

DANIEL WEBSTER,

Grievant,

v.

Docket No. 96-50-119

WAYNE COUNTY BOARD OF EDUCATION,

Respondent,

and

LEWIS BARRETT and THOMAS DAMERON,

Intervenors.

DECISION

Grievant, Daniel Webster, stated the Wayne County Board of Education ("WCBOE") took away [my] extracurricular/supplemental assignment in violation of West Virginia Code §§18A-44-8b, 18A-4-16, local practice, local policy as defined in the "Memorandum of Agreement" and the resolution of a prior grievance filed by Grievant. Grievant seeks reinstatement with back pay, and other benefits.

This grievance was denied at Levels I and II and waived at Level III. A Level IV hearing was held on May 17, 1996. During the last twenty minutes of this hearing, the undersigned received a phone call requesting intervention from Mr. Louis Barrett and Mr. Tom Dameron stating that the disposition of this case could substantially affect their rights. W. Va. Code §18-29-4(u) allows intervention "[u]pon a timely request." Both Respondent and Grievant objected to this intervention request as not timely made. A compromise agreement, allowing Mr. Barrett and Mr. Dameron to present written findings of facts and conclusions of laws and any prior grievance data was reached, and Intervenors were so informed. This case became mature for decision on June 21, 1996, the deadline for the parties' submissions of their proposed findings of fact and conclusions of law.

The facts and procedural history of this case, while confusing, are not in dispute and will be set out below.

Findings of Fact

1. On September 5, 1995, WCBOE created an extracurricular assignment which would originate from Ceredo-Kenova High School.
2. This position was posted, but in the interim Grievant was assigned the run.
3. Grievant and Mr. Barrett applied for the position.
4. Mr. Barrett is more senior than Grievant and already had an extracurricular assignment. Grievant had no extracurricular assignment.
5. Past practice has been to not allow a bus operator two extracurricular assignments until all bus operators in the area had one extracurricular assignment.
6. On or about November 15, 1995, Mr. Barrett was assigned the position.
7. Grievant contested this decision and filed a grievance (Webster I).
8. On December 7, 1995, Mr. Wilt Salmons, Director of Support Services and Assistant Director of Transportation, granted Grievant's grievance stating that "by board action" a bus operator could only have one run at a time. Grievant started the run the following Monday, December 11, 1995.
9. On December 8, 1995, Mr. Barrett requested to intervene into this grievance. As the grievance was resolved, this request could not be granted.
10. Sometime in December, Mr. Barrett filed a grievance over his removal from the run and on December 26, 1995, Mr. Salmons denied this grievance at Level I.
11. Mr. Barrett pursued this grievance, and on January 5, 1996, a Level II hearing was held, and on January 22, 1996, a Level II Decision granted Mr. Barrett the same bus run Grievant had been previously granted in his prior grievance.
12. Grievant then filed this current grievance (Webster II).

Issues

Grievant alleges his removal from the extracurricular assignment violated W. Va. Code §§18A-4-8b and 18A-4-16 and the Agreement reached between WCBOE and the bus operators on July 1, 1993. He also argues that the second grievance decision, issued on January 22, 1996, in favor of Mr. Barrett, is contrary to and violated his prior grievance decision of December 11, 1995. Respondent

argues the prior practice violated W. Va. Code §18A-4-8b and had to be changed. Mr. Barnett stated the prior practice violated his seniority right granted by W. Va. Code §18A-4-8b.

Discussion

The first issue requiring discussion is whether WCBOE violated Grievant's rights under W. Va. Code §18-29-1 et seq. when it allowed a second grievance on the same issue which resulted in overturning the prior grievance decision. The grievance procedure is "intended to provide a simple, expeditious and fair process for resolving problems at the lowest possible administrative level and shall be construed to effectuate this purpose." W. Va. Code §18-29-a. Accordingly, once Mr. Salmons rendered a decision in favor of the Grievant, the problem was resolved at the lowest possible administrative level. No appeal was taken from this decision, and it should stand as final. As this Grievance Board has previously noted, "finality is desirable in the law." Epling v. Boone County Bd. of Educ., Docket No. 89-03-562 (Feb. 28, 1990) (citing Liller v. W. Va. Human Rights Comm'n, 376 S.E.2d 639, 646 (W. Va. 1988)). "[T]his Grievance Board has declined to permit employees to grieve actions which directly result from a board of education's implementation of a grievance decision adjudicated at the lower levels of the grievance procedure provided in W. Va. Code §§18-29-1, et seq." Dalton v. Mercer County Bd. of Educ., Docket No. 96-27-044 (July 29, 1996). See Adams v. Cabell County Bd. of Educ., Docket No. 94-06-520 (May 15, 1995); Martin v. Mason County Bd. of Educ., Docket No. 94-26-261 (Oct. 19, 1994).

In essence, WCBOE allowed Mr. Barrett to make a collateral attack on the Webster I decision. After Mr. Barrett received his decision, WCBOE then allowed Grievant to attack Mr. Barrett's decision collaterally as well. Unchecked, this process could continue into endless rounds of litigation, and the process envisioned in the Code of "a simple, expeditious and fair process for resolving problems at the lowest possible administrative level" could not occur. W. Va. Code §18-29-1.

Because of the result reached above, it is not necessary to resolve the remaining issue dealing with the assignment of extracurricular assignments. ([See footnote 1](#))

The above discussion will be supplemented by the following conclusions of laws.

Conclusions of Law

1. The grievance procedure is "intended to provide a simple, expeditious and fair process for resolving problems at the lowest possible administrative level and shall be construed to effectuate

this process.” W. Va. Code §18-29-1.

2. A subsequent, collateral attack on a prior grievance decision will not be allowed, as it does not promote the intent of W. Va. Code §18-29-1 or meet the need for finality in the law.

Accordingly, this grievance is **GRANTED** and the Level I Decision in Webster I is **AFFIRMED**. WCBOE is ordered to place Grievant in the extracurricular assignment at issue and to pay him all appropriate back pay for the period in question.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Wayne 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: November 27, 1996

[Footnote: 1](#)

Cases that may be helpful in the parties resolving this issue are: Powell v. Brown, 160 W. Va. 723, 238 S.E.2d 220 (1977); Dyer v. Lincoln County Bd. of Educ., Docket No. 95-22-494 (June 28, 1996); Eastham v. Cabell County Bd. of Educ., Docket No. 95-06-191 (Sept. 29, 1995); Conner v. Barbour County Bd. of Educ., Docket No. 91-27-483 (Jan. 6, 1992); Stafford v. Hancock County Bd. of Educ., Docket No. 89-15-385 (Jan. 31, 1990).