

GREGORY DALTON,

Grievant,

v.

Docket No. 96-27-044

MERCER COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Gregory Dalton (Grievant) initiated this grievance against Respondent Mercer County Board of Education (MCBE) on September 7, 1995. Grievant contends that he was improperly removed from a teaching position at PikeView High School for which he had been competitively selected. MCBE avers that the actions which it took were mandated by a Level IV decision from this Grievance Board in the matter of Monk v. Mercer County Board of Education, Docket No. 95-27-245, rendered by Administrative Law Judge Jerry A. Wright on September 28, 1995. The grievance was denied at Levels I and II. MCBE waived action at Level III as authorized by W. Va. Code § 18-29-4(c). Grievant appealed to Level IV on February 28, 1996. A Level IV evidentiary hearing was conducted in Princeton, West Virginia, on May 7, 1996. Thereafter, this matter became mature for decision on June 10, 1996, upon receipt of timely post-hearing briefs from the parties. As there is no dispute regarding the pertinent facts, the following Findings of Fact are made from the record established at Levels II and IV.

FINDINGS OF FACT

1. In the Summer of 1994 the Mercer County Board of Education (MCBE) posted a business teacher vacancy at PikeView High School to be filled competitively in accordance with W. Va. Code § 18A-4-7a.

2. Grievant, Judy Monk, and one other person made timely applications for the position.

3. A committee which included PikeView Principal Dan Zirkle interviewed the applicants, applied W. Va. Code § 18A-4-7a, and recommended Grievant as the "best qualified" applicant. MCBE ultimately awarded the position to Grievant.

4. Ms. Monk filed a grievance regarding her non-selection for the position and prevailed at Level II of the education employees' grievance procedure, based upon a determination that her "total amount of teaching experience" had been miscalculated during the evaluation process.

5. Based upon the Level II decision, Principal Zirkle reassessed the applicants' qualifications, again determining that Grievant was the best qualified applicant for the position.

6. Ms. Monk grieved that determination and ultimately prevailed at Level IV in a decision styled Judy Monk v. Mercer County Board of Education, Docket No. 95-27-245, issued by Administrative Law Judge Jerry A. Wright on September 28, 1995. 7. ALJ Wright ordered MCBE to "conduct a random selection between the grievant [Ms. Monk] and Greg Dalton consistent with the provisions of W. Va. Code § 18A-4-8b, ¶11. In the event the grievant prevails in the selection, she is to be immediately instated to the position in issue."

8. MCBE conducted the random selection process as directed, resulting in Ms. Monk's selection for the position.

9. Prior to the Level IV decision, Grievant did not exercise his right under W. Va. Code § 18-29-3(u) to intervene in the Monk grievance.

10. MCBE Superintendent Debbie Akers believes that Grievant was the "best qualified" applicant for the teaching position at issue. However, MCBE did not exercise its authority under W. Va. Code § 18-29-7 to appeal the Level IV decision in Monk to an appropriate circuit court.

DISCUSSION

As in any grievance which does not involve a disciplinary matter, Grievant has the burden of proving each allegation in support of his grievance by a preponderance of the evidence. Black v. Cabell County Bd. of Educ., Docket No. 06-88-238 (Jan. 31, 1989). Under W. Va. Code § 18-29-4(d)(2), decisions of Administrative Law Judges at level four are final upon the parties and shall be enforceable in circuit court, unless timely appealed, as authorized by W. Va. Code § 18-29-7. This clear statutory provision provides no authority for the undersigned administrative law judge to interpret, clarify or otherwise amend the decision of another administrative law judge at Level IV.

Clay v. Mingo County Bd. of Educ., Docket No. 95-29-208 (Aug. 30, 1995). Indeed, this 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. 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); Gillman v. Logan County Bd. of Educ., Docket No. 91-23-196 (Nov. 7, 1991); Epling v. Boone County Bd. of Educ., Docket No. 89-03-562 (Feb. 28, 1990). See also Vance v. Logan County Bd. of Educ., Docket No. 95-23-190 (Mar. 15, 1996).

As correctly noted by MCBE, Grievant is making a collateral attack on the Monk decision. If Grievant is permitted to challenge the Monk ruling in this proceeding, and he prevails, why should Ms. Monk, who likewise failed to intervene in this matter, not be allowed to make a collateral attack on this decision? The obvious answer is that this would permit the parties to engage in endless rounds of litigation. W. Va. Code § 18-29- 1 provides "[t]his 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." Accordingly, this Grievance Board will not permit Grievant to attack collaterally a prior Level IV decision involving the same teaching position and the same employees. See Clay, supra.

Consistent with the foregoing discussion, the following Conclusions of Law are appropriate in this matter.

CONCLUSIONS OF LAW

1. "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)." Clay v. Mingo County Bd. of Educ., Docket No. 95-29-208 (Aug. 30, 1995).

2. The undersigned Administrative Law Judge has no authority to interpret, clarify, reconsider, or overrule a decision of another Administrative Law Judge at Level IV involving the same matter. See Clay, supra.

Accordingly, this grievance is **DENIED** .

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

LEWIS G. BREWER

ADMINISTRATIVE LAW JUDGE

Dated: July 29, 1996