



Members
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David L. White

**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**

GASTON CAPERTON
Governor

Offices
240 Capitol Street
Suite 515
Charleston, WV 25301
Telephone 348-3361

TERRY McCLOUD

v.

Docket No. 89-27-312

**HARRISON COUNTY
BOARD OF EDUCATION**

D E C I S I O N

Grievant filed a complaint in May 1989 alleging that in a reduction-in-force (RIF) action she lost her position as principal at Wallace Elementary School due to calculation of her seniority contrary to W.Va. Code §18A-4-8b, and seeking as relief to be assigned a principal's position. The grievance was denied at Level II¹ and consideration was waived at Level III. Grievant appealed to Level IV on June 30, 1989,² requesting a decision based on the record compiled below, but that record was not received until November 1. Thereafter, Respondent, by Counsel, inquired

¹It was filed directly at Level II, apparently because of no authority to grant the requested relief at Level I. The record fails to indicate whether the Level I evaluator agreed in writing to the Level II filing, as required by W.Va. Code §18-29-3(c).

²The appeal at Level IV stated as the requested relief that she be assigned a principalship or an assistant principalship.

whether this matter is moot since Grievant had been assigned the principalship at Enterprise Elementary School subsequent to her filing the grievance, arguing that "it appears that the relief requested by [Grievant] has been provided, with no loss of income or loss of other benefits." Letter of November 27, 1989. On December 5, 1989, Respondent's counsel, referring to the decision of Fratto v. Harrison Co. Bd. of Educ., Docket No. 89-17-294 (Nov. 30, 1989), contended that this case is indeed moot.

In Fratto the claim was denied because granting the requested relief of being put in an administrative position had rendered it moot. Accordingly, on December 15, 1989, the undersigned, finding Respondent's argument sound, informed Grievant's representative that, if Respondent's assertions were accurate, this grievance would be controlled by Fratto and that, unless information were provided supporting a contrary conclusion, the grievance would be dismissed. Thereafter Grievant, by representative, asserted that she had suffered a loss of income due to the RIF action and that documentation thereof would be provided. However, no such documentation has been provided and the deadline for submission thereof, February 8, 1990, has passed.³

³Even if such documentation had been received, it is doubtful that it would have prevented denial of this grievance. Only upon Respondent's raising the issue of mootness did Grievant make an apparent request for back pay. Such a change in the relief sought can be denied at the discretion of a hearing examiner. See W.Va. Code §18-29-3.

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

Findings of Fact

1. Grievant, a principal at Wallace Elementary School during 1988-89, was subject to a reduction-in-force imposed by Respondent during Spring 1989.

2. Grievant filed a grievance requesting as relief that she be assigned a principalship.

3. Grievant, outside the context of the grievance procedure, was subsequently assigned the principalship at Enterprise Elementary School.

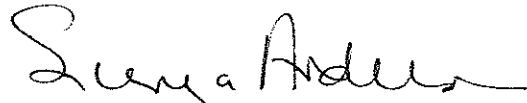
Conclusion of Law

Grievant's placement in the principalship satisfies her claim for relief; therefore, her grievance is moot. Fratto v. Harrison Co. Bd. of Educ., Docket No. 89-17-294 (Nov. 30, 1989).

Accordingly, the 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. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate court.



SUNYA ANDERSON
HEARING EXAMINER

Date: March 5, 1990