

**CYNTHIA J. LAVENDER,**

**Grievant,**

**v. Docket No. 96-20-241**

**KANAWHA COUNTY BOARD OF EDUCATION,**

**Respondent.**

## **DECISION**

Grievant, Cynthia Lavender, grieves her reduction-in-force ("RIF") and states: "I was not provided with meaningful notice and therefore not was not provided an adequate opportunity to prepare a defense to the recommendation that my teaching contract be terminated because of a reduction in force (RIF)." She requests as relief that the Kanawha County Board of Education ("KCBOE") rescind her RIF. The grievance was denied at Level II and waived at Levels I and III. Grievant appealed this decision to this Grievance Board and requested a decision be made on the record. This case became mature for decision on August 6, 1996, the date upon which the arguments of the parties were received. [\(See footnote 1\)](#)

The facts in this case are not in dispute and will be set out below.

### **Findings of Fact**

1. Grievant was employed at East Bank High School as a social studies teacher with a seniority date of September 1, 1994. [\(See footnote 2\)](#)
2. Grievant was originally told in late February 1996 that she would be placed on the RIF list. She received no written notice of this decision.
3. A later review of the seniority and certification lists indicated that this representation was in error, and on March 8, 1996, Grievant received written notification that she would be transferred to another school.
4. On Friday, March 22, 1996, Mr. Bill Milam, Director of Personnel, discovered another error had been made, and Grievant did not have enough seniority to be retained. On that same date, Superintendent Jorea Marple sent Grievant both a certified and a registered letter informing her she would be RIF'd, apologizing for the conflicting information Grievant had been given, and notifying her

that a RIF hearing would be held on Thursday, March 28, 1996, if she wished to attend.

5. Mr. Milam also directed Grievant's principal to notify Grievant about the RIF decision, but she did not do so.

6. Grievant received oral notice of her RIF on Wednesday, March 27, 1996, from Mr. Steve Wilson, a KCBOE member and family friend. 7. Because of her work hours, Grievant has difficulty picking up her mail at her post office box, and she did not pick up official notice of her RIF until Thursday, March 28, 1996, after she had been told by Mr. Wilson that she was to be RIF'd and should have received notice.

8. Grievant and her representative attended the RIF hearing, and although the late notice and reason for it were discussed, Grievant never requested additional time to prepare or present her case.

9. The information presented at hearing indicated Grievant's RIF was proper as she did not have enough seniority to be retained.

10. At the RIF hearing, Grievant's counsel agreed that no one less senior than Grievant was being retained, but suggested KCBOE utilize Step Seven monies to retain her because of the confusion.

11. KCBOE voted on March 28, 1996, to RIF Grievant.

12. At her Level II hearing, held on May 30, 1996, Grievant presented no evidence to indicate that any less senior employee had been retained. The only argument presented was the lateness of the notice.

### Discussion

W. Va. Code § 18A-2-2 requires a county board of education to give an employee written notice of her pending termination (RIF), and to provide that employee with "an opportunity to heard at a meeting of the board prior to the board's action thereon." This action of termination must be completed before the first day of April. This type of notice and opportunity to be heard was given to Grievant. Grievant relies on Farley v. Board of Education, 365 S.E.2d 816 (W. Va. 1988) to demonstrate her notice was untimely. This reliance is misplaced in this instance. In Farley, the Mingo County Board of Education mailed the teachers' RIF notice on March 25, 1987, and the proposed hearing date was March 27, 1987. The teachers received their notices on March 25, and 26, 1987.

The teachers did not attend a RIF hearing. [\(See footnote 3\)](#) The West Virginia Supreme Court of Appeals in Farley held the teachers did not receive adequate notice or notice that "contemplates meaningful notice which affords an opportunity to prepare a defense and to be heard of the merits." (Citing State ex rel. Hawks v. Lazaro, 157 W. Va. 417, 440, 202 S.E.2d 109, 124 (1974)). The Court also stated the teachers did not have adequate time to "challenge the bases [sic] for their proposed dismissals."

In this grievance, Grievant would have received earlier notice if she had picked up her mail. The fact that she has a post office box which makes it more difficult for her to get her mail cannot be held against KCBOE. Grievant did not state why she did not pick up her certified mail. It is difficult to understand why an individual would wait almost a week to check her mail. Additionally, Grievant attended her RIF hearing with her representative, and the RIF process in Grievant's certification area was reviewed. Grievant agreed the RIF process had been properly done and that there were no less senior teachers she should displace. Thus, Grievant did have adequate time to assess the situation and to identify that she had no basis to oppose her dismissal. It should be noted that at no time did Grievant or her representative ask for additional time to prepare or present her case.

While it is unfortunate that Grievant received several different notices and reports about her change in status, these changes do not make the process illegal, nor were they violative of the statute. Given the size of the Kanawha County School system and the number of changes that can occur to effect the RIF procedure, it is easy to see how an error could occur and some individuals could receive less prior notice than others.

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

#### Conclusions of Law

1. In a nondisciplinary action, a grievant has the burden of proving her case by a preponderance of the evidence.
2. When it is necessary to terminate a teacher with a probationary contract due to a RIF, a county board of education is required to give the teacher written notice stating the reasons for her dismissal. Additionally, a board must provide the teacher with an opportunity to be heard on the issue of her termination.
3. This notice must be meaningful and should afford the teacher a reasonable time to prepare

a challenge to the rationale for her dismissal. Farley v. Bd. of Educ. of Mingo County, 365 S.E.2d 816 (W. Va. 1988).

4. The notice afforded Grievant in this case was adequate, and her failure to receive earlier notice was due, in part, to her failure to pick up her mail.

Accordingly, this grievance is **DENIED**.

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

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**JANIS I. REYNOLDS**  
**Administrative Law Judge**

**Dated: October 31, 1996**

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[Footnote: 1](#)

*This case was reassigned to the undersigned for administrative reasons on September 26, 1996.*

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[Footnote: 2](#)

*Given Grievant's seniority date, it is assumed she was a probationary employee. The parties did not discuss this issue and did not argue that it should have any affect on the RIF process, and W. Va. Code §18A-4-7a requirement to follow W. Va. Code §18A-2-2 procedures.*

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[Footnote: 3](#)

*It is unclear from a reading of the case why the teachers did not request a continuance or attend the hearings.*