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**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**
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ALBERT EDWARD SMITH

v.

Docket No. 89-22-714

LINCOLN COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant Albert Edward "Eddie" Smith, employed in June 1989 by Respondent Lincoln County Board of Education as Assistant Principal, Hamlin High School (HHS),¹ complained on or before October 6, 1989, of "[n]ot being allowed to transfer to another position (Assistant Principal)," with a statement that "[p]lacement into this position would be the relief." The "position" referenced is the assistant principalship at Guyan Valley High School (GVHS), for which

¹ Grievant has been otherwise in Respondent's service for a number of years.

Grievant applied but was not selected. The GVHS post went instead, in August 1989,² to Mr. Guy Baisden.³

After denials at Levels I and II⁴ and waiver at Level III, Grievant filed his claim at Level IV on December 22, 1989, where a hearing was held February 8, 1990.⁵ The parties have declined the opportunity to submit post-hearing materials and the case is thus ripe for disposition.

At the outset of the Level IV meeting, Grievant advised that he no longer desired instatement at GVHS. He did, however, move that his remedy request be amended; his desire was for the undersigned to conduct a comparative evaluation of his qualifications with those of Mr. Baisden, for purposes of any future jobs for which the two men might vie. It

² No timeliness defense was posed; therefore, this grievance will be assumed timely per W.Va. Code §18-29-4.

³ The record reveals that Grievant and Mr. Baisden were competing applicants for both the HHS and the GVHS slot. Due to the outcome herein, there exists no need to address whether either of Respondent's hiring decisions, i.e., that Grievant was more qualified for HHS and Mr. Baisden for GVHS, was correct or incorrect.

At Level IV, Respondent, through its Superintendent Stephen Priestley, declared that both Grievant and Mr. Baisden are highly valuable and capable employees.

⁴ The Level II transcript, made part of the record, supports that an informal conference between Grievant and Respondent's Assistant Superintendent Tom Miller, who was acting as evaluator, was held rather than a hearing, even though Grievant was placed under oath. See State ex rel. Rogers v. Bd. of Educ. of Lewis Co., 125 W.Va. 579, 25 S.E.2d 537 (1943).

⁵ A scheduled January 30 hearing was continued upon joint motion of the parties.

was explained to Grievant, who was self-represented, that this sort of relief seemed highly speculative at best and was likely not available from this Grievance Board; even in light of this, he maintained that he was no longer pursuing the GVHS position and that clarification of the status of his credentials was all he now wanted.⁶ He specifically disavowed any claim that his personnel or other records contained any error. The parties jointly moved that this grievance not be dismissed, but that the undersigned proceed to decision. Due to certain circumstances of this case, this motion will be honored.

Since Grievant has abandoned his claim on the GVHS assistant principalship, the only relief he now seeks may be characterized, at best, as extremely limited. A retrospective review of Respondent's action of selecting Mr. Baisden over him would be virtually pointless since all such might accomplish, assuming Grievant's view were to prevail, would be a finding without any concrete relief issuing therefrom that Respondent had erred. A comparative review of the qualifications of Grievant and Mr. Baisden for purposes of establishing criteria for future occasions upon which the two educators may again compete for a vacancy is impractical and perhaps impossible. First of all, it is not at all certain that any such competition will ever again occur.

⁶ Respondent did not object to this alteration and it was allowed per W.Va. Code §18-29-3(k).

Further, each job has its own idiosyncratic characteristics which must be factored into a selection decision; simply because one candidate is chosen over another for a given position does not necessarily mean the other person would have been likewise unsuccessful had the target-job been different. See, e.g., n. 1. Also, any value a comparative evaluation of the two men's records would have toward Respondent's future hiring decisions would necessarily be tempered by after-acquired credentials and/or performance deficits.⁷

The remainder of this Decision will be presented by formal findings of fact and conclusions of law.

FINDINGS OF FACT

1. Grievant, an unsuccessful applicant for an assistant principalship, filed this claim to obtain reinstatement to the position.

⁷ Even if Grievant were seeking a review of his qualifications without comparison thereof to Mr. Baisden's, the outcome of this Decision would not be changed.

As an aside, it certainly would have been possible, for instance, for Mr. Baisden to enhance his credentials between June 1989, when he was denied the HHS job, and August 1989, when he was awarded the GVHS post. However, the record strongly suggests both men's resumes instead remained static over that summer.

2. At Level IV, he withdrew his request for instatement, seeking only a comparative assessment of his qualifications with those of the successful candidate for purposes of future jobs for which the two might vie.

CONCLUSIONS OF LAW

1. "Moot questions or abstract positions, the decision of which would avail nothing in the determination of controverted rights, are not properly cognizable in the grievance procedure. . .and this [Grievance] Board will therefore not issue advisory opinions." Wilburn v. Kanawha Co. Bd. of Educ., Docket No. 20-88-089 (Aug. 29, 1988); see also Adkins v. Lincoln Co. Bd. of Educ., Docket No. 89-22-323 (Aug. 21, 1989).

2. The only relief Grievant seeks is "abstract" and "would avail nothing in the determination of controverted rights" and so is "not properly cognizable in the grievance procedure."

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Lincoln 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 office should be advised of any intent to appeal so that the record can be prepared and transmitted to the appropriate court.

A handwritten signature in black ink, appearing to read 'M. Drew Crislip', is written over a horizontal line.

M. DREW CRISLIP
Hearing Examiner

Date: February 22, 1990