WEST VIRGINIA EDUCATION AND STATE EMPLOYEES GRIEVANCE BOARD

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WILLIAM FRATTO

v. Docket No. 89-17-294

HARRISON COUNTY BOARD OF EDUCATION

D E C I S I O N

William Fratto, who is employed by Respondent Harrison County Board of Education, was recently Assistant Principal of Lincoln High School in the same system. On April 12, 1989, he initiated the following grievance, claiming a violation of W.Va. Code §18A-4-8b(a):

> I lost my position as an assistant principal due to a Reduction in Force. The Board [of Education] did not calculate my seniority according to. . . [Code] §18A-4-8b[(a)]. The relief I seek is to be assigned to a comparable administrative position.

After denials at Levels I[1] and II and waiver at Level III, Grievant advanced his cause to Level IV on June 28, 1989.

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[1] According to the Level IV form, this grievance was "filed directly at Level II." It is established that employee complaints may not bypass Level I unless two criteria are met: there must be no authority there to grant the relief sought, and there must exist written consent from Level I authorities. Bumgardner v. Ritchie Co. Bd. of Educ., Docket Nos. 89-43-222, etc. (June 12, 1989). In the instant case, it will be assumed that the proper procedure was followed and that the claim was denied at Level I due to lack of jurisdiction to award the desired remedy.

With the presentation of proposed findings of fact and conclusions of law by September 20, the matter is mature.[2]

The essential facts of this case are for practical purposes stipulated. rievant, first hired by Respondent as a classroom teacher in August 1971, was elevated to assistant principal status in June 1982. He served in that capacity until the end of school term 1988-89. During that year, Respondent determined it necessary to reduce its number of administrators by at least one assistant principal; utilizing July 1, 1982, the date of Grievant's principal's certificate, as his seniority date, it identified him as one of the least senior members of that force.[3] Accordingly, Grievant was displaced and reassigned to a classroom instructor's slot.

Recently, the undersigned was advised that in early August 1989, Grievant was selected by Respondent to be, and is currently serving as, Assistant Principal at its

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[2] Grievant filed fact-law proposals August 25; Respondent, September 20. The Level II transcript and its attendant exhibits were provided September 19. The parties were originally granted until September 26 to complete the record, but accomplished this task before the deadline.

The undersigned has also considered the parties' November 29, 1989, filings. See n.6.

[3] Since there is no separate certification for assistant principals, it is somewhat curious that Respondent reviewed only the records of those persons then serving in that capacity. T. 20-21. However, the matter will not be further pursued in light of the outcome herein.

Roosevelt-Wilson High School (R-W).[4] Thus, the totality of the relief sought by Grievant, that he "be assigned to a comparable administrative position,"[5] has been realized by him.[6] Both parties decline to move for dismissal of this

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[4] The undersigned is troubled that neither party nor either representative advised him of Grievant's advancement to the R-W position promptly after its occurrence, as they should have.

[5] As noted by Respondent in its Conclusion of Law 7, Grievant, in his August 25 written submission to this Grievance Board, apparently for the first time of record asked reinstatement to his 1988-89 post at Lincoln High School. According to Respondent, that position was eliminated by Harrison County, which action was the catalyst for this grievance. Because Grievant has sought only assignment "to a comparable administrative position" throughout this proceeding, his belated request regarding Lincoln will not be further considered.

[6] The undersigned advised the parties of his concern that Grievant's placement at R-W might operate to moot this case, and invited them to submit evidence and/or argument on the point. Both sent material, which was received November 29, 1989. Respondent agreed, by letter, the matter "appear[s] to be moot." Grievant alleged in his "Addendum to Level IV Findings of Fact and Conclusions of Law" that the R-W assignment is not "comparable" for several reasons, with only this one having any facial merit:

> Grievant's salary is substantially less then the 1988-89 school term due to size of current school (i.e., R-W . . . has 500 less students and approximately 30 less teachers than Grievant's previous school). . ..

Unfortunately for Grievant, he did not present an affidavit or other evidence on this point, or even specific advisory as to the amount of his alleged salary loss, etc. It is noted that Respondent, in its November 29 correspondence, averred Grievant had "no loss of income or loss of other benefits"; however, this likewise is not evidence and may not be so credited any more than Grievant's bald assertions.

In short, Grievant offered no valid basis for survival of his claim in his November 29 presentation.

grievance due to mootness, however, citing mutual desire that certain specifics related to the issue, how seniority should be calculated when administrators are RIF'd, be adjudicated in this forum.[7]

It is well-settled that this agency does not issue advisory opinions. See, e.g., Wilburn v. Kanawha Co. Bd. of Educ., Docket No. 20-88-089 (Aug. 20, 1988). Events subsequent to the filing of a grievance may operate to moot that grievance, and in that instance, any decision rendered on the merits would be, in effect, advisory. See Carney v. DRS, Docket No. VR-88-055 (Mar. 28, 1989). "Grievances in which the relief, if provided, would have no practical effect on either party are abstract propositions and are not properly cognizable in the grievance procedure. . .." Smith v. MU, Docket No. BOR2-87-229-1 (June 29, 1988). Grievant's placement at R-W satisfies his claim, as it was stated, and that claim is therefore moot.

In addition to the foregoing, the following findings of fact and conclusions of law are made:

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[7] Grievant's representative explained that R-W is projected to close with school term 1989-90, and that his client will be faced with the same dilemma as when he was RIF'd from his post at Lincoln. While this is recognized as a possibility, it is little more than conjecture at this point and as such not sound basis for continued viability of the instant grievance.

FINDINGS OF FACT

1. Grievant, an Assistant Principal at Lincoln High School during 1988-89, was subject to a reduction-in-force (RIF) imposed by Respondent during Spring 1989. In conjunction with this, he was moved to a classroom teaching position for 1989-90.

2. Prior to the close of school year 1989-90, he filed a grievance over this RIF action, seeking only assignment "to a comparable administrative position." He argued that his seniority had been improperly calculated, resulting in his wrongful placement on the RIF list.

3. In August 1989, prior to the commencement of school year 1989-90 for students, Grievant was hired by Respondent to be Assistant Principal, Roosevelt-Wilson High School (R-W). He has served in that capacity since then.

CONCLUSIONS OF LAW

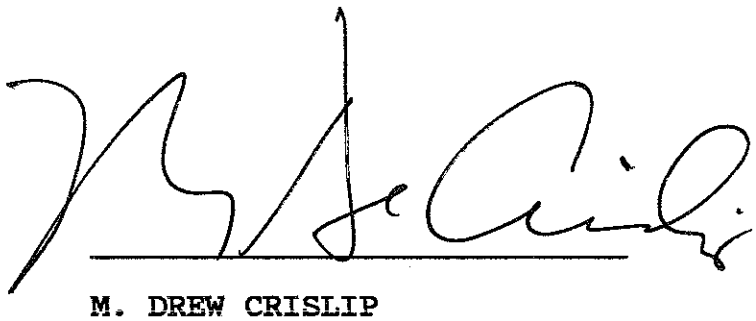
1. The West Virginia Education and State Employees Grievance Board does not issue advisory opinions. Wilburn v. Kanawha Co. Bd. of Educ., Docket No. 20-88-089 (Aug. 20, 1988).

2. Grievant's placement at R-W fully satisifes his claim as stated; therefore, his grievance is moot. Any decision rendered on the merits of the case would thus be

advisory. See Carney v. DRS, Docket No. VR-88-055 (Mar. 28, 1989).

Accordingly, this grievance is **DENIED.**

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Harrison County and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code §18-29-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Hearing Examiners is a party to such appeal, and should not be so named. This Grievance Board should be advised of any intent to appeal so that the record can be prepared and transmitted to the appropriate court.



M. DREW CRISLIP
HEARING EXAMINER

Dated: November 30, 1989