STEPHANIE BROWN

v. Docket No. 94-15-207

HANCOCK COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant Stephanie Brown is professionally employed as a classroom teacher by Respondent Hancock County Board of Educa tion (HCBE). On or about March 7, 1994, 1994 she filed the following level one grievance statement:

I have been applying for an asst. principal's job/jobs that have been posted since Nov. 16 [1993]. Since this time I have applied for them (3) times. Each time the job's description and qualifications have been changed.

Grievant's immediate supervisor, Principal Tony Cohelis, dis claimed authority to rule on the matter, and Grievant appealed to level two. A level two evidentiary hearing was conducted on April 27, 1994, and the grievance was denied on May 11, 1994.

Upon waiver of the grievance by HCBE at level three, Grievant appealed to level four on May 23, 1994. At that point, Grievant alleged on her level four filing form that HCBE

repeatedly changed job description and qualifications which were previously posted. [HCBE] failed to fill posted position in a timely fashion as required by law. [HCBE] failed to select the most qualified candidate and acted arbitrarily and capriciously in recruiting less qualified candidates to fill the unlawfully changed position.

Grievant requested a level four hearing. (See footnote 1) After several hear ings were set and postponed by agreement of the parties, and prior to the hearing set for early July 1994, Grievant asked, and HCBE agreed, that a decision be based on the evidence adduced at the lower grievance levels.

The record contains the grievance pleadings, lower level decisions, and a copy of the level two transcript. Grievant, who was represented by counsel at the level two proceeding and at level four, declined to file a level four brief; HCBE also declined.

Notably, although Grievant's counsel claimed during his opening statement at the level two

hearing that Grievant had been denied a "fair opportunity" to "apply for the position, to be considered, and to have a decision made," he never stated the relief Grievant desired. T.5-6. During closing, Grievant's counsel likewise did not reveal any relief sought. In fact, no relief was requested at any grievance level.

If Grievant sought a specific job, she did not say what jobshe desired. Nor did Grievant claim at any time to be more qualified than the person selected with respect to any position. While Grievant argues that HCBE's actions were detrimental to her interests, it appears that Grievant's sole purpose in pursuing this grievance is to obtain a ruling that HCBE improp erly altered several postings over time for one or more assis tant principal positions and did not fill said positions within the specified time allowed in W.Va. Code §18A-4-7a. (See footnote 2) See T.48- 50. Since Grievant has not specifically stated any desired outcome or any relief which would affect her rights in any manner, there is no issue to be decided. Under the circumstanc es, this grievance must be denied.

In addition to the foregoing, the following formal findings of fact and conclusions of law are appropriate.

Findings of Fact

1. Over an extended period of time from Fall 1993 through Spring 1994, HCBE posted several job openings for assistant principal positions at an elementary school and a middle school.

2. During the period of the job postings, one of the affected school's principal had been ill for a time and finally died. At the same time, HCBE was uncertain as to whether full- time assistant principals were needed at the elementary and middle school in question.

3. On several occasions, Grievant applied for a posted assistant principal's position.

4. Although administrators and others involved in the selection process determined that Grievant was qualified and rated her among the top candidates for an assistant principal's position, Grievant was not hired for any administrative posi tion.

5. Grievant filed a grievance in which she alleged improprieties in the posting and selection process; however, she failed to state the relief sought.

Conclusions of Law

1. Relief is not available at level four when . . . a decision would serve no useful purpose. See Roberts v. Marshall County Bd. of Educ., Docket No. 93-25-217 (June 29, 1994); Bandy/Fox v. Summers County Bd. of Educ., Docket Nos. 91/92-15- 468/065 (Feb. 16, 1994); Miraglia v. Ohio

County Bd. of Educ., Docket No. 92-35-270 (Feb. 19, 1993); McCloud v. Harrison CountyBd. of Educ., Docket No. 89-27-312 (Mar. 5, 1990); Fratto v. Harrison County Bd. of Educ., Docket No. 89-17-294 (Nov. 30, 1989); Adkins v. Lincoln County Bd. of Educ., Docket No. 89-22- 323 (Aug. 21, 1989); Harrison v. Kanawha County Bd. of Educ., Docket No. 20-87-134-1 (Oct. 30, 1987).

2. Since Grievant did not request any specific job or present any evidence that she was the most qualified candidate for any job at issue, her grievance is not cognizable at level four.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Hancock 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 Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate Court.

_____

NEDRA KOVAL

Administrative Law Judge

Date: August 24, 1994

Footnote: 1 From the way the level four grievance statement was worded, some job or jobs apparently were filled after Grievant initiated this grievance in early March 1994.

Footnote: 2 The outcome of the job postings in question was also the subject of another grievance, Foltz v. Hancock County Bd. of Educ., Docket No. 94-15-203 (Aug. 24, 1994). The record in that case and herein supports that, while HCBE may have had good cause to delay the employment of one or more assistant principals, it did not follow the time lines contained in W.Va. Code §18A-4-7a for the hiring of professional personnel following a posting period. Under §18A-4-7a, after a board of education has posted a vacancy for a professional position, "[i]f one or more applicants meets the qualifications listed in the job posting, the successful applicant to fill the vacancy shall be selected by the board within thirty working days of the end of the posting period."