THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

JOSEPH KOMOROWSKI,
Grievant,

v. **Docket No. 08-25-007**

MARSHALL COUNTY
BOARD OF EDUCATION,
Respondent,

v.

THOMAS WOOD,
Intervenor.

DECISION

Grievant is employed by Respondent as an Assistant Principal. He filed this grievance on May 7, 2007, alleging he was the most qualified candidate for the position of Principal at John Marshall High School. For relief, Grievant seeks to be awarded the position with all lost earnings, benefits and attorney fees. A hearing was held on October 31, 2008, at the Grievance Board's Westover office. Grievant was represented by Gregory Gaudino, Esq., of Petroplus & Gaudino, Respondent was represented by Richard S. Boothby, Esq. of Bowles Rice McDavid Graff & Love, and Intervenor, Thomas Wood, was present and represented himself. This case became mature for decision on December 15, 2008, upon the parties' submissions of Findings of Fact and Conclusions of Law.

Synopsis

Grievant asserts he was most qualified for the position and the interview process was flawed. Specifically, Grievant argues, among other things, that Respondent should have

taken into consideration that he had a Master's Degree in School Administration, whereas the Intervenor had a Master's Degree in Physical Education.

Respondent avers Grievant's relief is unavailable, as he voluntarily retired while this grievance was still pending.[1] Respondent also asserts the interview process was conducted in accordance with W. Va. Code §18A-4-7a.

Findings of Fact

1. At the time of filing this grievance, the Grievant was employed by the Respondent as an Assistant Principal at John Marshall High School.
2. The Principal position at John Marshall High School became available.
3. Only Grievant and Intervenor applied.
4. Both were minimally qualified for the position.
5. Both individuals were interviewed.
6. The interview committee recommended Intervenor for the position, and the Superintendent affirmed that recommendation.
7. Prior to the completion of this grievance, Grievant voluntarily retired from his employment.

Discussion

Because Respondent made a motion to dismiss at the end of the testimony, even though in the interest of judicial economy it would have been better addressed in a motion prior to the hearing, it is incumbent to address this issue first.

In Respondent's motion to dismiss, it argued that the relief Grievant is seeking is moot now that he voluntarily retired prior to the conclusion of this grievance. Grievant asserts

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[1]This argument was not addressed until the last witness of the day.

there is no legal authority that prevents Grievant from retiring while the grievance is pending. While this is accurate, Respondent aptly points out that the Grievance Board has ruled on this issue before in *Dooley v. W. Va. Dept. Of Transportation/Division of Highways*, Docket No. 98-DOH-312D (August 3, 1999). In that case, the Grievance Board ruled that reinstatement, the relief Grievant was seeking, was moot since she resigned her position. Grievant had prevailed on her claim that Respondent had defaulted. After the default hearing, and prior to the remedy hearing, Grievant resigned. At the remedy phase, she attempted to argue constructive discharge, but did not meet her burden. Therefore, since it was determined that she voluntarily resigned her position, her relief requested was moot.

This, however, is not the only case where the grievance board has ruled on this issue. In *King v. W. Va. Dept. of Transportation/Division of Highways*, Docket No. 06-DOH-020, (October 20, 2006), the grievance was dismissed because Grievant retired after the hearing before the Grievance Board, but prior to the case becoming mature. Mr. King's grievance concerned an involuntary transfer, and his requested relief was to be placed back into his previous position. It was determined that since his voluntary retirement, the relief was moot.

The grievance board will not hear issues that are moot. "Moot questions or abstract propositions, the decisions of which would avail nothing in the determination of controverted rights of persons or property, are not properly cognizable [issues]. *Bragg v. Dept. of Health and Human Res.*, Docket No. 03-HHR-348, (May 28, 2004); *Burkhammer v. Dept. of Health and Human Res.*, Docket No. 03-HHR-073, (May 30, 2003); *Pridemore v. Dept. of Health and Human Res.*, Docket No. 95-HHR-561, (September 30, 1996).

Because Grievant retired prior to the conclusion of this grievance rendering his relief moot, this grievance is **DISMISSED**.

Conclusions of Law

1. "Moot questions or abstract propositions, the decisions of which would avail nothing in the determination of controverted rights of persons or property, are not properly cognizable [issues]. *Bragg v. Dept. of Health and Human Res.*, Docket No. 03-HHR-348, (May 28, 2004); *Burkhammer v. Dept. of Health and Human Res.*, Docket No. 03-HHR-073, (May 30, 2003); *Pridemore v. Dept. of Health and Human Res.*, Docket No. 95-HHR-561, (September 30, 1996).

2. Grievant's retirement rendered his selection grievance moot.

Accordingly, this grievance is **DISMISSED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. *See* W. VA. CODE § 6C-2-5. Neither the West Virginia Public Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. However, the appealing party is required by W. VA. CODE § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The Civil Action number should be included so that the certified record can be properly filed with the circuit court. *See also* 156 C.S.R. 1 § 6.20 (2008).

Date: March 23, 2009

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Wendy A. Campbell
Administrative Law Judge