CRAIG M. CLAY,

Grievant,

v. DOCKET NO. 95-29-208

MINGO COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Craig M. Clay, filed the following grievance on May 1, 1995:

> I filed a grievance concerning my termination for 94-95 school year. A Level IV decision was granted that I would remain in my teaching position at Dingess. I am asking that I be given the loss of wages and all benefits.

Following adverse decisions at the lower levels, Grievant appealed to level four on May 23, 1995. The parties agreed to submit this matter on the record, and the case became mature upon receipt of Grievant's Proposed Findings of Fact and Conclusions of Law on or about August 16, 1995.

Grievant is a teacher for Respondent Mingo County Board of Education. Grievant filed a grievance at the end of the 1993-94 school year concerning his reduction in force by Respondent. Specifically, Grievant stated on his grievance form that he wished "to remain in [my] teaching position at Dingess Grade for the 94-95school term." Ultimately, Grievant prevailed and the Level IV decision ordered that "Grievant is to remain in his teaching position at Dingess Grade School." Clay v. Mingo County Bd. of Educ., Docket No. 94-29-516 (Dec. 29, 1994)("Clay I").

Sometime following the decision in Clay I, Grievant's representative contacted Respondent inquiring when they were going to reimburse Grievant for lost wages and benefits. G Ex. 2. Hearing nothing from Board counsel, Grievant's representative contacted Mingo County Schools Treasurer Tommy Salmons and requested that he calculate how much Grievant would be owed as a result of his reinstatement into the position at Dingess. Mr. Salmons subsequently forwarded that calculation to Grievant's representative. G Ex. 3. Grievant's representative alleges that correspondence amounts

to an offer of settlement on the part of the Board, which Grievant accepted. G Ex. 4.

Subsequently, Mr. Sammons contacted Grievant's representative and indicated that the Board was not going to pay Grievant any lost wages or benefits. Board counsel also spoke with Grievant's representative and confirmed that the Board was not going to pay Grievant for lost wages and benefits as it was not directed to do so in the Clay I decision.

Grievant filed this grievance on May 1, 1995, which he claims was within 15 days of the denial of a settlement by the Board. Grievant claims he is entitled to lost wages and benefits as a result of the decision in Clay I. The Board argues that Grievant's claim is untimely filed, and that it has no obligation to payGrievant lost wages and benefits because Grievant did not ask for such relief, and Clay I only held that Grievant be allowed to retain his position at Dingess.

Grievant basically is asking the undersigned to either: 1) enforce the Clay I decision; and/or 2) enforce a settlement agreement allegedly entered into between Grievant and Respondent as a result of Clay I.

The second issue will be addressed first. In a non-disciplinary matter, Grievant must establish the truth of his allegations by a preponderance of the evidence in order to prevail. Black v. Cabell County Bd. of Educ., Docket No. 06-88-238 (Jan. 31, 1989). Assuming that the grievance was timely filed (See footnote 1), Grievant has failed to present any evidence that the calculation of Grievant's back pay by Treasurer Salmons was an offer of settlement, rather than merely a response to a request for information. Grievant has also failed to prove that Treasurer Salmons has the authority to enter into settlement agreements on behalf of Respondent. Thus, Grievant's claim that a settlement had been reached by the parties must fail. Based upon the evidence presented, the undersigned cannot find that Treasurer Salmons' calculations were intended as an "offer" of settlement which Grievant then accepted.

Regarding the first issue, the undersigned has no authority to enforce a decision of another Administrative Law Judge. The decisions of Administrative Law Judges at level four are final upon the parties and shall be enforceable in circuit court, subject to the provisions of W. Va. Code § 18-29-7. W. Va. Code § 18-29-4(d)(2). Therefore, the Grievant's avenue of redress in this matter must be the circuit court.

Findings of Fact

1. Grievant prevailed in a prior grievance filed in which he requested he be allowed to retain his position at Dingess Grade School for the 1994-95 school year, rather than be reduced in force.

2. The Administrative Law Judge held in that grievance that "Grievant is to remain in his teaching position at Dingess Grade School." Clay v. Mingo County Bd. of Educ., Docket No. 94-29-516 (Dec. 29, 1994)("Clay I").

3. Subsequent to receiving the decision in Clay I, Grievant's representative inquired of Respondent when it would reimburse Grievant for lost wages and benefits for the time he was reduced in force.

4. Respondent refused to reimburse Grievant for lost wages and benefits based upon its interpretation of the decision in Clay I.

Conclusions of Law

1. Grievant has failed to prove that a settlement agreement had been reached with Respondent regarding compensation for lost wages and benefits as a result of the decision in Clay I.

2. Subject to the provisions of W. Va. Code § 18-29-7, the decision of the hearing examiner shall be final upon the parties and shall be enforceable in circuit court. W. Va. Code § 18-29-4(d)(2).

3. The undersigned has no authority to interpret or clarify a decision of another Administrative Law Judge at level four.

Accordingly, this grievance is **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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MARY JO SWARTZ

Administrative Law Judge

Dated: August 30, 1995

Footnote: 1 *It is evident that there was much confusion at the time Clay I was issued due to a change in counsel for the Board. Giving the Grievant the benefit of the doubt in this matter, the undersigned finds that the grievance was timely filed following Grievant's understanding that a settlement had not been reached.*