

**BEFORE THE MERIT EMPLOYEE RELATIONS BOARD
OF THE STATE OF DELAWARE**

KEVIN MCBRIDE,)	
)	
Employee/Grievant,)	DOCKET No. 17-09-678
v.)	
)	DECISION AND ORDER
DEPARTMENT OF HEALTH AND SOCIAL)	
SERVICES/DIVISION OF SOCIAL SERVICES,)	
)	
Employer/Respondent.)	

After due notice of time and place, this matter came to a hearing before the Merit Employee Relations Board (“Board”) at 9:00 a.m. on April 5, 2018 at the Delaware Public Service Commission, Silver Lake Plaza, Cannon Building, Suite 100, 861 Silver Lake Boulevard, Dover, DE 19904.

BEFORE Paul R. Houck, Chair, Jacqueline Jenkins, Ed.D, Victoria Cairns, and Sheldon Sandler, Esq., Members, a quorum of the Board under 29 *Del. C.* §5908(a).

APPEARANCES

Rae M. Mims
Deputy Attorney General
Legal Counsel to the Board

Deborah L. Murray-Sheppard
Board Administrator

Kevin Fasic, Esq.
on behalf of the Grievant,
Kevin McBride

Kevin Slattery
Deputy Attorney General
on behalf of the Department of
Health and Social Services

BRIEF SUMMARY OF THE EVIDENCE

The Department of Health and Social Services (“Agency”) offered and the Board admitted into evidence sixteen (16) documents marked for identification as Exhibits A-P. The Agency did not call any witnesses to testify.

The Employee/Grievant, Kevin McBride (“McBride”), offered fifteen (15) documents into evidence, and the Board admitted into evidence twelve (12) documents marked for identification as Exhibits 1 – 12 (Exhibits 13 - 15 excluded at prehearing). McBride called two witnesses: Raymond Fitzgerald (“Fitzgerald”), Director, Division of Social Services, DHSS; and Wesley Southall (“Southall”), Chief Administrator, Division of Social Services, DHSS. McBride also testified on his own behalf.

FINDINGS OF FACT

McBride, a Training/Education Administrator I for 19 years with the Division of Social Services (“DSS”), applied for the Training/Education Administrator II position previously held by McBride’s supervisor, Anthony Sianni, when it was posted on October 25, 2016. The Training/Education Administrator II position supervises four to five Training/Education Administrator I positions. The posted class specification for this Training/Education Administrator II position listed the following “Job Requirements”, stating, “Applicants must have education, training and/or experience demonstrating competencies in each of the following areas”:

1. Three years’ experience in training administration which includes planning and establishing training priorities, implementing strategic initiatives, developing and implementing training programs and overseeing the development of training courses and materials.
2. Six months experience in developing policies and procedures.
3. Six months experience in strategic planning such as planning and mapping a path between the present and future usually for three to five years by determining key objectives, how to accomplish key objectives, what strategies should be used, what activities would contribute to accomplishing

the key objectives and developing performance measures to gauge and report progress or success.

4. Six months experience in managing budgets, grants or contracts.
5. Knowledge of staff supervision acquired through course work, academic training, training provided through an employer, or performing as a lead worker overseeing the work of others; OR supervising staff which may include planning, assigning, reviewing and evaluating the work of others; OR supervising through subordinate supervisors a group of professional, technical and clerical employees. *Grievant Exhibit 1*

The Job Description for the Trainer/Educator class series created by the Department of Human Resources describes the Training/Education Administrator II position:

As the second level of administrative management, positions are responsible for administering, through subordinate training/education professionals and contractors, the training/education/organizational development functions of a division, department or large facility OR provides guidance, facilitation and evaluation for the highest levels of management within state government on strategic planning, performance measures, continuous quality improvement and organizational effectiveness at the State policy level...Positions report to an administrative superior.

- Supervises training/education professionals and contractors. Supervision is exercised over at least two or more merit, full-time positions (per Merit Rules). The elements of supervision include planning, assigning, reviewing, evaluating, coaching, training and recommending hire, fire and discipline. Supervision must include responsibility, as needed for providing documentation to support recommended corrective and disciplinary actions, signing performance plans and appraisals and resolving informal grievances OR provides mission and vision development assistance and advice and consultation to agencies at the highest levels of management by providing conflict resolution and neutral facilitation for strategic planning sessions, management retreats, and other top level management meetings with topics such as strategic planning, performance measure, budgeting, goal setting, reorganization, organizational effectiveness, and continuous quality improvement and often involving controversial issues. *Agency Exhibit B, pp. 6-7.*

DSS received from the Office of Management and Budget (“OMB”) a referral list with 37 names. Nine applicants on the referral list (including McBride and Gina Jimenez, who was ultimately selected for the position) were interviewed by a panel which included Wesley Southall,

Takeya Perez and Anthony Sianni. The interview panel reported its findings and recommendations to the hiring manager Raymond Fitzgerald, the DSS Director. The panel asked each applicant a set of six questions, and then individually evaluated the responses on a scale from excellent to poor. The interviews were conducted over the course of two days. The panel used the same rating system for the application, interview and performance evaluation. For purposes of comparability, each interviewer assigned a numerical value to his or her assessment of each factor, e.g. Excellent = 5, Very Good = 4, Good = 3, Fair = 2, and Poor = 1. Fitzgerald had requested the interview panel not use a numerical rating system but the panel found the numbers useful to their discussion in assessing each candidate interviewed.

Southall forwarded the interview results for the Training/Education Administrator II (with the numerical ratings for each candidate) to Fitzgerald. The panel rated McBride Very Good on his application, 3.3 for his interview and Excellent on his evaluation. The panel rated Jimenez Good on her application, 3.27 for her interview and Very Good on her evaluation.

Fitzgerald reviewed the panel's findings and recommendations. Initially the position was offered to a candidate who declined the offer. Fitzgerald then selected Jimenez based on her supervisory and management experience. He testified he believed Jimenez's background was more compatible with the requirements of this position based on her prior experience in DSS, where she had been employed in a variety of positions since 2004.¹ In addition to her normal duties and responsibilities, Jimenez had volunteered for assignments within DSS which included being part of the Document Imaging Group ("DIS") which was responsible for strategic planning initiatives, serving on the NCBI group where vendor training materials were supplemented by the staff on the team, and serving on various training committees, including New Worker training and

¹ Jimenez had a brief period of separation in 2008-2009 when she moved away from Delaware.

Diversity training. Fitzgerald knew Jimenez had been assigned to “clean up” areas of DSS in order to improve their effectiveness. She was effective and performed well in these assignments and she had demonstrated her willingness to move locations as required to complete these assignments. Fitzgerald was familiar with Jimenez’ work when she assumed responsibility for an \$18.8 million grant project that had been failing due to training issues. Fitzgerald testified she was effective in turning the project around.

The interview panel found McBride to be well qualified and included him in the top three candidates in the rankings it forwarded to Fitzgerald. While McBride received a slightly higher score to Jimenez in the interview panel’s evaluation, Fitzgerald testified he took the applications, interview panel rankings and recommendations, and his experience with both candidates into consideration when he ultimately chose to offer the position to Jimenez.

CONCLUSIONS OF LAW

Merit Rule 18.5 provides:

Grievances about promotions are permitted only where it is asserted that (1) the person who has been promoted does not meet the job requirements; (2) there has been a violation of Merit Rule 2.1 or any of the procedural requirements in the Merit Rules; or (3) there has been a gross abuse of discretion in the promotion.

McBride contends he is the best candidate for the position as he currently meets all of the job requirements. McBride, in his appeal, challenges the selection of Jimenez, stating she fails to meet the minimum job requirements. Specifically, he asserted she did not have the requisite three years’ experience in training administration.

McBride failed to meet his burden to prove Jimenez failed to meet the minimum

qualifications to hold the Training/Education Administrator II position. McBride expressed his opinion that Jimenez's answers to questions on her application fail to evidence the requisite experience in training administration. He specifically challenged whether her application established she had experience conducting needs assessments and implementing evaluation processes to determine the effectiveness of training which had been provided. McBride stated no one told him supervision or management experience would be important. He did testify, however, that he was asked about his experiences in both supervision and management during his interview.

The Board finds both the posted job requirements and the classification specification clearly detail supervision, strategic planning and management experience as required for the position.

The Board holds that, without evidence or testimony to the contrary, it must rely on its own expertise and experience plus the documentary evidence and witness testimony to establish the meaning of training administration and the other job specifications. "Because the MERB serves as the final administrative authority for correcting and compensating wrongs suffered by State employees in connection with their employment with the State, it is fully within the purview of the MERB to interpret job requirements in a reasonable manner." *The Family Court of the State of Delaware v. Scaturro*, C.A. No. S10A-06-004 THG, 2011 WL 1225893 at p. 5 (Del. Super., Feb. 28, 2011).

The Board finds that Jimenez's training experience, coupled with her significant supervisory and management experience (much of which was gained through volunteering for projects and assignments within DSS) establishes she meets the minimum qualifications for the position of Training/Education Administrator II.

Both McBride and Jimenez made the referral list and both were interviewed for the

position. Under Merit Rule 8.2.3, “[A]ny candidate whose name appears on a certified list may be considered to fill the vacancy.” The Board holds McBride failed to meet his burden to prove that Jimenez was not minimally qualified for the position or that the hiring manager abused his discretion in choosing Jimenez for the position.

ORDER

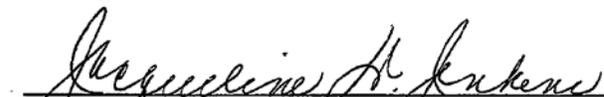
It is this **27th** day of **July**, 2018, by a unanimous vote of 4-0, the Decision and Order of the Board to deny McBride’s appeal. The Board finds McBride failed to provide sufficient evidence that DHSS violated Merit Rule 18.5 when it promoted Gina Jimenez rather than McBride to Training/Education Administrator II position.



PAUL R. HOUCK, MERB Member



VICTORIA D. CAIRNS, MERB Member



JACQUELINE D. JENKINS, EDD, MERB Member



SHELDON N. SANDLER, ESQ., MEMBER