JAYELL FROATS

v. Docket No. 95-15-155

HANCOCK COUNTY BOARD OF EDUCATION

DECISION

Grievant, Jayell Froats, employed by the Hancock County Board of Education (Board) as a bus operator, filed a level four grievance appeal on April 18, 1995, in which she complained that a position of First Aid instructor was not posted and was filled by a less qualified, "non-regular," male. The second issue was that the Board had not responded favorably to Grievant's request to teach a Community CPR class when facilities were regularly made available to other qualified employees. The matter was submitted for decision based upon the lower-level record, and became mature on July 26, 1995, when both parties declined the opportunity to file proposed findings of fact and conclusions of law.

The record supports the following findings of fact.

1. Grievant has been an employee of the Hancock County Board of Education for approximately twenty-five years, classified as a bus operator.

2. Grievant has not worked since October 1993 and is pursuing a total permanent disability claim through Workers' Compensation.

3. On or about January 9, 1995, the Board approved Paul Doughty as an instructor of Adult Basic Education "First Aid." This assignment is part-time, as needed, to certify bus operators, and pays twelve dollars per hour.

4. Mr. Doughty, formerly employed by the Board as a bus operator, first assumed the ABE instruction during the 1991-92 school year as a volunteer. The Board paid him for these services in 1992-93, at the same hourly rate he received as a bus operator.

5. Mr. Doughty retired as a bus operator in June 1994. In January 1995 he indicated a continuing interest in the ABE classes and was retained by the Board for this assignment.

6. The position of ABE instructor for First Aid was not posted.

Grievant argues that the Board was required to post the position. She holds the proper certification from the Red Cross to instruct First Aid classes and opines that she is at least, or more, qualified than Mr. Doughty. When questioned regarding her medical condition, Grievant stated that she is not physically capable of performing the duties of a bus operator, or even an aide, but that her disability would not prevent her from teaching.

The Board asserts that the ABE First Aid assignment isnot a new position, but rather, is one that Mr. Doughty has held for several years. Assistant Superintendent Ronald Daugherty explained that the Board employs qualified individuals to teach the non-traditional ABE classes on a part-time, as needed basis. These individuals are retained from year to year and the positions are not posted until a vacancy occurs. Subsequent to Mr. Doughty's retirement as a bus operator, the January 1995 action was merely an affirmation of his employment in the ABE slot.

The creation of the position in question, and Mr. Doughty's assumption of the assignment were the subject of a prior grievance and thus merits no further consideration. See Froats v. Hancock County Bd. of Educ., Docket No. 93-15-251 (Sept. 28, 1995). Because Mr. Doughty continues to hold the ABE position, the Board's claim that the January 1995, action was merely an affirmation of his employment in that assignment is accepted. Accordingly, no posting violation has been proven.

In response to the second issue, Grievant offers no evidence to substantiate that the Board is required to permit her to teach CPR classes, or even that she had formally made such a request. References made by Grievant to other similar classes already being taught may offer some informal explanation as to why her inquiries were not accepted.

In addition to the foregoing findings of fact and discussion it is appropriate to make the following formalconclusions of law.

CONCLUSIONS OF LAW

1. It is incumbent upon a grievant to prove all the allegations constituting the grievance by a preponderance of the evidence. Rupich v. Ohio County Bd. of Educ., Docket No. 89-35-719 (June 29, 1990).

2. Res judicata prohibits the consideration of grievances which involve the same parties, cause of

action, relief requested, and factual situation as that of a prior matter which has actually been decided by the Board. Woodall v. W.Va. Dept. of Transportation, Docket No. 93-DOH-393 (Feb. 2, 1994).

3. The position of ABE instructor for First Aid was initially filled in 1992 and the issue of whether Grievant was entitled to that assignment was previously addressed by the Grievance Board in Froats v. Hancock County Bd. of Educ., Docket No. 93-15-251 (Sept. 28, 1995). Further consideration of this issue is prohibited by res judicata.

4. Notwithstanding the appearance created by the Board minutes, the position of ABE instructor - First Aid, was not vacated or filled in January 1995. The Board's action reaffirmed the incumbent's continued employment in that assignment, and no new grievable event has taken place.

Accordingly, the grievance is **DENIED.**

DATED SEPTEMBER 28, 1995 SUE KELLER, SENIOR ADMN. LAW JUDGE