JERRY VANCE,

Grievant,

v. **DOCKET NO. 95-23-190**

LOGAN COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Jerry Vance, filed this grievance on or about April 13, 1995, alleging "[i]ncorrect determination of seniority as per §18A-2-2. Grievant should not have been RIF'd." Grievant seeks to have his reduction-in-force ("RIF") rescinded and the seniority list recalculated and corrected. Following a hearing and adverse decision at Level II, Grievant appealed to the Grievance Board on May 16, 1995. (See footnote 1) Hearing was held on September 12, 1995, and this case became mature for decision on February 20, 1996.

Findings of Fact

1. Grievant was hired by Respondent as a substitute bus driver on January 11, 1988.

2. In February 1991, Respondent posted a temporary, one-half day bus run in the bus garage. Respondent informed the drivers, including Grievant, that no seniority or benefits would accrue with this position.

3. Grievant bid on and received the above-posted position. The other drivers in the county, Johnny Collins, Cecil Spry, Ronald Jarvis, Ronald Brumfield and William Mullins, did not apply for the position.

4. In May 1991, Grievant successfully grieved Respondent's determination that no regular seniority or benefits would accrue with the February 1991 bus run. Grievant's regular seniority date was recalculated to February 26, 1991, as a result of the grievance.

5. The other bus drivers, listed above, then filed a grievance alleging the February 1991 bus

run had been incorrectly posted, claiming they would have applied for the position had seniority and benefits accrued. Grievant did not intervene in that grievance.

6. The other bus drivers and Respondent reached a settlement agreement in May 1993, the day the Level IV hearing was scheduled, wherein the bus drivers' regular seniority dates were recalculated to February 26, 1991, the same day as Grievant's.

7. Grievant became a regular bus operator in the 1992-93 school year.

8. At the beginning of the 1993-94 school year, Respondent conducted a random drawing between Grievant and the other bus drivers with the same seniority date to determine priority. Grievant became third in priority, following Spry and Jarvis. Grievant did not question at that time why the other drivers had the same seniority date as he, nor why a random drawing was being conducted. 9. In Spring 1995, Grievant was RIF'd from his position of bus operator, and filed the instant grievance.

Discussion

Grievant challenges the May 1993 settlement agreement between the other bus drivers and Respondent which gave those operators the same seniority date as Grievant. Grievant alleges he was "not given the opportunity" to intervene in that grievance and therefore, the settlement agreement should be set aside. Grievant testified that he did not find out about the settlement agreement or the other bus operators' seniority dates until the Level II hearing in the instant grievance. Nevertheless, Respondent has not raised a timeliness defense in this matter.

The only issue to be decided is whether an employee who did not intervene in a prior grievance can, at a later date, collaterally attack a settlement agreement reached in that grievance? The answer must be no.

It is well-settled that a Grievant cannot employ the grievance procedure to attack the final decision in a prior grievance. See Martin/Holcomb v. Mason County Bd. of Educ., Docket No. 94-26-261 (Oct. 16, 1994); Gillman v. Logan County Bd. of Educ., Docket No. 91-23-196 (Nov. 7, 1991). The intent of the Education Employees Grievance Procedure is to "provide a simple, expeditious and fair process for resolving problems at the lowest possible administrative level." W. Va. Code § 18-29-1. In addition to encouraging interested parties to resolve their differences at the lowest possible level, this approach promotes finality in the administrative process. See Liller v. W. Va. Human Rights

Comm'n, 376S.E.2d 639, 646 (W. Va. 1988); Adams v. Cabell County Bd. of Educ., Docket No. 94-06-520 (May 15, 1995).

Grievant's contention that this rule does not apply to settlement agreements reached prior to administrative grievance decisions cannot prevail. "The law favors and encourages resolution of controversies by contracts of compromise and settlement rather than by litigation; it is the policy of the law to uphold and enforce such contracts if they are fairly made and not in contravention of some law or public policy." McDowell County Bd. of Educ. v. Stephens, 191 W. Va. 711, 447 S.E.2d 912 (W. Va. 1994). If settlement agreements could be nullified by non-parties at some later date, employers would be discouraged from entering into such contracts or settlement agreements with its employees.

Grievant has not shown that the settlement agreement entered into between the other bus operators and Respondent was entered into unfairly or in contravention of some law or public policy. Grievant contends that the agreement should be vitiated because he was not "given an opportunity to intervene" in the grievance. While it is currently the practice of some boards of education to inform employees of their intervenor rights under W. Va. Code § 18-29-4(u) in grievances which may affect their interests, there is no statutory requirement on the part of the employer to do so. Therefore, Grievant has failed to allege any violation of any statute, policy, rule, regulation or written agreement for which relief can be granted.

Conclusions of Law

1. The actions of a board of education as employer on one hand and as grievance evaluator on the other are separate and distinct. Gillman v. Logan County Bd. of Educ., Docket No. 91-23-196 (Nov. 7, 1991).

2. An employee cannot successfully grieve a county board of education's actions in reasonably and correctly implementing a decision on an earlier grievance. Gillman, supra; Epling v. Boone County Bd. of Educ., Docket No. 89-03-562 (Feb. 28, 1990).

3. The law favors and encourages resolution of controversies by contracts of compromise and settlement rather than by litigation; it is the policy of the law to uphold and enforce such contracts if they are fairly made and not in contravention of some law or public policy. McDowell County Bd. Of Educ. v. Stephens, 191 W. Va. 711, 447 S.E.2d 912 (W. Va. 1994).

4. Settlement agreements prior to final administrative decision in a grievance matter are not subject to challenge by employees who were not parties to the prior grievance, unless those employees can prove by a preponderance of the evidence that the settlement agreement was not fairly made or was in contravention of some law or public policy.

5. A board of education has no statutory obligation under law to inform employees, whose interests may be affected by a pending grievance, of their intervenor rights under W. Va. Code § 18-29-4(u).

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Logan 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: March 15, 1996

Footnote: 1

Despite repeated requests from Grievant and the undersigned, the Level II transcript has never been provided and therefore has not been made part of the record.