MARSHA J. ROBERTS

v. Docket No. 93-25-217

MARSHALL COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant Marsha J. Roberts has been employed by Respondent Marshall County Board of Education (MCBE) for over twelve years. During the 1992-93 school year she was assigned to teach physi cal education at Cameron Elementary, grades K-6. She filed the following level one grievance on April 7, 1993:

The problem is I am losing my job because of an illegal [reduction in force] R.I.F. Even though I am certified in Physical Education K-12 and teaching grades K-6, my position is being taken by a person who is certified in P.E. 1-12. There are two people who are less senior still working in a P.E. position which I'm certified to teach. I wish to remain in a full[-] time P.E. position.

Grievant's case was denied at the lower grievance levels, and she filed the within action on or about June 14, 1993. (See footnote 1)

This case has a protracted procedural history at levelfour, basically because of events which occurred after the level two proceedings and immediately prior to the time Grievant filed her level four appeal on or about June 14, 1993. Notably, Grievant's requested relief, "to remain in a full[-]time P.E. position," was granted when she was assigned to a full-time teaching position for the upcoming 1993-94 school year.

This information was made known to the undersigned on or about July 27, 1993, when Grievant's West Virginia Education Association representative, Owens Brown, filed his fact/law proposals. On the seventh and last page of that document, Mr. Brown added a footnote as follows:

On June 8, 1993, the grievant was assigned to a PE teacher's position at Park View/Limestone/County, effective the beginning of the 1993/94 school term. This changes the nature of this grievance. The issue that must be addressed is whether [Grievant] maintains her position at Cameron Elementary.

The undersigned agreed that the "nature" of the grievance had changed and further concluded that the grievance was essen tially moot. The basis for that conclusion was because the reduction in

force had been, in effect, rescinded since Grievant's reassignment to a full-time teaching position without any employment interruption occurred prior to the end of the 1992-93 school year on June 30, 1993 and/or because the request ed relief had been granted, respectively. See Kuhns v. Hancock County Bd. of Educ., Docket No. 91-15-360 (Dec. 30, 1991); Brown v. Logan County Bd. of Educ., Docket No. 90-23-177 (Oct. 31, 1990); Barberio v. Harrison County Bd. of Educ., Docket No. 89- 17-351 (Feb. 13, 1990).

Because of the concerns presented by the altered circumstances which gave rise to the grievance, a telephone conference was held on August 2, 1993 with Mr. Brown and Howard Seufer, counsel for MCBE. Discussion ensued about whether the grievance was moot and/or whether Kuhns had bearing on the issue of whether Grievant should remain at Cameron, and, if so, whether a brief level four hearing would be necessary to open the record and formally admit evidence on the reassignment action. The undersigned invited the parties to at least consider whether mediation would be helpful. In addition, Mr. Brown agreed to discuss with Grievant whether she should or would withdraw the grievance.

Over the course of time, further informal discussions about the case were held. By letter of November 1, 1993, Mr. Brown informed the undersigned that Grievant declined mediation because there were "issues that need to be resolved because of possible future ramifications on her employment status." Finally, in mid-February Grievant filed a letter in which she stated that, while she was happy with her present position, she needed to know if an illegal RIF had occurred and desired an answer to that question. It is presumed that Grievant is satisfied that she has obtained the relief she initially sought, i.e., "to remain in a full[-]time P.E. position," and is satis fied with her present assignment. She expressed no desire to be reinstated at Cameron Elementary, only that, "If an error was made [on the question of the RIF] let it be known now."

Based on all matters of record, the following determina tions and conclusions are made:

Findings of Fact

1. In Spring 1993, Grievant was placed on the RIF list, effective the end of the 1992-93 school year on June 30, 1993.

2. MCBE placed Grievant on the RIF list in order to reassign Jeanne Melchiori to Grievant's physical education (PE) teaching position as a result of legal actions which culminated in a West Virginia Supreme Court of Appeals decision, State ex rel. Melchiori v. Bd. of Educ., 425 S.E.2d 251

(1992). The Court directed MCBE to "reconsider" Ms. Melchiori's assignment as a special education teacher.

3. At the time of the RIF, Ms. Melchiori was more senior than Grievant. Although Melchiori was not certified to teach PE on the kindergarten level, according to MCBE, the West Virginia Board of Education authorizes the holder of a 1-12 PE certifi cate to teach kindergarten.

4. At the time of the RIF, two other PE teachers were less senior than Grievant; however, those teachers held alterna tive certifications and were assigned to divide their time between teaching in both disciplines. These teachers are Mrs. Greenwood, who taught PE and health at Union Junior High School and Mrs. Trembush, who taught health and PE at Moundsville Junior High.

5. Neither Grievant nor Ms. Melchiori are certified to teach health.

6. Following the RIF action, Grievant filed a grievance and asked as relief that she "remain in a full[-]time P.E. posi tion." 7. Subsequent to the level two hearing (and decision) but prior to the end of the 1992-93 school year, that is, on June 8, 1993, Grievant was reassigned to fill a full-time PE teaching job. Therefore, Grievant's RIF was never effectuated.

8. None of following factors in this action, the "nature" of the grievance, the issues involved or any possible final outcome, have any bearing on Grievant's, Ms. Melchiori's, Ms. Trembush's or Ms. Greenwood's seniority status or presently held certifications.

Conclusions of Law

1. Prior to the end of the 1992-93 school year and prior to Grievant's appeal to level four on the question of her placement on the reduction in force list, she was reemployed to a full-time PE teaching position for the upcoming school year, and, at that point, she had obtained the relief which she initially requested in this grievance: "I wish to remain in a full[-]time P.E. position."

2. Relief is not available at level four when the griev ance has become moot and/or a decision would serve no useful purpose. See 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); 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).

Accordingly, the grievance is **DISMISSED** and **STRICKEN** fromthe docket of the West Virginia Education and State Employees Grievance Board.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Marshall 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.

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NEDRA KOVAL

Administrative Law Judge

Date: April 29, 1994

Footnote: 1 The parties agreed that a level four decision could be based upon the record adduced at the lower level and supplemented with written fact/law proposals. The record consists of the pleadings, the adverse level one and two decisions of April 17 and June 4, 1993, respectively, and the transcript/exhibits of the May 21, 1993 level two hearing.