

**MARCELLA CHARLES,**

**Grievant,**

**v.**

**Docket No. 95-29-222**

**MINGO COUNTY BOARD OF EDUCATION,**

**Respondent,**

**and**

**CHARLENE HATFIELD,**

**Intervenor.**

## **DECISION**

Grievant, Marcella Charles, alleges the transfer of Charlene Hatfield to the new Matewan Elementary ("ME") violates W. Va. Code §18A-4-8f. Mingo County Board of Education's ("MCBOE") placement of Intervenor Hatfield at ME caused Grievant to be RIF'd and placed on the Preferred Recall List because she lacked sufficient seniority to be retained. Grievant requests as relief that Intervenor's transfer be rescinded, and that she be transferred to the position at ME. This grievance was denied at Levels I and II and waived at Level III. An appeal to Level IV followed, and a Level IV hearing was held on August 9, 1995; however, this case did not become mature for decision until the receipt of the lower level record on November 2, 1995.

The facts, although somewhat confusing, are not in dispute, and involve a prior Level II Decision issued in a grievance previously filed by Intervenor Hatfield.

On September 12, 1994, MCBOE posted openings for two elementary teachers at Matewan Grade School ("MGS"). Intervenor Hatfield, then employed at Gilbert Grade School ("GGS"), applied for these positions, but somehow her application was overlooked. One of the reasons Intervenor Hatfield was interested in the MGS position was because MGS was one of three feeder schools which were to be consolidated and merged into the new ME.

On September 21, 1994, Mingo County teachers voted, pursuant to W. Va. Code §18A-4-8f, to give preference to the teachers in the feeder schools for the new ME. Thus, the teachers at MGS, Red Jacket, and Thacker would be given priority status when the new positions were filled. Following this vote, all the positions at the new ME were posted on September 23, 1994. Applications were received until September 30, 1994.

A decision to select Ms. Jean Varney to fill one of the two posted MGS positions was made on or about September 23, 1994. Although somewhat unclear from the record, Ms. Varney was notified about this decision shortly thereafter. Ms. Varney's placement into the MGS position was voted on by MCBOE at a meeting held on October 6, 1994. At that same meeting, MCBOE identified the teachers who would be placed at the new ME providing there was no necessity for a RIF. Ms. Varney's name did not appear on this list as she did not have sufficient seniority to be considered for one of the positions. Grievant's name does appear on this placement list, and she was the least senior teacher of those selected.

When Intervenor Hatfield found out she was not selected for an MGS position she filed a grievance. On her grievance form Intervenor Hatfield clarified she not only wanted the position, but also wanted the preference for the new school that the position would give her. During the course of this Level II hearing, it was discovered that Intervenor Hatfield had indeed sent a timely application by certified mail for the two positions at MGS. Additionally, it was clear from the evidence presented that Ms. Hatfield would have received one of the positions as she was qualified and had more seniority than Ms. Varney. Accordingly, on December 6, 1994, Ms. Hatfield's grievance was granted at Level II. For the good of the students, both Ms. Varney and Ms. Hatfield agreed to remain in their current positions for the rest of the school year. Further, the Hatfield Decision stated, "by this ruling, Grievant Hatfield's name will now be placed as one of the positions at the new Matewan Elementary providing there is not a reduction in force beginning at the 1995-1996 school term . . . ." This Level II Decision went on to say that Ms. Hatfield's name should be placed on the list of approved teachers for the new ME school that was voted on by MCBOE on October 6, 1994. Ms. Varney did not appeal this decision, thus, it became final.

In January 1995, when Grievant found out about the Hatfield Decision, she filed this grievance, but it was held in abeyance by the agreement of the parties until the final plans for the new school were made. Because Grievant had the least seniority of the teachers chosen to be placed at the new

school, seven years, and Intervenor Hatfield had ten years, Ms. Hatfield's placement at the school removed Grievant's name from the proposed assignment list.

### Issues

Grievant's major argument is that Intervenor Hatfield's placement at ME is violative of W. Va. Code §18A-4-8f because, either at the time of the vote to give preference, or at the time teachers were to bid on the new positions, Intervenor Hatfield was not yet at MGS and thus, could not receive the preference. Grievant also argues Intervenor Hatfield waived her right to preference when she chose to stay at GGS instead of immediately taking the position at MGS. MCBOE argues it appropriately corrected a prior mistake, and the lower level grievance decision is binding. MCBOE also argues that Intervenor Hatfield should not be penalized by her decision to stay at GGS, and that decision, which was in the best interest of the students, cannot be seen as a waiver.

### Discussion

This Grievance Board has previously ruled that "[a]n employee cannot successfully grieve a county board of education's actions in reasonably and correctly implementing an earlier grievance decision's order." Gillman v. Logan County Bd. of Educ., Docket No. 91- 23-195 (Nov. 7, 1991); Epling v. Boone County Bd. of Educ., Docket No. 89-01-562 (Feb. 28, 1990). The record reveals that Intervenor Hatfield would have received one of the positions at MGS "but for" an error made by MCBOE. Intervenor Hatfield would have been selected, and she would have been notified of this selection before the posting for the new ME positions expired. Additionally, Assistant Supervisor Johnny Fullen testified that Intervenor Hatfield would have been considered for, and would have received one of the positions at the new school, if she had received the MGS position as she should have. Mr.Fullen stated Intervenor Hatfield's name would have been on the list approved by MCBOE at the October 6, 1995 board meeting.

W. Va. Code §18A-4-8f states the issue to be resolved by the preference vote is whether "teachers in the school or schools to be closed shall have priority in filling new positions in the new or merged schools . . . ." If Intervenor Hatfield had been appropriately selected for the MGS position she would have been a teacher in one of the schools to be closed, and she would have had preference. Further, it is clear from the record that the main reason Intervenor Hatfield applied for the position at MGS was to have a preference at the new school. Since this was the case, surely she would have

applied for one of the ME positions as soon as she was notified she had been selected for the MGS position.

Further, Grievant's reading of the statute is too restrictive. W. Va. Code §18-4-8f gives preference to those teachers "affected by the school closings." Id. This Code Section does not limit the preference only to the teachers in the school at the exact time of the vote.

Grievant's argument that Intervenor Hatfield waived her right to preference by staying at GGS is without merit. The Level II Decision outlined that, by agreement of the parties, Intervenor Hatfield would stay at GGS, but by staying she did not give up her preference. Obviously, if Intervenor Hatfield had been told she would not retain her preference if she had remained at GGS, she would not have agreed to complete the school term there.

The above-discussion will be supplemented by the following Findings of Fact and Conclusions of Law.

#### Findings of Fact

1. Grievant, a teacher at MGS, one of the feeder schools for the new ME, had seven years of seniority.

2. Intervenor, a teacher at GGS, had ten years of seniority, and "but for" an error on the part of MCBOE, would have been placed during the first part of the 1994-1995 school year at MGS.

3. In a county-wide vote, MCBOE teachers decided to give preference to the teachers at the feeder schools when the schools were merged into the new ME.

4. Intervenor filed a grievance over her non-selection for a position at MGS for the 1994-1995 school year and won. The Level II Decision stated the parties agreed she would complete the school year at GGS, but would have preference at the new ME.

5. Intervenor's placement at ME caused Grievant to be deleted from the preference list because she had the least seniority.

#### Conclusions of Law

1. W. Va. Code §18A-4-8f allows all county teachers to vote whether a preference will be granted to the teachers affected by the closing of a school or schools.

2. "An employee cannot successfully grieve a county board of education's actions in reasonably and correctly implementing an earlier grievance decision's order." Gillman v. Logan County Bd. of Educ., Docket No. 91-23-196 (Nov. 7, 1991).

3. Grievant failed to demonstrate any violation of W. Va. Code §18A-4-8f.

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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**JANIS I. REYNOLDS**

**Administrative Law Judge**

**Dated: February 29, 1996**