BRENDA MAHON ,

Grievant,

v. Docket No. 94-29-425

MINGO COUNTY BOARD OF EDUCATION,

Respondent,

and

PATRICIA MCCOY/LORRAINE THOMPSON,

Intervenors.

D E C I S I O N

Grievant, Brenda Mahon, is a teacher with Mingo County Board of Education ("MCBOE"). She states she was "illegally transferred by being denied the opportunity to remain at Matewan Junior High School ("MJHS") in one of the teaching positions that were available when I was displaced." As a remedy Grievant seeks placement into one of these available positions. Grievant filed this grievance on October 8, 1993. The parties stipulated this grievance was denied at Level II on November 3, 1993, but was not filed at Level IV until August 15, 1994. This case was scheduled for hearing on December 14, 1994, but the parties agreed to submit the case on the record developed below. It became mature for decision on January 27, 1995, after the submission of proposed findings of fact and conclusions of law, as well as stipulations. Intervenors were allowed to intervene at Level IV and their legal argument was received on January 26, 1995.

Background

On September 13, 1990, MCBOE posted a temporary, Math teaching position at MJHS. Grievant applied for this position and was selected to fill it until the status of the regular teacher was determined. Apparently in 1993, the regular teacher's status was resolved. Because this left the Grievant without a position, she was placed in an itinerant music teacher position.

Grievant then filed this grievance. On November 3, 1993 this grievance was denied at Level II. The Level II Hearing Evaluator held that MCBOE must follow W. Va. Code §18A-4-7a in filling the positions at MJHS. MCBOE also stated they would cooperate with Grievant in trying to find a placement for her. Grievant did not appeal this decision for nine months. In January, 1994, Grievant was placed into a position at MJHS.

Apparently, some time later, Grievant filed another grievance dealing with events subsequent to this grievance. This second grievance, Mahon v. Mingo County Bd. of Educ., Docket No. 94-29-305, was filed with this Grievance Board on July 21, 1994. Grievant unsuccessfully sought to inject the issues of this grievance into the second grievance. When that attempt failed, Grievant appealed this grievance to the Grievance Board.

Issues

Respondent and the Intervenors argue this appeal was untimely filed pursuant to W. Va. Code §18-29-4 and should be dismissed. They note the Grievant waited nine months to perfect her appeal.

Grievant's argument is somewhat unusual. She does not deny she waited nine months before filing her appeal to Level IV. She argues she relied on the "good intentions of the Respondent" in choosing not to appeal.

She states that at the time of the Level IV appeal she had "abandoned her original contention as set forth in her original statement of grievance . . . and by then agreed with the Respondent that any such position had to have been advertised and filled pursuant to statute." Grievant argues that since her "'appeal' was and is distinctly different from that of her original grievance, that complaint constitutes a new grievance and not what the Respondent characterizes as a untimely appeal of a Level II decision." Grievant then argues that since there has been no Level II or III hearing on this new contention the case should be remanded to Level II.

Discussion

W. Va. Code §18-29-4(c) states in pertinent part "[w]ithin five days of receiving the decision of the chief administrator, the grievant may appeal the decision to the governing board of the institution or may proceed to directly to level four." According to Grievant's representative, the grievant relied on the Respondent's promised cooperation and chose not to appeal. Indeed, the grievant was teaching

at MJHS approximately two months later in January, 1994. All parties agree Grievant waited over nine months before appealing her Level II decision to Level IV. This is, ofcourse, clearly outside the time lines established by statute. Accordingly, this grievance is untimely.

As for grievant's argument that the case should be remanded for a Level II decision because she has a new contention, this argument is found to be without merit. If Grievant has a new grievance, she is directed to follow the statutory guidelines established for the filing of a grievance. W. Va. Code §18-29-4 does not provide for remanding a grievance under this set of facts.

The above-discussion is supplemented by the following findings of fact and conclusion of law.

Findings of Fact

1. The Level II decision in this grievance was issued on November 3, 1993.
2. Grievant appealed this grievance to Level IV on August 15, 1994.

Conclusion of Law

Since Grievant waited nine months to appeal this grievance to Level IV from Level II, the appeal is untimely filed pursuant to W. Va. Code §18-29-4.

Accordingly, this case is **DISMISSED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mingo 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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JANIS I. REYNOLDS

Administrative Law Judge

Dated: February 28, 1995