BARBARA R. KLEIN, .

Grievant, .

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v. . Docket Number: 95-29-210

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MINGO COUNTY BOARD OF EDUCATION, .

Respondent. .

D E C I S I O N

Barbara Klein (hereinafter Grievant) filed this grievance on April 26, 1995, against her employer, the Mingo County Board of Education (hereinafter Board), as permitted by West Virginia Code §§18-29-1, et seq. Grievant's statement of grievance reads as follows:

> CONCERN: Letter of transfer within the building.
>
> AFFECTS: I feel the transfer was of a discriminatory and favoritism nature. The duties and responsibilities given to me at the beginning of the 1991-1992 school term have not altered. These same duties and responsibilities were also given to each secretary at the board of education offices.
>
> CORRECTION: The letter of transfer within the building be rescinded.

Grievant's complaint was denied at the lower two levels of the grievance procedure and she by-

passed level three pursuant to W. Va. Code §18-29-4(d). Grievant made appeal to level four on May 24, 1995, and an evidentiary hearing was held at this Grievance Board's Charleston, West Virginia office on July 20, 1995.

At the conclusion of the level four hearing, the grievance was preliminarily denied based upon determinations that Grievant had both failed to meet her burden of proving any violation of law, rule, regulation, policy or written agreement, and that she had failed to establish any harm which either could be or needed to be remedied by this Grievance Board. The case became mature for written decision at the conclusion of the July 20, 1995 hearing. (See footnote 1) The preliminary ruling in this case is hereby **AFFIRMED**.

The material facts giving rise to this grievance are not in dispute and shall be set forth below as appropriately made findings derived from the evidentiary record developed in the case.

Findings of Fact

1. Grievant has been employed as a secretary by the Board for approximately twenty-seven years. She is currently classified as an Executive Secretary/Secretary III and assigned to work at the Board's central office.

2. It is the Board's long-standing practice to assign each of its secretarial staff to a particular administrator at the central office.

3. It is also the Board's long-standing practice to require that its support staff at the central office, as time and workload permit, help each other accomplish the total work required of the administrators whom they all indirectly serve.

4. All of the secretarial staff at the Board's central office have performed work for administrators other than those to whom they are primarily assigned.

5. Grievant has primarily been assigned to work for the administrator in charge of the school lunch program.

6. In the spring of this year, Grievant was given notice that she was going to be transferred, i.e., that her primary work assignment at the central office would be changed for the upcoming 1995-1996 school year. She requested and was given a hearing before the Board on her proposed transfer.

7. After the Board's transfer hearing, Grievant received notice that she had been placed on

transfer. She was informed that she would still work in the school lunch program; however, she would be assigned additional duties as time would permit.

8. Grievant was the only Executive Secretary who received a transfer notice for the 1995-1996 school year.

Discussion

Grievant does not challenge her "transfer." She contends that the Board has discriminated against her by giving only her atransfer letter in the spring of 1995, and not any of the other secretaries. She maintains that her grievance is based "on the principle of the thing" and only requests as a remedy that the transfer letter be rescinded. The Board argues that Grievant has failed to meet her burden of proof in establishing any violation of law.

Grievant has failed to establish a violation of any statute, law, policy, rule, regulation, or written agreement under which she works. Further, she has not established that the Board's placement of her on the transfer list resulted in any harm to her. Factually, Grievant's duty assignment will not be changed for the upcoming 1995-1996 school year. It appears that Grievant simply filed this grievance in order that she might understand the reason why she was issued a certified letter notifying her that she was going to be transferred, and why the Board considered that she needed to be transferred if she was going to retain her primary assignment. Regardless of the fact that the Board did not have to consider its proposed minor change in Grievant's work assignment as a transfer in the first place, its decision to do so has not resulted in Grievant being harmed in anyway. Grievant's reliance on, or use of the term "discrimination," in the context of this case, is misplaced and need not be discussed in detail as she has failed to make even a prima facie showing of any discrimination or favoritism.

The foregoing discussion of the case is hereby supplemented by the following appropriately made conclusion of law.

Conclusion of Law

Grievant has failed to establish by a preponderance of the evidence a violation of any statute, law, rule, regulation, policy or written agreement under which she works, or that the Board had engaged in any discriminatory or preferential treatment.

Therefore, this grievance is hereby **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mingo 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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ALBERT C. DUNN, JR.

Administrative Law Judge

August 22, 1995

Footnote: 1At the level four hearing, that parties agreed that the Undersigned could be provided with the actual transfer letter in question sometime after the hearing. As of the date of this decision, that letter has not been submitted. In any event, it is determined that said letter is immaterial to the disposition of the case, and the record is deemed closed.