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HELEN JOAN HARPER

v.

Docket No. 50-86-221-1

WAYNE COUNTY BOARD OF EDUCATION

DECISION

Grievant, Helen Jean Harper, has been employed by the Wayne County Board of Education as a transportation/classroom aide since November, 1984, when she bid upon and was awarded the position. On May 27, 1986, she filed a grievance alleging that the board of education had failed to timely notify her of a possible transfer as required by W.Va. Code, 18A-2-7 and that she had been "bumped" from a position in violation of W.Va. Code, 18A-4-8b. A level two hearing was conducted on June 6, 1986 and a level four evidentiary hearing on December 11, 1986.

The position that was posted and awarded to grievant on a probationary basis in November, 1984, was for a Transportation/Classroom Aide for Special Education Multi-School Itinerant assignment

and grievant was reemployed in the position in June, 1985.¹ On March 28, 1986, Superintendent Ferguson scheduled a meeting with grievant and other employees similarly situated and informed these employees that in all likelihood they would be transferred and reassigned the next school year; that the employees would receive a letter advising them of the transfers.² Also on March 28, 1986, a certified letter was mailed to grievant at her address in Prichard, West Virginia, and returned "unclaimed" to the board office on April 15, 1986.³ On April 17, 1986, assistant superintendent Charles Oshel sent grievant a copy of the letter by regular mail and on April 24, 1986, grievant requested a statement of the reasons for her transfer, which were furnished on April 29, 1986, by Superintendent Ferguson. By letter dated May 1, 1986, grievant requested a hearing on the proposed transfer before the Wayne County Board of Education and a hearing was conducted on May 5, 1986; the board later placed grievant on the unassigned list for the school year.

¹ The description in the posting was that:

The present schedule calls for the aide to begin the workday in the Fort Gay area and travel to Westmoreland. However, it must be understood that the assignment is multi-school itinerant and the schedule can be changed to meet the needs of the students served.

² Superintendent Ferguson testified that he called the meeting to relieve some of the anxiety school employees experience when they receive a certified letter from the school board this time of the year and to answer questions the employees might have.

³ The letter bears the notation that grievant had been notified on March 29 and April 9 of the certified letter and the unopened letter was admitted into evidence at the level four hearing as Employer's Exhibit No. 1.

On May 27, 1986, grievant filed a grievance and at the level two hearing on June 6, 1986, testified that she did not receive notice of the transfer until April 19, 1986, and that she had been "bumped" from her position by a senior Aide. (Level two transcript, unnumbered pages 5,7).⁴ Grievant appealed the adverse decision to the Education Employees Grievance Board on July 8, 1986.

Significantly, at the commencement of the school year in September, 1986, grievant worked for six or seven days as a substitute classroom and transportation aide in a newly created position at Wayne Middle School with the only difference in duties being that grievant was working with PD students instead of BD students. When the position was posted the successful bidder vacated a position at Westmoreland resulting in grievant bidding upon and being awarded her previous position. Accordingly, prior to and at the time of the level four hearing the issues raised by grievant in the initial grievance had become moot and grievant was completely satisfied with her present position. Grievant pursued this grievance because she wanted the assurance that henceforth she would be given timely notice and be placed on a preferred transfer list.⁵

⁴ At the level two hearing Superintendent Ferguson took the position that the letter of notification to grievant on the proposed transfer was a courtesy and not a procedural requirement because of grievant's classification. (Level two transcript, unnumbered page 10).

⁵ Grievant repeatedly stated that she was happy with her present position and did not know what additional measures the board of education could have taken to notify her of the proposed transfer.

At the close of the grievant's case counsel for the board moved to dismiss the appeal for lack of a grievable matter, which was denied. These types of grievances are, however, subject to motion to dismiss before or during a level four hearing and in a proper case a motion for costs would be appropriate. See, e.g., Carol Snyder v. Kanawha County Board of Education, Docket No. 20-86-162-1.

In addition to the foregoing factual account the following specific findings of fact are appropriate.

FINDINGS OF FACT

1. Grievant is classified as a transportation/classroom aide for special education multi-school itinerant by the Wayne County Board of Education.

2. On March 28, 1986, Superintendent of Schools Ferguson orally informed grievant of a possible transfer and reassignment for the coming school year and that a letter to that effect would be forthcoming.

3. On March 28, 1986, a certified letter was mailed to grievant at her home address by the school officials and returned to the board office on April 16, 1986, as "unclaimed."

4. On April 17, 1986, grievant received notice of the impending transfer and requested a hearing before the board of education; a hearing was held on May 5, 1986. Grievant was thereafter placed on the unassigned transfer list.

5. Grievant filed a grievance which was ultimately appealed to the Education Employees Grievance Board. In the interim between filing the appeal to level four and the level four hearing grievant,

by coincidence, was restored to her original position and sought no relief from the hearing examiner except a decision that the school board had been in error.

CONCLUSIONS OF LAW

1. The Education Employees Grievance Board will not issue advisory opinions or anticipate issues not fairly raised in the evidence. Douglas Richmond v. Raleigh County Board of Education, Docket No. 41-86-127-1; Ledbetter v. Braxton County Board of Education Docket No. 04-86-092.

2. Moot questions or abstract positions, the decision of which would avail nothing in the determination of controverted rights, are not properly cognizable in the grievance procedure. Harrison v. Cabell County Board of Education, 351 S.E.2d 604 (W.Va. 1985).

3. W.Va. Code, 18-29-3(d) provides that an employee may withdraw a grievance at any time by notice, in writing, to the level wherein the grievance is then current. When a grievance becomes moot it is incumbent upon the grievant to dismiss the grievance promptly to avoid incurring needless expense and costs. Carol Snyder v. Kanawha County Board of Education, Docket No. 20-86-162-1.

For the foregoing reasons the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha County or Wayne County and such appeal must be filed within thirty days of receipt of this decision. (W.Va. Code, 18-29-7). Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the Court.



LEO CATSONIS

Chief Hearing Examiner

Dated: February 26, 1987