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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**
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ALAN HARRISON

v.

Docket No. 20-87-134-1

KANAWHA COUNTY BOARD OF EDUCATION

DECISION

Grievant, Alan Harrison, is employed by the Kanawha County Board of Education and is assigned as principal of South Charleston High School. On May 13, 1987 he filed a grievance alleging that Kanawha County Schools had not given him proper seniority and he had therefore been scheduled to be replaced by a more senior employee. There were no evidentiary hearings conducted either at level two or level three and the parties waived the grievance to level four. An evidentiary hearing was conducted at level four on September 17, 1987.

On September 17, prior to the taking of evidence, the parties informed the hearing examiner that the contemplated action had not been taken by the board of education but that both of the parties were desirous of obtaining a decision from the Education Employees

Grievance Board. Accordingly, the parties were permitted to continue with the hearing with the understanding that counsel for the school board would file a memorandum of law setting forth the reasons this grievance should not be dismissed on the basis of the decision in Raymond A. Dunleavy v. Kanawha County Board of Education, Docket No. 20-87-102-1.¹

On October 5, 1987 counsel for the school board submitted a letter memorandum setting forth the case of Scites v. Huffman, 324 S.E.2d 153 (W.Va. 1984) as authority for the issuance of an advisory opinion in the instant case. However, in Scites the Court seized upon an opportunity to establish time requirements within which the West Virginia Workers' Compensation Commission and Appeal Board were to process claims for workers' compensation benefits and that case is inapposite to the instant grievance.

In addition to the foregoing the following specific findings of fact and conclusions of law are appropriate.

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The grievant was not represented by counsel but was also given the opportunity to file memoranda or other material on this question.

The parties urged that there was no objection in the instant grievance as there had been in Dunleavy, supra, and that the grievance was similar to the first Dunleavy grievance, i.e., Dunleavy v. Kanawha County Board of Education, Docket No. 20-86-240-1. Admittedly, in Dunleavy I the parties submitted the legal issues to the hearing examiner in absence of an actual controversy but it was upon the basis of that grievance that the practice was terminated.

FINDINGS OF FACT

1. Grievant is employed by the Kanawha County Board of Education as principal of South Charleston High School.

2. Grievant was notified by the school superintendent that he intended that grievant's contract be terminated at the conclusion of the 1986-87 school year.

3. On March 18, 1987 grievant executed an agreement whereby he agreed to voluntarily assume a position at Sissonville High School commencing with the 1987-88 school year. Grievant contended the school officials had erroneously calculated his seniority.

4. The anticipated action was not taken by the school board and grievant remains in his position as principal of South Charleston High School.

5. Notwithstanding, both parties desire to obtain a decision from the Education Employees Grievance Board on the basis that the subject of seniority is critical to accomplish appropriate staffing decisions in the public schools and/or that the school board might decide to terminate grievant's position next school year.

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; Ledbetter v. Braxton County Board of Education, Docket No. 04-86-092; Helen Joan Harper v. Wayne County Board of Education, Docket No. 50-86-221; Raymond A. Dunleavy v. Kanawha County Board of Education, Docket No. 20-87-102-1.

2. Moot questions or abstract propositions, the decision of which would avail nothing in the determination of controverted rights, are not properly cognizable in the grievance procedure. Helen Joan Harper v. Wayne County Board of Education, Docket No. 50-86-221; Harrison v. Cabell County Board of Education, 351 S.E.2d 604 (W.Va. 1985). A case is "moot" when relief, if rendered, will have no practical effect on existing controversies. Raymond A. Dunleavy v. Kanawha County Board of Education, Docket No. 20-87-102-1.

3. A grievance will be dismissed at level four of the grievance procedure when it appears that the grievant has not been adversely affected or aggrieved by any alleged act of the employer and which

is otherwise highly speculative. Four-H Road Comm. Assoc. v. Division of Water Resources, 355 S.E.2d 624 (W.Va. 1987); Raymond A. Dunleavy v. Kanawha County Board of Education, Docket No. 20-87-102-1.

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha 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.

A handwritten signature in dark ink, appearing to read "Leo Catsonis", is written over a horizontal line.

LEO CATSONIS
Chief Hearing Examiner

Dated: October 30, 1987