LEANNA J. HAYNES, .

.

Grievant, .

.

v. . Docket No. 94-20-337

.

KANAWHA COUNTY BOARD OF EDUCATION, .

.

Respondent. .

D E C I S I O N

Leanna Haynes (Grievant), an employee of the Kanawha County Board of Education (KCBE), alleges a violation of W. Va. Code § 18A-4-8b in regard to her transfer following elimination of her 261-day Secretary IIIA position in KCBE's central office. This grievance was initiated at Level I on June 29, 1994 and denied at that level due to her supervisor's inability to grant the relief requested. Grievant appealed to Level II where a brief evidentiary hearing was held on July 6, 1994. Her grievance was denied on July 20, 1994 because it was untimely. Grievant waived Level III and submitted this matter to Level IV for decision on the record developed below. This matter became mature for decision on September 14, 1994, following expiration of the time allotted forthe parties to file proposed findings of fact and conclusions of law. (See footnote 1)

DISCUSSION

According to the extremely sparse, but adequate, record in this case, Grievant was notified sometime in March 1994 that her 261-day position as a Secretary IIIA in KCBE's central office was proposed for elimination. Subsequently, prior to April 1, 1994, Grievant was afforded a hearing regarding this matter but the Board nonetheless approved elimination of her position and placed Grievant on administrative transfer. Consequently, Grievant was transferred to a 210-day secretarial position. Grievant filed this grievance on June 29, 1994, immediately after

learning, on June 27, 1994, that another KCBE employee, Doris Berry, had prevailed in litigation before the West Virginia Supreme Court of Appeals. Berry v. Kanawha County Bd. of Educ., No. 21957 (W. Va. Sup. Ct. of App. June 16, 1994); L II HT at 5. Grievant determined that under the Court's interpretation of W. Va. Code § 18A-4-8b in Berry, KCBE had improperly transferred her to a 210-day position rather than a 261-day position.

W. Va. Code § 18-29-3(a) provides that "[a] grievance must be filed within the times specified in section four [§ 18-29-4] of this article . . . ." As referenced in § 18-29-3(a), W. Va. Code § 18-29-4(a)(1) states:

> **Before a grievance is filed and within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date on which the event became known to the grievant or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance, the grievant or the designated representative shall schedule a conference with the immediate supervisor to discuss the nature of the grievance and the action, redress or other remedy sought.**

Grievant's position that she should be allowed to proceed with her grievance within fifteen days of learning of a favorable ruling obtained by another school employee was specifically rejected by this Grievance Board in a recent decision, Pack v. Kanawha County Board of Education, Docket No. 93-20-483 (June 30, 1994). That ruling explicitly held that a "grievant will not be allowed to overcome a timeliness defense by basing his current claim on another employee's successful grievance decision, if the events giving rise to the grievance were known to the grievant, but he delayed filing until the other employee received a successful outcome." Pack, supra, at 5.

It is apparent here that "the event upon which the grievance is based," within the meaning of § 18-29-4(a)(1), was the elimination of Grievant's previous 261-day secretarial position and her placement on administrative transfer. This event occurred not later than April 1, 1994, and a preponderance of the evidence establishes that Grievant was well aware of this "event" at that time. Accordingly, consistent with the defense raised by Respondent KCBE at Level II, this grievance must be dismissed as untimely under W. Va. Code § 18-29-4(a)(1). Pack, supra. See e.g., Hixenbaugh v. Hancock County Bd. of Educ., Docket No. 94-15-215(Sept. 30, 1994); Strippel v. Wetzel County Bd. of Educ., Docket No. 94-52-192 (Sept. 30, 1994).

Consistent with the foregoing discussion, the following Findings of Fact and Conclusions of Law are appropriate in this matter:

FINDINGS OF FACT

1. Grievant was notified of the proposed elimination of her 261-day position as a Secretary IIIA in the central office of the Kanawha County Board of Education during March 1994.

2. Prior to April 1, 1994, KCBE approved the proposed elimination of Grievant's position and placed her on the administrative transfer list.

3. On June 27, 1994, Grievant learned of the successful outcome of another employee's grievance before the West Virginia Supreme Court of Appeals in a decision issued on June 16, 1994.

4. Grievant filed the instant grievance on June 29, 1994.

CONCLUSIONS OF LAW

1. "A grievant will not be allowed to overcome a timeliness defense by basing his current claim on another employee's successful grievance decision, if the events giving rise to the grievance were known to the grievant, but he delayed filing until the other employee received a successful outcome." Pack v. Kanawha County Bd. of Educ., Docket No. 93-20-483 (June 30, 1994). See Harris v. Lincoln County Bd. of Educ., Docket No. 89-22-49 (Mar. 23, 1989).

Accordingly, the grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha 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 intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

LEWIS G. BREWER

Administrative Law Judge

Dated: December 16, 1994

Footnote: 1*Neither party availed themselves of this opportunity, the Respondent affirmatively waiving its option by letter dated August 17, 1994.*