TERRY UNDERWOOD

v. **Docket No. 94-24-535**

MARION COUNTY BOARD OF EDUCATION

D E C I S I O N

Terry Underwood, Grievant, states the Marion County Board of Education ("MCBOE") violated W. Va. Code §18A-2-8a and seeks as a remedy "to be employed in my teaching position by Marion County Schools with any backpay, interest, and benefits due me." This grievance was denied at Levels I and II, waived at Level III, and appealed to Level IV on August 31, 1994. The case was submitted on the record below over the objection of the Respondent's counsel, as the undersigned thought the record was sufficient for decision, Grievant did not want a hearing, and the Respondent had been represented adequately by counsel at Level II. This case became mature for decision on November 9, 1994 following the submission of findings of fact and conclusions of law by the parties.

Findings of Fact

The following findings of fact are undisputed by the parties:

1. MCBOE first hired Grievant as a teacher for 1991-92 school year. She was assigned to North Marion High School and given a probationary contract.

2. In the spring of 1992 Grievant was notified she would not be rehired by MCBOE. She requested a hearing and was placed on the transfer list.

3. Grievant taught at East Park School for the 1992-93 school year.

4. In February 1993 Grievant was notified that a RIF would take place and her position would be recommended for termination. Grievant requested and received a hearing and was notified by letter dated April 15, 1993 that she had been placed on the preferred recall list.

5. On August 11, 1993 MCBOE posted a position for a language arts instructor at Mannington Middle School. The posting stated:

> Note: Applicants are advised this is a one-year leave of absence position; it will

terminate on June 10, 1994.

6. Grievant applied for and on August 25, 1993 MCBOE voted to hire Grievant for the one-year leave of absence position which would terminate on June 10, 1994. Assistant Superintendent Dennis Edge notified the Grievant by letter dated August 26, 1993 that MCBOE had voted to hire her for the position described in Finding of Fact 5. This letter noted that the position was "for the 1993-94 school year only."

7. On August 31, 1994 Grievant signed her third probationary contract under a provisional teacher's certificate, for the above-stated position. Handwritten at the top of the contract it stated: "This position is for 1993-1994 year only."

8. Grievant testified that the above-cited notation was on the contract when she signed it and that she had read it. Grievant also testified she understood the position was to fill a one-year leave of absence only and would terminate on June 10, 1994.

9. On March 4, 1994 Superintendent Jane Reynolds sent a certified letter to Grievant reminding her that her current position was "for a one-year leave of absence only and will terminate at the conclusion of the school year." Grievant was directed to contact Assistant Superintendent Edge if she had "any questions or comment regarding the matter . . . ."

10. Grievant did not contact or attempt to contact Assistant Superintendent Edge or Superintendent Reynolds.

11. Grievant did not request a statement of reasons or a hearing.

12. On or about March 9, 1994 Grievant did contact her representative Mr. Craft and asked what she should do. He told her to "wait and see" what would happen.

13. On May 6, 1994 Mr. Craft wrote Superintendent Reynolds and inquired about Grievant's job status. In the letter Mr. Craft stated that since the MCBOE had taken no formal action under W. Va. Code §§18A-2-8 or 18A-2-8a to terminate Grievant's appointment he assumed she was employed for the 1994-95 school year.

14. On May 13, 1994 (See footnote 1) Assistant Superintendent Edge wrote Mr. Craft stating the contract was for the 1993-94 school year only and this position "expired of its own violation" and that no action by the Board was required. He reported Grievant's status would be "that of a RIFed employee on the preferred recall list with one (1) additional year of seniority."

15. Although the Board had met on April 18, 1994, Mr. Edge indicated no action was taken on Grievant's contract as there was no need. At that meeting MCBOE had rehired some probationary teachers for an additional year.

16. Grievant filed this grievance on May 26, 1994.

Issues

As previously stated, Grievant argues MCBOE violated W. Va. Code §18A-2-8a when they failed to send written notification to her that they had terminated her contract. Further, Grievant argues there was no notice of any action that would have told her to request a hearing. Respondent argues 1) the grievance is untimely; (See footnote 2) 2) Grievant did not request a statement of reasons in a timely manner; 3) that MCBOE did not abuse their discretion in the matter; and 4) since the contract was clearly for one year only no further action by the Board was required.

Discussion

Apparently, Grievant's argument is that, in this instance, the Board is required to take action to terminate her contract and give her notice after such action has taken place. Since MCBOE did not do this she must be returned to her prior position. As will be discussed below, Grievant's reasoning is flawed and this grievance must be denied.

W. Va. Code §18A-2-8a, the code section at issue here states:

> The superintendent at a meeting of the board on or before the first Monday in May of each year shall provide in writing to the board a list of all probationary teachers that he recommends to be rehired for the next ensuing school year. The board shall act upon the superintendent's recommendations at that meeting in accordance with section one [§ 18A-2-1] of this article. The board at this same meeting shall also act upon the retention of other probationary employees as provided in sections four and five [§§ 18A-2-4, repealed and 18A-2-5] of this article. Any such probationary teacher or other probationary employee who is not rehired by the board at that meeting shall be notified in writing, by certified mail, return receipt requested, to such persons' last known addresses within ten days following said board meeting, of their not having been rehired or not having been recommended for rehiring.
>
> Any probationary teacher who receives notice that he has not been recommended for rehiring or other probationary employee who has not been reemployed may within ten days after receiving the written notice request a statement of the reasons for not having been rehired and may request a hearing before the board. Such hearing shall be held at the next regularly scheduled board of education meeting or a special

> meeting of the board called within thirty days of the request for hearing. At the hearing, the reasons for the nonrehiring must be shown. (1722, c. 94.)

Board action on the termination of Grievant's contract occurred on August 25, 1994 when it approved a contract for the 1993-94 school year only, to terminate on June 10, 1994. Thisinformation was conveyed to Grievant by the job posting, Mr. Edge's letter of August 26, 1993 and the contract she signed on August 31, 1993. By her testimony, Grievant had notice at the time of her signing when her contract would terminate and that she would not be rehired. Additionally, Grievant was again notified by certified mail dated March 3, 1994 and received March 7, 1994 that her position "was for a one-year leave of absence only and will terminate at the conclusion of the current school year." Further, Grievant was told to contact Mr. Edge if she had any questions.

This grievance can be approached from one of two legal theories and with either line of reasoning the grievance must fail. First, it is clear Grievant received notice her position was for the 1993-94 school year only. Grievant was notified at each juncture with a piece of paper she either signed or read that her position would end on June 10, 1994. Additionally, had there been any doubt, Superintendent Reynolds' certified letter of March 4, 1994 notified Grievant again that her contract terminated at the end of the school year. This is sufficient notice pursuant W. Va. Code §18A-2-8a. Grievant had the right to request a statement of reasons and a hearing. This she did not do. She was directed to call Assistant Superintendent Edge if she had questions. This she did not do. Her representative directed her to "wait and see" and she followed his advice. Thus, given the above set of facts, no violation of W. Va. Code §18A-2-8a occurred.

This conclusion is mandated by the holdings in Miller v. Bd. of Educ. of County of Boone, 437 S.E.2d 591, 190 W. Va. 153 (1993). In Miller, the West Virginia Supreme Court held that "W. Va. Code §18A-2-8a [1977] does not require the board of education or superintendent to take some affirmative action before the first Monday in May when not rehiring probationary employees." Id. at Syl. Pt. 6. The Court noted the code section referred to the rehiring of probationary employees and did not require the board to take any action not to rehire probationary employees. In Miller the grievants received notice prior to the board meeting that their probationary contracts would not be renewed. Since the grievants were not harmed by this early notice the Court stated this harmless error "does not require reversal of the final judgment." Id. at Syl. Pt. 5.

The second approach to this grievance is a contractual one. This contract ended according to its own terms on June 10, 1994. The starting and ending date of the contract was known on the date the contract was issued and signed. As previously held by this Grievance Board, when a contract "entered into pursuant [to statute] ceases to exist and that cessation is expressly provided for in the terms of the contract, the contract comes to an end by its own terms and is not subject to the procedural requirements of [W. Va. Code §18A-2-8a]." Ramey v. Lincoln County Bd. of Educ., Docket No. 94-02-002 (June 3, 1994). Grievant's contract came to an end by its own term thus no violation of statute occurred.

Conclusions of Law

1. In a nondisciplinary grievance the Grievant has the burden of proving her case by a preponderance of the evidence.
2. Grievant's contract of employment expired under its own terms as contemplated by the parties when the 1993-94 school year ended. Ramey, supra.
3. Grievant received adequate notice at the time of her hiring and subsequently that her contract would not be renewed for the 1994-95 school year. Miller, supra.
4. No violation of W. Va. Code §18A-2-8a occurred. Miller, supra.

Accordingly, this grievance is **DENIED**.

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

_____

JANIS I. REYNOLDS

Administrative Law Judge

Dated: January 30, 1995

Footnote: 1 *In this letter Mr. Edge quoted from the March 4, 1994 letter and mistakenly referred to it as May 4, 1994 letter. All parties agreed this was merely a clerical error and the letter was written on March 4, 1994.*

Footnote: 2 *After a review of the dates involved, the undersigned finds this case to be timely pursuant to statute.*