SHARON HOPE HALL

v. Docket No. 95-55-140

WYOMING COUNTY BOARD OF EDUCATION

DECISION

The grievant, Sharon Hall, is employed by the Wyoming County Board of Education (Board) as a teacher at Berlin McKinney Elementary School. She filed this grievance at Level I February 2, 1995 alleging that her employment had been improperly terminated in a Spring 1992 reduction-in-force. Her supervisor was without authority to grant relief and the grievance was denied at Level II following a hearing held March 1, 1995. The Board, at Level III, declined to address the matter and appeal to Level IV was made April 5, 1995. The parties subsequently submitted the case for decision on the record developed at Level II. Proposed findings of fact and conclusions of law were received on May 9, 1995.

There is no dispute over the facts of the case. During the 1992 school year, the grievant possessed only multi-subject, kindergarten through 8 certification and was teaching in thatarea. (See footnote 1) In Spring 1992, she was provided written notice, per W.Va. Code §18A-2-2 (See footnote 2) that because of a drop in student enrollment and an attendant decrease in state funding, Superintendent of Schools Frank Blackwell would recommend to the Board that her employment be terminated effective the end of the 1991-92 school year.

The grievant was also advised that she could request a hearing before the Board prior to its consideration of Mr. Blackwell's recommendation, but she declined. Instead, she advised Kati Toler, an employee in the Board's central office assigned to certification matters, that she would be receiving certification in reading in May 1992 and that such certification should be considered in the impending reduction. Ms. Toler advised her that only those certifications held at the time the notices were sent would be considered.

Subsequently, the grievant contacted her West Virginia Education Association (WVEA) representative and was advised that a grievance over the Board's refusal to consider her certified in reading for the purposes of the reduction-in-force would be futile. At that time, the grievant was

aware that another Board employee, Glenda Hollins, had filed a grievance over the very same issue. Relying on her representative's advice and concluding that if Ms. Hollins prevailed she would also benefit, the grievant declined to initiate formal action on her own. She received the reading certification in September 1992 but it indicated a June 3, 1992 effective date. The grievant was appointed to her present position in October, 1992.

According to the grievant, she became aware in January 1995 that Ms. Hollins had prevailed in her grievance at Level IV. (See footnote 3) She again contacted her WVEA representative and was told to initiate a grievance. As previously noted, it was filed February 5, 1995.

The grievant asserts that had the Board taken into consideration her impending reading certification in the spring of 1992 she would have been retained during the reduction-in-force. Since she seeks only to have the Board readjust her seniority to include the period between the end of the 1991-92 school term and her October 1992 rehire date, the grievant characterizes her claim as merely an attempt to correct an "ongoing error" in her personnel file. She cites Hatfield v. Cabell County Bd. of Educ., Docket No. 90-06-208 (Dec. 17, 1990) as support for her contention that such claims may be filed at any time. The Board maintains the complaintwas not timely per W.Va. Code §18-29-4(a)(1) and the holdings in Spahr v. Preston County Bd. of Educ., 391 S.E.2d 739 (W.Va. 1990) and Kish v. Mercer County Bd. of Educ., Docket No. 93-27-080 (Apr. 27, 1995).

W.Va. Code §18-29-4(a), in relevant part, provides,

> Before a grievance is filed and within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date on which the event became known to the grievant or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance, the grievant or the designated representative shall schedule a conference with the immediate supervisor to discuss the nature of the grievance and the action, redress or other remedy sought.

Clearly, the event upon which the grievant's claim is based is the Board's failure or refusal in the spring of 1992 to credit her with a reading certification in its reduction-in-force calculations. An event does not become a "continuing practice" merely because it has ongoing consequences. Spahr; Kish. While equitable theories, if proven, may operate to toll the timelines for filing, see, Steele v. Wayne County Bd. of Educ., Docket No. 50-87-062-1 (Sept. 29, 1987), the grievant has neither asserted or offered evidence on such a defense. Rather, she concedes that her sole reasons for delaying were her mistaken belief that the Board would afford any benefits that Ms. Hollins might obtain by virtue of

her grievance and her WVEA representative's advice. Accordingly, the grievance, filed nearly three years after the action on which it was based, was not timely.

Moreover, regardless of the timeliness of the complaint, the grievant has not shown that the Board committed any error in 1992. The only evidence of record regarding the reduction-in-force and the effect of the Board's refusal to consider the grievant's "prospective" certification was her assertion, during her Level II testimony, that if she had been so credited, she would have been able to displace or "bump" a less senior teacher in the reading field. The grievant did not identify the less senior teacher or provide other pertinent information necessary for a reasoned inquiry into the claim. The record does not even reveal the grievant's seniority. Her testimony alone will not support a finding that consideration of the additional certification would have resulted in her retention as was the case in Hollins.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or the Circuit Court of Wyoming 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.

_____

JERRY A. WRIGHT

ADMINISTRATIVE LAW JUDGE

Dated: August 30, 1995

Footnote: 1The record does not reveal where the grievant was employed at the time.

Footnote: 2W.Va. Code §18A-2-2, in relevant part, provides:

> *The continuing contract of any teacher shall remain in full force and effect except as modified by mutual consent of the school board and the teacher, unless and until terminated (1) by a majority vote of the full membership of the board before the first day of April of the then current year, after written notice, served upon the teacher, return receipt requested, stating cause or causes, and an opportunity to be heard at a meeting of the board prior to the board's action thereon.*

Footnote: 3See, Hollins v. Mercer County Bd. of Educ., Docket No. 92-55-263 (March 18, 1993). The grievant is correct that the key holding in the case was that, in a reduction-in-force of professional employees, county boards of education must take into account all certifications then held by such employees and those which would be obtained by the end of the school year in which the reduction was initiated.