HAROLD BANDY and

WILLIAM V. FOX

v. Docket Nos. 91-45-468/92-45-065

SUMMERS COUNTY BOARD OF EDUCATION

and CHARLES OXLEY

DECISION

PROCEDURAL HISTORY

On July 25, 1989, the Summers County Board of Education (Board) posted the position of Principal of the Summers County Career Center (Center). Charles Oxley, Harold Bandy and others made timely applications. The Board ultimately accepted then-Superintendent of Schools Demetrius Tassos' recommendation that Mr. Bandy be awarded the post. Mr. Oxley grieved his nonselection alleging that Mr. Tassos had manipulated the selection process by making false representations to the West Virginia Department of Education and enabling Mr. Bandy to obtain a Vocational Administrator's certificate, one of the requirements for the job contained in the posting.

At Level IV, the Board prevailed on the grievance. Oxley v. Summers County Bd. of Educ., Docket No. 89-45-594 (Aug. 31, 1990).

By order dated April 15, 1992, the Circuit Court of Kanawha County affirmed the decision in Oxley. A timely appeal of the Circuit Court's decision was made to the West Virginia Supreme Court of Appeals.

In the spring of 1990, while the Oxley case was on appeal, the Board was forced to reduce the number of professional employees on its staff. To this end, Mr. Bandy was notified that, effective the end of the 1989-90 school term, he would lose his Center position and be placed on a transfer list for subsequent reassignment. Mr. Bandy grieved his removal from his administrative post and prevailed on the merits of his claim at Level IV. (See footnote 1) The Board was ordered to reinstate him to that post. The Kanawha County Circuit Court eventually also affirmed that decision and an appeal was filed with the West Virginia Supreme Court of Appeals. (See footnote 2)

In August 1991, while both Mr. Bandy's and Mr. Oxley's cases were pending, the Board elected to

post the Center position as vacant and accept applications therefor. After interviewing applicants Fox, Bandy, Oxley and others, newly-appointed Superintendent of Schools Charles Rodes recommended Mr. Fox for the position but the Board declined to accept. Without a furtherrecommendation by Mr. Rodes, the Board voted to place Mr. Oxley in the position.

Mr. Bandy and Mr. Fox grieved Mr. Oxley's appointment and at Level IV the cases were consolidated as styled above. (See footnote 3) At an evidentiary hearing commenced April 29, 1992, a motion by Mr. Oxley to intervene was granted. (See footnote 4) The presentation of evidence was concluded June 11, 1992 and the parties completed a briefing schedule by August 24, 1992. Subsequently, counsel for the Board advised that the Supreme Court had agreed to review the lower Oxley decisions. By letter dated February 22, 1993, the undersigned advised all parties that a decision in the case would be held in abeyance pending the Court's opinion unless objection was registered. No party filed such objection.

In Oxley v. The Bd. of Educ. of the County of Summers, No. 21536, (December 14, 1993), the Court held that certain actions on the part of former Superintendent Tassos warranted a finding that Mr. Oxley should have been awarded the Center position in 1989. At footnote 1, the Court remarked,

> Other individuals have filed grievances asserting that they are more qualified for the position of principal at the career center. These grievances have been stayed at Level IV pending the outcome of this case. Therefore, the appellee further requests that we order the Board to reevaluate the candidates who applied for the career center position, with respect to the qualifications of each candidate as they then existed, which would compel the appellee to offer the position to the most qualified individual.
>
> The appellant's grievance is the only grievance or issue before us in this case, and that is the only issue we will address. The record herein is insufficient to support any further findings or rulings by this Court with respect to the other grievants.
>
> Following everything that has transpired, the appellant was ultimately hired as career center principal. We cannot comment on the other candidates, nor can we discern any reason as to why the appellee should conduct a reevaluation of the candidates.

After the Court's pronouncements in Oxley the undersigned, by letter dated December 23, 1993, asked the parties to review the decision and advise as to their positions on the effect of the rulings therein on the present case. The Board and Respondent Oxley replied that the Court had, in effect,

rendered the matter moot and moved that the case be dismissed on that basis. The grievants made no response. By letter dated January 10, 1994, the grievants were given until January 14, 1994 to respond to the motion. Again, no responses were made.

CONCLUSIONS

"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 the Grievance Board will therefore not issue advisory opinions." Adkins v. Lincoln Co. Bd. of Educ., Docket No. 89-22-323 (Aug. 21,1989). The Supreme Court, by holding that Mr. Oxley should have been awarded the position in question in July 1989 necessarily held that he should have held the position at all times pertinent to the claims of the grievants herein, including August 1991 when the position was reposted. Footnote 1 of the decision indicates that the Court considered the ramifications of that holding on the events subsequent to Mr. Oxley's initial rejection for the post and found no basis for any reassessment of persons vying for the job. The undersigned similarly concludes that since any pronouncements on the grievant's claims, see n. 3, would have no practical effect and would be advisory in nature, the case is moot.

Accordingly, the grievances are hereby **DISMISSED** and **STRICKEN** from the docket of the West Virginia Education and State Employees Grievance Board.

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JERRY A. WRIGHT

CHIEF ADMINISTRATIVE LAW JUDGE

Dated: February 16, 1994

Footnote: 1Bandy v. Summers County Bd. of Educ., Docket No. 90-45-298 (Apr. 30, 1991). It is not necessary, for the purposes of resolving the present matter, to set forth the legal rulings in the case.

Footnote: 2To date, the Court has not issued a decision in this case. It is assumed, given the holdings in Oxley, that the Court will find Mr. Bandy's claims moot.

Footnote: 3Grievant Fox claimed entitlement to the post on the basis of his qualifications therefor and also argued that the Board improperly awarded the job to Mr Oxley without a recommendation by Mr. Rodes to that effect. Mr Bandy made the same assertions and alternatively argued that it was improper for the Board to post the position while litigation over his removal therefrom was pending before the Supreme Court.

Footnote: 4At that time W.Va. Code §18-29-3(u), which specifically permits such intervention, had been enacted by the Legislature but was not to become effective until July 31, 1992. The motion was granted over the objections of counsel for grievant Fox in recognition of the legislative intent of the statute and equitable considerations.