SUSAN INCLAN

v. Docket No. 94-25-233

MARSHALL COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant Susan Inclan is professionally employed by the Marshall County Board of Education (MCBE). In April 1994 she filed a grievance and complained she had been subjected to an illegal reduction-in-force (RIF) for the 1994-95 school year in that less-senior teachers would remain employed. She sought reinstatement to her present position or an assignment to any other position within the school system. Upon adverse decisions at the lower grievance levels, she appealed to level four on or about June 8, 1994 and asked that a decision be based on the lower-level record. (See footnote 1)

By letter dated July 7, 1994, Grievant's West Virginia Education Association representative stated that Grievant had been reemployed and reassigned to her present position for the1994-95 year. He claimed the issue of Grievant's seniority was still unresolved and that she wished to go forward with the grievance. Presumably, Grievant's concerns arise from the fact that her RIF was based on seniority calculations which excluded substitute service previously credited to her prior to the August 30, 1990 effective date of the amendments to W.Va. Code §18A-4-7a.

Next, by letter dated July 13, 1994, MCBE's counsel moved that the grievance be dismissed as moot. Counsel agreed that "even though a seniority issue lurks in this case, there is no need to address it since the grievant faces no adverse or seniority-based personnel action at the present time." He cited several Grievance Board cases in support of his position. Grievant's representative responded to MCBE's motion to dismiss by letter dated July 22, 1994. A claim was made that the grievance was not moot because Grievant "is put at a disadvan tage in bidding on other positions in the county" because of the seniority question.

The undersigned agrees that this case is moot because the requested relief has, in effect, been granted. Roberts v. Marshall County Bd. of Educ., Docket No. 93-25-217 (June 29, 1994); McCloud v. Harrison County Bd. of Educ., Docket No. 89- 27-312 (Mar. 5, 1990); Harrison v. Kanawha County Bd. of Educ., Docket No. 20-87-134-1 (Oct. 30, 1987). Roberts, McCloud and Harrison all involved factual situations much like the one in the instant case, that is, the employee had been targeted for a

RIF based on seniority calculations. Subsequently, the RIFeither never occurred or was effectively rescinded. The end result was that the employee retained a full-time job for the next school year, the requested relief. In each case the administrative law judge recognized that the grievance was essentially moot and declined to address any seniority issues. "A case is 'moot' when relief, if rendered, will have no practi cal effect on existing controversies." (See footnote 2) Harrison, supra.

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

Findings of Fact

1. In Spring 1994, Grievant was placed on the RIF list, thus terminating her employment for the 1994-95 school year. Her RIF was to become effective the end of the 1993-94 school year, that is on June 30, 1994.

2. The RIF action was based on seniority calculations for Grievant which excluded substitute service previously credited to her prior to the August 30, 1990 effective date of the amend ments to W.Va. Code §18A-4-7a.

3. Following the RIF action, Grievant filed a grievance and asked as relief that she "maintain [her] present position or retain a position" with the school system.

4. Subsequent to Grievant's level two hearing (and adverse decision) and her level four grievance appeal, but prior to the end of the 1993-94 school year, on June 30, 1994, Grievant was reassigned to the teaching job she held during the 1993-94 school year.

5. Even though Grievant's RIF was never effectuated, she declined to withdraw her grievance, ostensibly due to concern that her future "bidding" rights within the county would be compromised should the question of her seniority not be re solved.

Conclusion of Law

Relief is not available at level four when the grievance has become moot and/or 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 County Bd. 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).

Accordingly, the grievance is **DISMISSED** and **STRICKEN** from the 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: July 29, 1994

Footnote: 1 The record consists of the transcripts and exhibits of the March 30, 1994 RIF hearing and the May 17, 1994 level two hearing, Grievant's pleadings, and, following Grievant's level four appeal, pertinent correspondence.

Footnote: 2 Grievant need not be concerned about her seniority status when bidding on jobs within the county. W.Va. Code §18A-4-7a provides that a substitute teacher's service in excess of 133 days in one school year "shall accrue" as seniority for the purpose of applying for regular, full-time employment. If the substitute becomes regularly employed as a "permanent, full-time teacher" said substitute seniority "shall vest," presumably for later bidding purposes within the county. See Humberson v. Hancock County Bd. of Educ., Docket No. 91-15-163 (Feb. 28, 1992).

Humberson applied the holding in Hoffman v. Kanawha County Bd. of Educ., Docket No. 91-20-170 (Jan. 31, 1992), wherein it was determined that, under Code §18A-4-7a, substitute seniority in excess of 133 days shall be used "exclusively" for bidding purposes. Humberson was appealed to the Circuit Court of Hancock County, Humberson v. Hancock County Bd. of Educ., Civil Action No. 92-P-48B, where it was affirmed, in part. While the court agreed that qualified substitute seniority could not be credited to a teacher hired after the effective date of Code §18A-4-7a, it also determined that substitute seniority credited to a regularly-hired teacher prior to the amendment to §18A-4-7a should be retained for RIF purposes. MCBE's position is that it is not bound by that holding.