WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

EVELYN DOLIN,
Grievant,

v. **Docket No. 2010-0733-GreED**

GREENBRIER COUNTY
BOARD OF EDUCATION,
Respondent.

DISMISSAL ORDER

Grievant Evelyn Dolin filed a grievance against Greenbrier County Board of Education on December 3, 2009. Her statement of grievance reads, "WV. [sic] §18A-4-8 §18A-4-8a(I) (j) & §18A-4-8b substantial change in the daily schedule without consent. No transfer notice."

For relief, "The grievant requests to return to her regular schedule that she fallowed [sic] prior to November 30, 2009. The grievant requests that extracurricular aide assignments be posted as such and not added to full time contracts. Mileage to new reporting site."

This grievance was denied at level one after a conference held on December 10, 2009. A level two mediation session was held on February 24, 2010. After a timely appeal to level three, a hearing was held on April 12, 2010, in the Grievance Board's Beckley office. Grievant was represented by Ben Barkey, West Virginia Education Association, and Respondent was represented by Erwin L. Conrad, Esq. The case was originally scheduled to be mature on April 23, 2010, upon the parties' submissions of proposed findings of fact and conclusions of law. However, on May 26, 2010, the undersigned received a letter from Respondent's counsel stating the student to whom Grievant had been assigned had transferred out of the district. A phone conference was held and the parties were permitted

to submit additional written argument on the issue of whether the transfer resulted in the grievance being moot. Therefore, this case became mature on December 30, 2010, upon the parties' additional written arguments.

Findings of Fact

1. Grievant is employed by Respondent as a Supervisory Aide III, Autism Mentor and Classroom/Bus - Itinerant Aide assigned to Lewisburg Elementary School.

2. Grievant's current assignment became effective September 13, 2006, and she has served in that capacity at that location since September 13, 2006.

3. Grievant has served for 16 years in the Greenbrier County School system in various locations in the capacity of Aide, including the Bus Aide description since school year 1998-1999.

4. Grievant's current position is as a result of Grievant's application for the position of Supervisory Aide/Classroom/Bus Aide/Itinerant at Lewisburg Elementary School for which Grievant applied by application dated August 16, 2002.

5. Subsequent to her receipt of the assignment at Lewisburg Elementary School pursuant to her application, Grievant requested and agreed to a change of assignment from Lewisburg Elementary School to White Sulphur Elementary School to be closer to her home and served as an Aide/Autism Mentor assigned to a specific student at White Sulphur for approximately four years until her return to Lewisburg Elementary School.

6. On or about November 9, 2009, Grievant had been initially assigned to serve as a Bus Aide for a child in the Caldwell area of Greenbrier County, as the least senior Aide unassigned to bus duties or bus-related duties at Lewisburg Elementary School.

7. Prior to undertaking that assignment, Grievant contacted Pam Hannah, another Aide assigned from the Lewisburg Elementary School, to inquire as to Ms. Hannah's current duties. Grievant then reported to the Principal that, although Ms. Hannah had been assigned to make bus runs, she was not currently making the bus runs because the student to which Ms. Hannah was assigned had moved. Grievant requested the Principal assign Ms. Hannah, who is less senior than Grievant, to the Caldwell area run.

8. The Principal assigned Ms. Hannah to the Caldwell run, and advised Grievant that, as the only Aide at Lewisburg without a bus-duty related assignment, the next assignment would go to Grievant.

9. On or about November 30, 2009, Grievant, as the least senior Aide with Bus Aide classification remaining at Lewisburg Elementary School without current Bus Aide related duties, was notified that starting December 1, 2009, she would be assigned to a new student who required a Bus Aide.

10. Grievant did not begin the run on December 1, 2009, and never worked the run she had been assigned. She was off work on sick leave, and eventually went off work on an approved medical leave of absence which was to extend through the school year.

11. On May 26, 2010, the Grievance Board received a letter from Respondent's counsel explaining the student Grievant was assigned to had moved out of the area.

12. After the transfer of the student, Grievant then requested her medical leave of absence be discontinued and obtained a return to work statement.

Discussion

Pursuant to the Procedural Rules of the Public Employees Grievance Board, 156 C.S.R. 1 § 6.11 (2008), "A grievance may be dismissed, in the discretion of the

administrative law judge, if no claim on which relief can be granted is stated or a remedy wholly unavailable to the grievant is requested."

As defined by statute, a grievance must allege "a violation, a misapplication or a misinterpretation of the statutes, policies, rules or written agreements applicable to the employee." W. VA. CODE § 6C-2-2(I). The scope of the authority of the Grievance Board is limited to that set forth in the Grievance statutes. *Skaff v. Pridemore*, 200 W. Va. 700, 490 S.E.2d 787 (1997).

"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]." *Harrison v. Cabell County Bd. of Educ.,* 351 S.E. 2d 604 W. Va. 1985); *Burkhammer v. Dep't of Health & Human Res.*, Docket No. 03-HHR-5-073 (May 30, 2003).

When it is not possible for any actual relief to be granted, any ruling regarding the question raised by this grievance would merely be an advisory opinion. The Grievance Board will not issue advisory opinions. *Bragg v. Dep't of Health & Human Res.*, Docket No. 03-HHR-348 (May 28, 2004); Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 156-1-6 6.21(2008).

In this current case, Grievant was off on sick leave as soon as she became notified that she would be assigned a bus run. Grievant never made the run, and while she argued the run would have extended her day by approximately two hours, there is no evidence to support this, as Grievant did not perform the work she was assigned given her necessity for medical leave. Therefore, Grievant suffered no damages.

While the undersigned clearly realizes that Grievant disagreed with Respondent's decision to assign her to the bus run, this Grievance Board has routinely held, "A grievant's belief that his supervisor's management decisions are incorrect is not grievable unless these decisions violate some rule, regulation, or statute, or constitute a substantial detriment to, or interference with, the employee's effective job performance or health and safety. W. VA. CODE § 29-6A-2(I). [Now W. VA. CODE § 6C-2-2(I).] *See Ball v. Dept. of Highways*, Docket No. 96-DOH-141 (July 31,1997)." *Rice v. Dept. of Transp./Division of Highways*, Docket No. 96-DOH-247 (Aug. 29, 1997). Typically, a Grievant must show "an injury-in-fact, economic or otherwise" to have what "constitutes a matter cognizable under the grievance statute." *Lyons v. Wood County Bd. of Educ.*, Docket No. 89-54-601 (Feb. 28, 1990); *Dunleavy v. Kanawha County Bd. of Educ.*, Docket No. 20-87-102-1 (June 30, 1987). "Relief which entails declarations that one party or the other was right or wrong, but provides no substantive, practical consequences for either party, is illusory, and unavailable from the [Grievance Board]. *Miraglia v. Ohio County Bd. of Educ.*, Docket No. 92-35-270 (Feb. 19, 1993).

Because Grievant has failed to show an injury in fact, a decision on the merits would simply be a declaration of the correctness of one party over the other, and would provide no substantive, practical consequences for either party. Therefore, this case must be dismissed.

Conclusions of Law

1. Pursuant to the Procedural Rules of the Public Employees Grievance Board, 156 C.S.R. 1 § 6.11 (2008), "A grievance may be dismissed, in the discretion of the

administrative law judge, if no claim on which relief can be granted is stated or a remedy wholly unavailable to the grievant is requested."

2. As defined by statute, a grievance must allege "a violation, a misapplication or a misinterpretation of the statutes, policies, rules or written agreements applicable to the employee." W. VA. CODE § 6C-2-2(I). The scope of the authority of the Grievance Board is limited to that set forth in the Grievance statutes. *Skaff v. Pridemore*, 200 W. Va. 700, 490 S.E.2d 787 (1997).

3. "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]." *Harrison v. Cabell County Bd. of Educ.,* 351 S.E. 2d 604 W. Va. 1985); *Burkhammer v. Dep't of Health & Human Res.*, Docket No. 03-HHR-5-073 (May 30, 2003).

4. When it is not possible for any actual relief to be granted, any ruling regarding the question raised by this grievance would merely be an advisory opinion. The Grievance Board will not issue advisory opinions. *Bragg v. Dep't of Health & Human Res.*, Docket No. 03-HHR-348 (May 28, 2004); Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 156-1-6 6.21(2008).

5. "A grievant's belief that his supervisor's management decisions are incorrect is not grievable unless these decisions violate some rule, regulation, or statute, or constitute a substantial detriment to, or interference with, the employee's effective job performance or health and safety. W. VA. CODE § 29-6A-2(I). [Now W. VA. CODE § 6C-2-2(I).] *See Ball v. Dept. of Highways*, Docket No. 96-DOH-141 (July 31,1997)." *Rice v.*

Dept. of Transp./Division of Highways, Docket No. 96-DOH-247 (Aug. 29, 1997). Typically, a Grievant must show "an injury-in-fact, economic or otherwise" to have what "constitutes a matter cognizable under the grievance statute." *Lyons v. Wood County Bd. of Educ.*, Docket No. 89-54-601 (Feb. 28, 1990); *Dunleavy v. Kanawha County Bd. of Educ.*, Docket No. 20-87-102-1 (June 30, 1987). "Relief which entails declarations that one party or the other was right or wrong, but provides no substantive, practical consequences for either party, is illusory, and unavailable from the [Grievance Board]. *Miraglia v. Ohio County Bd. of Educ.*, Docket No. 92-35-270 (Feb. 19, 1993).

6. Grievant did not prove she suffered an injury-in-fact.

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: February 28, 2011

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Wendy A. Elswick
Administrative Law Judge