additional criteria shall be consistent with the six § B.11 elements.)

3. The Administration shall consider all applicants without predetermined priority. If the Administration determines that none of the applicants are suitable for the position in question, the Administration is not obligated to choose an applicant at that time, and the position may be re-advertised.

4. Personal interviews may be conducted by the Administration as part of the selection process. However, the Administration will determine the extent of such interviews, and no person has an entitlement to being interviewed.

5. The Administration may consider all information concerning each applicant which is permitted by the definitions, and weigh the variables from applicant to applicant, and determine which applicant is best suited for the position.

Appeal And Review Criteria And Procedures

A. *Step 1* The REA may file a grievance protesting a particular application of the § B.11 criteria by filing the grievance with the Superintendent by the end of the tenth day after the REA became aware of the facts underlying the grievance.

The Superintendent, or a designee possessing decisional authority, and the designated REA representative shall meet to discuss the grievance within five (5) days after its

filing. A written decision shall be given to the REA by the end of the second business day after the meeting.

Step 2 The REA may appeal from an adverse Step 1 decision by submitting its request for a review hearing to the Superintendent by the end of the second business day after its receipt of the Step 1 decision.

****7 B. The Review Hearing***

1. The hearing shall be conducted by a permanent umpire selected by the parties. The permanent umpire shall be selected pursuant to established collective bargaining procedures previously used by the parties. The permanent umpire shall hear the case at the next scheduled umpire availability date.

2. The parties shall obtain sufficient umpire availability dates in advance to allow the speedy processing of § B.11 grievances.

3. The hearings shall proceed pursuant to recognized arbitration practice.

4. Fees for the umpire shall be paid by the District. Each party shall bear its own costs for presenting its position to the umpire.

5. The umpire may reverse a § B.11 decision of the District only if he/she finds it resulted from improper application of the § B.11 criteria and definitions.

6. The intent of this procedure is to allow a rapid adjudication of § B.11 grievances. The status quo must be maintained pending the umpire's § B.11 decision.

7. A party who believes the umpire acted in excess of his/her authority may submit its appeal of the decision to this court, provided it is done by the end of the second business day after the party's receipt of the umpire's written decision. Otherwise, the umpire's decision shall be binding upon the parties.

CONCLUSION

For the reasons set forth herein, the court adopts the definitions and grievance procedure for § B.11 of the Second Interim Order as stated above.