RAYMOND D. CLAGG

v. Docket No. 96-10-337

FAYETTE COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Raymond D. Clagg, was professionally employed as the Coordinator of Transportation and Custodial Services by the Fayette County Board of Education (Respondent) on or about April 3, 1996, when he filed a level one grievance in which he alleged violations of W.Va. Code §§18-4-10(3), 18A-2-7, 18A-4-7(a), 18A-4-8b, 18A-2-8 and 18A-3-1, after his position was abolished as part of a reduction in force. Grievant's immediate supervisor lacked authority to resolve the matter at level one, and the grievance was denied at level two. Respondent waived consideration at level three and appeal to level four was made on August 2, 1996. The parties agreed to submit the matter for decision based upon the lower level record, supplemented with proposed findings of fact and conclusions of law submitted simultaneously on November 12, 1996. (See footnote 1)

The essential facts of this matter are undisputed and set forth as formal findings of fact:

1. Grievant was first employed by the Fayette County Board of Education in 1985, and has held the professional position of Coordinator of Transportation and Custodial Services since 1989.

2. Sometime after Grievant's assignment as Coordinator, a majority of the duties relating to custodial services were reassigned to another employee.

3. In September 1993, Respondent adopted a Lateral Reduction in Force Policy (Policy B-4) for professional personnel, in compliance with a directive set forth in W.Va. Code §18A-4-7a. The policy provides that the position of Coordinator of Transportation is lateral to positions of principal, assistant principal, specialists, and classroom teachers, in that order, provided the employee is properly certified and meets the job description.

4. During a reduction in force in Spring 1996, the Board accepted Superintendent Rick P. Powell's recommendation that the position of Coordinator of Transportation and Custodial Services be eliminated.

5. Grievant was subsequently reassigned as principal at Valley High School for the 1996-97

school year. Grievant later bid on and received a different assignment, not identified in the record.

6. Sometime prior to May 1997 Grievant resigned from Respondent's employment; however, he has indicated a desire to pursue the relief requested in this matter.

7. A document generated by Respondent identifying the administrative and overall seniority of administrators, as of June 30, 1995, (Grievant Exhibit 3) indicates that the Assistant Director of the vocational school had the least administrative seniority, .95 years, with six years total seniority.

8. The position of Assistant Director did not exist at the time Policy B-4 was adopted, and is not included in that document.

9. Sometime prior to May 20, 1997, Grievant voluntarily resigned his employment with Respondent to accept a position in education outside the state.

Grievant argues that he was entitled to bump into the position of Assistant Director of the vocational school because the listing of school administrators classifies the head administrator of thevocational school as a principal. Grievant deduces that would place the Assistant Director on the same plane as an assistant principal, a position lateral to Coordinator of Transportation.

Respondent argues that two positions, assistant director of the vocational school and the federal programs supervisor, were not included on the lateral transfer policy and, therefore, were not considered during the reduction in force. Respondent notes that prior to any consideration for bumping purposes, the lateral transfer policy would have to be amended to determine whether assistant director is on the same, or different, level as assistant principal. Even if it should be determined that the position of assistant director is lateral to assistant principal, Grievant would not have been permitted to bump into that position because he possessed more seniority than a principal, the highest level of lateral positions, and may not skip that level to the second tier of positions, that of assistant principal.

The Grievance Board has previously held that when a grievant voluntarily terminates his employment relationship with the Respondent board of education, complaints involving transfer and reassignment become moot. Muncy v. Mingo County Bd. of Educ., Docket No. 96-29-211 (Mar. 28, 1997); Brightwell v. Tyler County Bd. of Educ., Docket No. 96-48-255 (Nov. 22, 1996). Because Grievant is no longer an employee of Respondent, a decision on the merits of the grievance would constitute an advisory opinion which the Grievance Board does not issue. Procedural Rules of the West Virginia Education & State Employees Grievance Bd. §4.20 156 C.S.R. 1 (1996).

In addition to the foregoing it is appropriate to make the following formal conclusions of law.

Conclusion of Law

Grievant's complaint regarding his transfer and reassignment became moot when he left the Board's employ. Muncy v. Mingo County Bd. of Educ., Docket No. 96-29-211 (Mar. 28, 1997);Brightwell v. Tyler County Bd. of Educ., Docket No. 96-48-255 (Nov. 22, 1996). Accordingly, the grievance is DENIED.

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

Date: July 31, 1997 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

The grievance was reassigned for administrative reasons to the undersigned Senior Administrative Law Judge in April 1997.