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**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**
GASTON CAPERTON
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ROY G. RUSSELL

v.

Docket No. 89-20-671

KANAWHA COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant Roy G. Russell is employed by Respondent Kanawha County Board of Education as a vocational instructor at Garnet Adult Education Center. In August 1989, he filed a grievance at Level I, contesting the selection of Mr. Scott Beane over him, Grievant, for Respondent's opening in the position of Coordinator of Purchasing and Supply Management. This complaint was rejected at that step due to the evaluator's lack of authority to grant the relief requested, i.e., instatement to the job. A hearing was conducted at Level II, and a detailed decision with findings of fact and conclusions of law denying the claim followed.¹ Respondent waived consideration at Level III pursuant to W.Va. Code §18-29-4(c), and Grievant advanced the controversy to Level IV, where hearing was scheduled for January 18, 1990. However, intervening circumstances, which are outlined first

¹ This decision is of record at Level IV.

by a brief discussion of Grievant's claim, have ripened this dispute for resolution.

According to the Level II evaluator, Grievant and Mr. Beane were among five persons, all then-currently employed by Respondent, who were selected from the sixteen original applicants to be interviewees. Level II decision, ¶4. Grievant does not specifically challenge this interview process, instead generally stating his case in the following simple terms: "I do not feel that the most qualified person was selected to fill the vacancy for Coordinator of Purchasing and Supply Management." On December 21, 1989, he submitted "some of. . .[his] evidence relating to this grievance," namely,

1. Course outline of the Automotive Counterparts Program;
2. List of my qualifications.
3. Comparison of Mr. Beane's & Mr. Russell's qualifications.

This last-mentioned submission is a document which is presented as a contrast of Grievant's background pertinent to the position in question with that of the successful candidate. It purports to show that Grievant is superior to Mr. Beane in the areas of education,² purchasing, warehousing, distribution, ability to manage and motivate a staff with diverse backgrounds and personalities, understanding of

² If this information is accurate, Grievant holds "two M.S. degrees, plus," while Mr. Beane has no diploma beyond high school.

educational system needs, ability to work under pressure and to meet changing timetables and deadlines, knowledge of purchasing methods, inventory management, and distribution routing, and familiarity with data processing techniques.³ These categories were among the minimum requirements for the Coordinator of Purchasing and Supply Management listed in the vacancy announcement. Level II decision, ¶3.

In Gillespie v. Kanawha Co. Bd. of Educ., Docket No. 89-20-684 (Jan. 17, 1990), the West Virginia Education and State Employees Grievance Board issued the following order: "Respondent is...to re-post the position of Coordinator of Purchasing and Supply Management." Ms. Gillespie's complaint was based on her unsuccessful candidacy for that job and Mr. Scott Beane's selection therefor. Obviously, it and the within claim relate to the exact same Coordinator of Purchasing and Supply Management Position.

The case of Pratt v. Harrison Co. Bd. of Educ., Docket No. 17-88-176 (Mar. 1, 1989), is instructive. In Pratt, the grievant sought "for the kindergarten position held by a person not certified in kindergarten to be vacated and

³ The record reflects that Grievant's service with Respondent has been in the professional area, while Mr. Beane's has been in the service realm, i.e., "as a school bus terminal supervisor and bus operator." Level II decision, ¶10. This raises the question as to precisely what standard or standards of seniority is/are pertinent, compare W.Va. Code §§18A-4-8b(a), 18A-4-8b(b), particularly since Grievant apparently has not worked for Respondent as long as has Mr. Beane; however, due to the outcome herein, this issue will not be further addressed.

posted." Since, by like date, this Grievance Board had ordered the very position to which Ms. Pratt referred "vacated and posted" in Chapman v. Harrison Co. Bd. of Educ., Docket No. 18-87-210-2, her complaint was dealt with by noting,

When a grievant's requested relief has already, in effect, been granted in toto, his/her claim is mooted and must be denied. See Payne et al. v. Fayette Co. Bd. of Educ., Docket No. 10-87-319-4 (Mar. 23, 1988).

Although the relief Grievant desires, namely, placement as Coordinator of Purchasing and Supply Management, has not been provided him, it cannot be granted him in light of the order in Gillespie.⁴

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

FINDINGS OF FACT

1. Grievant was an unsuccessful applicant for Respondent's Coordinator of Purchasing and Supply Management Vacancy.
2. He filed this grievance, seeking instatement to the job.

⁴ Like Grievant, Ms. Gillespie sought instatement to the job, not reposting thereof. However, Respondent's hiring procedures were found to be flawed to the point that reposting was the appropriate remedy.

3. Respondent was ordered to repost the position of Coordinator of Purchasing and Supply Management in Gillespie v. Kanawha Co. Bd. of Educ., Docket No. 89-20-684 (Jan. 17, 1990).

CONCLUSIONS OF LAW

1. When the relief sought by a grievant is or has become unavailable in this forum, his claim must be denied. See Pratt v. Harrison Co. Bd. of Educ., Docket No. 17-88-176 (Mar. 1, 1989); see also Carney v. DRS, Docket No. VR-88-055 (Mar. 28, 1989).

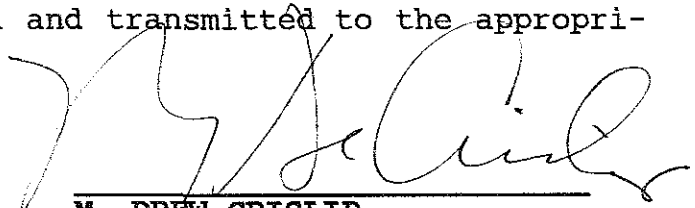
2. When a previous West Virginia Education and State Employees Grievance Board decision includes an order which would conflict with the allowance of relief sought by a grievant, his complaint must be denied.⁵

Accordingly, this grievance is **DENIED**.⁶

⁵ For example, if Grievant A complains at Level IV that he should have been selected to be Principal at West Virginia High School, and by decision is awarded the job, Grievant B's Level IV claim for the WVHS principalship is deniable on the basis of Grievant A's favorable decision alone.

⁶ This Decision obviates the need for the scheduled January 18, 1990, hearing, which is cancelled.

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



M. DREW CRISLIP
Hearing Examiner

Date: January 17, 1990