THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

KATHY JO ADKINS,

Grievant,

v. **Docket No. 2011-1618-BooED**

BOONE COUNTY BOARD OF EDUCATION,

Respondent.

DISMISSAL ORDER

Grievant, Kathy Jo Adkins, filed a grievance against her employer, Respondent Boone County Board of Education, on May 6, 2011, stating as follows: "Kathy Adkins, Grievant, is a full-time classroom teacher at Scott High School. She claims positions were filled by employees without proper posting of the Compacting the Curriculum for Summer School position. Grievant claims violations of the following law, policies, and/or procedures, including, but not limited to, W. Va. Code 18A-4-7a and W. Va. Code 18A-4-16." As the relief sought, "Grievant seeks that all jobs be posted and the opportunity to apply for any positions and any other relief deemed appropriate but not limited to salary, interest and seniority etc."

A Level One conference was conducted on May 19, 2011, and denied by a decision dated June 2, 2011. Grievant appealed to Level Two on June 8, 2011. The Level Two Mediation was conducted on October 3, 2011. Grievant perfected her appeal to Level Three on October 13, 2011. A Level Three hearing was held before the undersigned Administrative Law Judge on February 2, 2012, at the Grievance Board's Charleston, West Virginia, office. Grievant appeared in person and with her Representative, Jennifer Romeo, AFT-West Virginia/AFL-CIO. Respondent appeared

by counsel, Timothy R. Conaway, Esquire, Conaway & Conaway. This matter became mature for decision upon receipt of the last of the parties' proposed Findings of Fact and Conclusions of Law on March 6, 2012.

Synopsis

Grievant seeks to require Respondent to post all future positions where an employee will be compensated. Respondent offered Grievant the opportunity to work on compacting the curriculum for summer school 2011, as well as the same compensation paid to other teachers who worked on the project. Grievant declined this offer. Grievant seeks an advisory opinion on whether tasks such as compacting the curriculum is a "position" as defined by W. VA. CODE § 18A-4-7a. As the Grievance Board does not issue advisory opinions, this grievance is DENIED.

Stipulations

The parties stipulated to the following facts at the Level Three hearing:

1. The task of compacting the PLATO curriculum for the 2011 summer school session was not posted by Respondent.

2. Those teachers who participating in completing the task of compacting the curriculum for the 2011 summer school session were compensated for their work.

Findings of Fact

1. Grievant, Kathy Jo Adkins, is employed by Respondent as a full-time classroom teacher at Scott High School in Boone County, West Virginia.

2. Grievant is certified in the content area of Science, grades seven through twelve, in both General Science and Biological Science.

3. In the spring of 2011, Boone County Schools began the process of compacting the curriculum in the content areas of mathematics, science, social studies, and English/language arts for a credit recovery program to be offered during the summer of 2011 and for future summer sessions at the middle and high schools.

4. In an effort to recruit teachers to help with compacting the curriculum, Nancy Booth, Instructional Coach/Mathematics Coordinator, emailed each of the Boone County middle and high school principals regarding the need for teachers to work on this project.[1] In this email, Ms. Booth stated that working on this project would allow the teachers the opportunity to provide some input into the summer school curriculum and to earn some extra money.[2] Further, Ms. Booth asked that each principal place this information in the teacher mailboxes at their schools.

5. None of the teachers at Scott High School received the information from Ms. Booth.

6. Despite Ms. Booth's email, not enough teachers agreed to work on compacting the curriculum.

7. As such, Ms. Booth began telephoning teachers to ask them to assist in compacting the curriculum. Ms. Booth managed to get some of the teachers to agree to participate in the project.

8. Grievant did not receive Ms. Booth's email in her mailbox at her school and did not receive a recruiting telephone call from Ms. Booth.

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[1] *See*, email from Nancy Booth, Joint Exhibit 1.

[2] *See*, Joint Exhibit 1.

9. Grievant learned of the compacting of the curriculum project and the compensation from another teacher during a faculty senate.

10. Grievant filed her Level One Grievance seeking as relief "that all jobs be posted with interested parties having an opportunity to apply for any and all positions . . . ."

11. At Level One, Grievant was offered the opportunity to work on the compacting the curriculum project and was offered the same compensation that the other teachers working on the project received. However, Grievant declined the offer because Respondent would not agree to post all such future projects where compensation is paid to employees.

12. Grievant does not now seek the opportunity to work on compacting of the curriculum for compensation.

13. Grievant seeks clarification as to whether the compacting of the curriculum task is a "position" as defined by W. VA. CODE § 18A-4-7a.

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."

> When there is no case in controversy, the Grievance Board will not issue advisory opinions. *Brackman v. Div. of Corr./Anthony Corr. Center,* Docket No. 02-CORR-104 (Feb. 20, 2003); *Gibb v. W. Va. Div. of Corr.*, Docket No. 98-CORR-152 (Sept. 30, 1998). In addition, 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 & Human Res.,* Docket No. 03-HHR-348 (May 28, 2004); *Burkhammer v. Dep't of Health & Human Res.,* Docket No. 03-HHR-073 (May 30, 2003); *Pridemore v. Dep't of Health & Human Res.*, Docket No. 95-HHR-561 (Sept. 30, 1996).

Pritt, et al., v. Dep't of Health and Human Res., Docket No. 2008-0812-CONS (May 30, 2008). In situations where "it is not possible for any actual relief to be granted, any ruling issued by the undersigned regarding the question raised by this grievance would merely be an advisory opinion. 'This Grievance Board does not issue advisory opinions. *Dooley v. Dep't of Transp.,* Docket No. 94-DOH-255 (Nov. 30, 1994); *Pascoli & Kriner v. Ohio County Bd. of Educ.,* Docket No. 91-35-229/239 (Nov. 27, 1991).' *Priest v. Kanawha County Bd. of Educ.,* Docket No. 00-20-144 (Aug. 15, 2000)." *Smith v. Lewis County Bd. of Educ.*, Docket No. 02-21-028 (June 21, 2002).

This Grievance Board has continuously refused to address issues when the relief sought is "speculative or premature, or otherwise legally insufficient." *Stepp v. Dep't. of Trans./Div. of Highways,* Docket No. 06-DOH-215 (Oct. 27, 2006) citing *Dooley v. Dep't. of Trans./Div. of Highways*, Docket No. 94-DOH-255 (Nov. 30, 1994); *Pascoli & Kriner v. Ohio County Bd. of Educ.*, Docket No. 91-35-229/239 (Nov. 27, 1991). "[R]elief 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).

Grievant was offered the opportunity to work on compacting the curriculum for summer school and was offered the same compensation as the other teachers who performed that work. However, Grievant declined the offer unless Respondent agreed

to post all future tasks where compensation will be paid to an employee. The only relief Grievant seeks is that "all jobs be posted and the opportunity to apply for any positions and any other relief deemed appropriate, but not limited to salary, interest, and seniority." Grievant is really seeking an advisory opinion as to whether the compacting the curriculum task was a "position" as defined by W. VA. CODE § 18A-4-7a and should have been posted. Accordingly, Grievant seeks relief that is wholly unavailable. As such, this grievance must be denied.

The following Conclusions of Law support the Dismissal of this grievance:

Conclusions of Law

1. "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." Procedural Rules of the Public Employees Grievance Board, 156 C.S.R. 1 § 6.11 (2008).

2. "When there is no case in controversy, the Grievance Board will not issue advisory opinions. *Brackman v. Div. of Corr./Anthony Corr. Center,* Docket No. 02-CORR-104 (Feb. 20, 2003); *Gibb v. W. Va. Div. of Corr.*, Docket No. 98-CORR-152 (Sept. 30, 1998). In addition, 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 & Human Res.,* Docket No. 03-HHR-348 (May 28, 2004); *Burkhammer v. Dep't of Health & Human Res.,* Docket No. 03-HHR-073 (May 30, 2003); *Pridemore v. Dep't of Health & Human Res.*, Docket No. 95-HHR-

561 (Sept. 30, 1996)." *Pritt, et al., v. Dep't of Health and Human Res.*, Docket No. 2008-0812-CONS (May 30, 2008).

3. In situations where "it is not possible for any actual relief to be granted, any ruling issued by the undersigned regarding the question raised by this grievance would merely be an advisory opinion. 'This Grievance Board does not issue advisory opinions. *Dooley v. Dep't of Transp.,* Docket No. 94-DOH-255 (Nov. 30, 1994); *Pascoli & Kriner v. Ohio County Bd. of Educ.,* Docket No. 91-35-229/239 (Nov. 27, 1991).' *Priest v. Kanawha County Bd. of Educ.,* Docket No. 00-20-144 (Aug. 15, 2000)." *Smith v. Lewis County Bd. of Educ.*, Docket No. 02-21-028 (June 21, 2002).

4. "[R]elief 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).

Accordingly, the grievance is **DISMISSED.**

Any party may appeal this Dismissal Order to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Dismissal Order. *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 appealing party must also provide the Board with the civil action number so that the certified record can be prepared and properly transmitted to the Circuit Court of Kanawha County. *See also* 156 C.S.R. 1 § 6.20 (2008).

DATE: July 31, 2012.

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Carrie H. LeFevre
Administrative Law Judge