EVERETTE Q. KNAPPER,

Grievant,

v. DOCKET NO. 94-20-361

KANAWHA COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Everette Q. Knapper instituted this grievance on June 27, 1994, alleging Respondent violated the reduction in force provisions of W. Va. Code § 18A-4-7a and its own reduction in force guidelines. Grievant also claims he has been discriminated against because of race by Respondent's conduct. (See footnote 1) A Level II hearing was held on July 15, 1994, and an unfavorable decision was issued on July 29, 1994. Grievant appealed to Level IV on July 30, 1994 and hearing was held on December 29, 1994. Grievant filed proposed findings of fact and conclusions of law on January 3, 1995. No written submission was received from Respondent and this case became mature for decision on January 12, 1995.

The following findings of fact are properly derived from the record and testimony presented in this grievance.

Findings of Fact

1. Grievant was employed during the 1993-94 school year as a 240-day vice principal at Garnet Career Center.

2. Kanawha County Board of Education Policy 47.02(C) provides that "no later than January 15 of each year all persons who are to be recommended for transfer shall be identified". Level III, G. Ex. 3.

3. Harold Walker, Director of Garnet Career Center, submitted a "Recommendation for Staff Reduction - Professional" form on February 25, 1994, which identified the vice principal position held

by Grievant as a position to be reduced. Mr. Walker notes that the rationale for selecting that area for reduction is "unknown", and further notes, "I don't have any positions to cut." Level III, G. Ex. 2. It is clear that although directed by Board management to identify a position to be cut, Mr. Walker personally did not wish any positions at Garnet to be eliminated.

4. Mr. Walker discussed the situation with Grievant on February 25, 1994, and suggested he look for other employment options within the school system.

5. Grievant's name was originally on the list compiled by the Personnel Department for administrative transfer. Tr., p. 26.

6. A vacancy for a vice principal position at Stonewall Jackson Junior High School ("Stonewall") effective the beginning of the 1994-95 school year was posted. Grievant applied for the position.

7. Grievant was notified by telephone by Board legal counsel on March 10, 1994, that he was the only qualified candidate and that the Superintendent was going to recommend to the Board that he be awarded the position. Admin. Ex. 1.

8. The Board awarded Grievant the vice principal position at Stonewall. Tr., p. 36. (No evidence was presented regarding the date of the Board's action).

9. Grievant wrote a letter to Superintendent Jorea Marple on April 23, 1994, asking for clarification of his employment status, indicating that he had not received notice of administrative transfer prior to April 1, 1994 for the vice principal position at Garnet Career Center. Grievant acknowledges in this letter that he spoke to Mr. Bailey about the position at Stonewall, but ". . . still have not received a letter." Level III, R. Ex. 1.

10. Superintendent Marple responded to Grievant on April 27, 1994, informing him that he was the successful candidate for the position at Stonewall and was scheduled to transfer to that position effective with the commencement of the 1994-95 school year. Level III, R. Ex. 1.

11. Grievant initiated his grievance on June 27, 1994.

Arguments

Grievant argues that he did not receive notice of reduction in force or administrative transfer as required by W. Va. Code § 18A-4-7a, for his position at Garnet Career Center, and that the Board violated its own internal policy by not identifying him for transfer by January 15, 1994.

Respondent argues that once Grievant applied for and accepted the position at Stonewall, there

was no need to notify him of administrative transfer or reduction in force because he had already voluntarily assumed another position. Respondent argues that Grievant's filing is untimely under the grievance statute.

Discussion

Grievant's filing is untimely under the grievance statute, W. Va. Code § 18-29-4. At the very latest, Grievant knew of his employment status as of April 27, 1994, when the Superintendent informed him that he had been awarded the Stonewall Jackson position. Still, Grievant did not file his grievance until June 27, 1994, two months later, and clearly outside the fifteen days allowed for filing. Thus, Grievant cannot prevail on this grievance.

Conclusions of Law

Respondent clearly established that Grievant failed to file his grievance within the timelines established by W. Va. Code § 18-29-4.

Accordingly, this 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.

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MARY JO SWARTZ

Administrative Law Judge

Dated: February 14, 1995

Footnote: 1 *As Grievant presented no evidence to substantiate even a prima facie case of discrimination, this issue is considered to be without merit and is summarily dismissed.*