ELIZABETH MILLER,

Grievant,

v. **DOCKET NO. 97-15-334**

HANCOCK COUNTY
BOARD OF EDUCATION,

Respondent.

DECISION

Grievant, Elizabeth Miller, (See footnote 1) initiated this proceeding pursuant to the provisions of W. Va. Code §§ 18-29-1, et seq., challenging matters which resulted from her reduction in force at the end of the 1996-1997 school year. She contends that the Hancock County Board of Education ("Board") acted improperly when it posted her position, rather than merely placing the more senior employee who was "bumping" her directly in the position. She seeks reinstatement as a full-time Supervisory Aide. After denials of this grievance at levels one and two, this matter was appealed to level four on July 21, 1997. In lieu of a level four hearing, the parties agreed to submit this grievance on the record developed at level two, accompanied by proposed findings of fact and conclusions of law received by September 10, 1997, at which time this matter became mature for consideration.

The following findings of fact are made from a preponderance of the credible evidence of record.

Findings of Fact

1. Grievant is employed by the Board as a Supervisory Aide, and she has been a full- time service employee for four years. 2. By letter dated March 3, 1997, Grievant was notified by Charles Chandler, Superintendent, that she was being reduced in force ("RIF") due to the need to eliminate positions for the 1997-1998 school year.

3. Grievant's position was reduced because the Board eliminated three positions within her classification. Because she had less seniority than the persons whose positions were eliminated, she

was selected for reduction.

4. Rather than placing one of the displaced employees directly into Grievant's position, the Board posted Grievant's position as a job vacancy in a May 5, 1997, posting, along with the positions of other Supervisory Aides who had been RIFed.

5. Through the process of bidding on posted positions, one of the more senior employees whose position was eliminated was awarded Grievant's position.

Discussion

In a non-disciplinary matter, the grievant has the burden of proving each element of her claim by a preponderance of the evidence. W. Va. Code § 18-29-6; Holly v. Logan County Bd. of Educ., Docket No. 96-23-164 (Apr. 30, 1997). Pertinent to this matter are the following portions of W. Va. Code § 18A-4-8b:

> Should a county board of education be required to reduce the number of employees within a particular job classification, the employee with the least amount of seniority within that classification or grades of classification shall be properly released and employed in a different grade of that classification if there is a job vacancy: **Provided,** That if there is no job vacancy for employment within such classification or grades of classification, he shall be employed in any other job classification which he previously held with the county board if there is a vacancy and shall retain any seniority accrued in such job classification or grade of classification.
>
> If two or more employees accumulate identical seniority, the priority shall bedetermined by a random selection system established by the employees and approved by the county board.
>
> All employees whose seniority with the county board is insufficient to allow their retention by the county board during a reduction in work force shall be placed upon a preferred recall list and shall be recalled to employment by the county board on the basis of seniority.

Grievant contends that the Board acted improperly when it posted her position, rather than assigning it to one of the displaced employees. In other words, she alleges that the displaced person should have “bumped” into her position. The Board argues that it was required by statute to post all of the positions which had been subject to the RIF, citing another portion of W. Va. Code § 18A-4- 8b:

> Boards shall be required to post and date notices of all job vacancies of established

existing or newly created positions in conspicuous working places for all school service employees to observe for at least five working days.

There is nothing in this Code section which indicates, as Grievant alleges, that there are any "bumping" rights involved whenever service personnel positions are reduced. The provision is silent as to the placement of employees whose positions have been eliminated, but whose seniority is sufficient to allow them continued employment. It only provides for the placement of the least senior employees, who are to be placed in lower grades of the classification, in another classification they hold (if a vacancy exists), or on preferred recall. Accordingly, whether or not posting is required is irrelevant; there is no statutory support for Grievant's argument that a more senior employee had to be directly placed into her position.

Moreover, even if the Board had done as Grievant requests and not posted her position, she still would have been RIFed. Grievant does not dispute that her seniority was insufficient to allow her to remain employed when the Board had to reduce the number of positions within herclassification. Accordingly, even if the position had not been posted, Grievant would still have been RIFed and replaced by a displaced employee, in compliance with the statute. Similarly, Grievant has provided no evidence which would prove that other employees in her classification with less seniority were retained. The evidence does not indicate the RIF was inappropriate. Therefore, the remedy requested by Grievant, reinstatement to her position, cannot be granted. Grievance Board precedent requires that a grievant have a personal stake in the outcome of the issues raised in order to have standing to pursue a grievance. Muncey v. McDowell County Bd. of Educ., Docket No. 96- 33-297 (May 19, 1997). In this case, Grievant has not proven she had standing to challenge the Board's action; nevertheless, she did not prove the Board acted incorrectly.

In addition to the foregoing findings and discussion, the following conclusions of law are appropriate in this matter.

Conclusions of Law

1. In a non-disciplinary matter, the grievant has the burden of proving each element of her claim by a preponderance of the evidence. W. Va. Code § 18-29-6; Holly v. Logan County Bd. of Educ., Docket No. 96-23-164 (Apr. 30, 1997).

2. The provisions of W. Va. Code § 18A-4-8b do not provide "bumping rights" for displaced

employees whose positions have been eliminated, but whose seniority is sufficient to allow them continued employment.

3. Grievant did not prove by a preponderance of the evidence that the Board violated any statutory provision when it posted her position.

4. A grievant must have a personal stake in the outcome of the issues raised in order to have standing to pursue a grievance. Muncey v. McDowell County Bd. of Educ., Docket No. 96-33-297 (May 19, 1997).

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the Circuit Court of Hancock 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.

DATE: November 17, 1997 _____ **V.**

DENISE MANNING

Administrative Law Judge

Footnote: 1

Jessica Grace, previously a named grievant in this matter, withdrew her claim by letter of her representative dated August 8, 1997, and is no longer a party to this case.