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**THOMAS BUMGARDNER**

v.

**Docket No. 89-45-474**

**SUMMERS COUNTY BOARD OF EDUCATION**

**DECISION**

Grievant, Thomas Bumgardner, was employed by the Summers County Board of Education (Board) during the 1988-89 school term as an Adult Basic Education Teacher at the Alderson Correctional Center. Prior to the end of that term, he was advised by Superintendent of Schools Demetrius Tassos that a recommendation that his contract be terminated for lack of funding would be made to the Board. Grievant was advised of his right to a hearing pursuant to W.Va. Code §18A-2-2 but the record does not reveal whether he exercised his right to such. Grievant's contract was terminated and his name was placed on a preferred recall list. He was notified, by certified mail, of two math teacher vacancies, grades 7-12, at Hinton High School (HHS), which occurred during the summer. Grievant applied but was rejected for both. He filed a grievance at Level I on July 17, 1989 protesting his non-selection and, due to the retirement of his immediate supervisor, it was waived to Level II. After a hearing was held July

20, 1989, the grievance was denied and the Board upheld that decision August 10, 1989. Appeal was made to Level IV August 18, 1989 where, prior to a hearing scheduled for September 12, 1989, the Board filed a motion to dismiss on the grounds that grievant had been awarded a position at HHS. Grievant filed a written response to the motion on September 18, 1989. A hearing was held October 23, 1989, at which time both parties presented testimony and legal arguments concerning the motion. The testimony revealed the following sequence of events.

Grievant is certified to teach mathematics and biology, grades 7 through 12. The aforementioned vacancies, posted May 21 and June 12, 1989, were filled by persons Mr. Tassos concluded were more qualified than the grievant. Another such vacancy at HHS occurred sometime in August and grievant was offered and accepted the position. The Board contends the grievance is moot in that grievant has been awarded precisely the same position for which he originally applied but was rejected and has suffered no loss of pay or other injury.

Grievant, appealing pro se, represented that the matter was not moot and asked that he be allowed to present evidence concerning certain actions taken by the Board or its representatives during lower level proceedings and the calculation of the seniority of one of the persons selected to fill one of the earlier vacancies. After Mr. Tassos testified as to the manner in which that seniority was calculated, grievant conceded it was correct and posed no future problems concerning his own seniority rights.

Grievant then offered as evidence the Board's grievance policy and represented that he had not been afforded the full benefit of its provisions. After review of the policy and the lower level appeal and response forms, the undersigned ruled that, while there may have been some confusion as to the proper place for filing certain forms at lower levels, grievant had been afforded all rights guaranteed by the Board's policy and the provisions of W.Va. Code §§18-29-1, et seq. That ruling is hereby affirmed.

Grievant also raised rather vague allegations that statements had been made by unspecified persons during the process which he felt were injurious to his character and other actions on the part of the administration which he considered improper.<sup>1</sup> The undersigned ruled, pursuant to W.Va. Code §18-29-3(j), that those matters could not be considered part of the grievance and would have to be the subject of a separate complaint, requiring new filing. That ruling is also hereby affirmed. Grievant expressed concern over timeliness requirements if he chose to file, at which time counsel for the Board expressly waived any such defense in the event the filing was made within two weeks of October 23, 1989.

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<sup>1</sup>It became apparent during the hearing that grievant had developed considerable animosity toward representatives of the Board and wished to use the hearing for the purpose of venting some of his anger and/or frustration. Since the record developed at lower levels reveal grievant was given ample opportunity to present evidence and make his legal position known, the undersigned can only assume that the source of his frustration was the termination of his contract at the end of the 1988-89 school term.

Grievant was asked several times by the undersigned what relief he was requesting in light of his recent appointment at HHS but, except for assertions that he should be allowed to pursue the matters previously discussed, no response was forthcoming. Grievant was also asked if reinstatement to one of the earlier posted positions was being requested and, similarly, no response was made.

In addition to the findings and the conclusions contained in the foregoing discussion and analysis, the following findings of fact and conclusions of law are also made:

#### FINDINGS OF FACT

1. Grievant's continuing contract of employment was terminated at the end of the 1988-89 school term and he was placed on a preferred recall list.

2. Grievant made applications for two mathematics teacher positions, grades 7-12, at HHS during the summer of 1989 but the other applicants were awarded the jobs.

3. Subsequent to initiation of these grievance proceedings, grievant applied for and was awarded a third mathematics teaching position at HHS.

#### CONCLUSIONS OF LAW

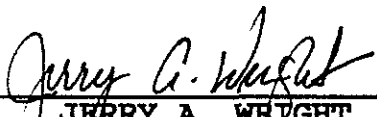
1. A grievance may be denied or dismissed at Level IV of the grievance procedure when it appears that the grievant has

achieved the relief requested and has not otherwise been adversely affected. See Dunleavy v. Kanawha County Board of Education, Docket No. 20-87-102-1 (June 30, 1987); Richmond v. Raleigh County Board of Education, Docket No. 41-86-127-1 (June 9, 1986).

2. By virtue of grievant's appointment to a mathematics teaching position at HHS, he was granted the relief which he requested. Furthermore, there is no evidence that grievant has "otherwise been adversely affected".

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Summers County or the Circuit Court of Kanawha County and said 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. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate Court.

  
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JERRY A. WRIGHT  
Chief Hearing Examiner

Dated: November 30, 1989