MELISSA K. STRATTON,

Grievant,

v. **Docket No. 97-29-525**

MINGO COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Melissa K. Stratton (Grievant) filed a grievance against Respondent Mingo County Board of Education (MCBE) in accordance with the provisions of W. Va. Code §§ 18-29-1, et seq., on October 20, 1997. (See footnote 1) The grievance set forth the following complaint:

> Grievant claims a violation of 18A-4-7a when she received RIF notice and the Board of Education was ordered to post and fill a secretary position before the end of the school year, thus making her RIF action invalid. She seeks a secretary position with backpay and benefits including seniority.

Following denial of the grievance by her immediate supervisor, Grievant appealed to Level II where a hearing was conducted on November 6, 1997. On November 20, 1997, Johnny Fullen, the Superintendent's designee, denied the grievance at Level II, and Grievant appealed to Level IV, waiving Level III as authorized by W. Va. Code § 18-29- 4(c). Following a series of continuances, each of which was granted for good causeshown, a Level IV hearing was held in this Board's office in Charleston, West Virginia, on February 26, 1998. The parties waived post-hearing submissions, and this matter became mature for decision at the conclusion of the Level IV hearing.

The facts which are dispositive of this grievance are not in dispute. Accordingly, the following Findings of Fact are derived from the record developed through Level IV.

FINDINGS OF FACT

1. Grievant is employed by Respondent Mingo County Board of Education (MCBE) as a Secretary.

2. On April 28, 1997, this Grievance Board issued a decision in Paula Taylor- Hurley v. Mingo County Board of Education, Docket No. 96-29-265, in which MCBE was ordered to post a position vacancy for a Secretary I, rather than a Clerk/Receptionist, as the position had previously been posted.

3. On July 1, 1997, Grievant was placed on preferred recall status as a Secretary as the result of a reduction in force.

4. On July 7, 1997, MCBE posted the position described in Finding of Fact No. 2. R Ex 1 at L IV. Karen May, a Secretary in preferred recall status with greater seniority than Grievant, was the successful applicant for that Secretary I position.

5. On October 22, 1997, MCBE posted a Secretary II position in the Central Office. R Ex 2 at L IV. Jackie Hatfield, a regular Secretary assigned to Burch High School, was the successful applicant for that vacancy.

6. As a result of filling the vacancy created by Ms. Hatfield's selection, Grievant became the most senior Secretary on MCBE's preferred recall list, and was subsequently recalled to fill a position at Williamson High School in late 1997.

DISCUSSION

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.19 (1996); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code § 18-29-6.

Grievant's allegation that posting a position as a Secretary I in accordance with this Grievance Board's Taylor-Hurley decision would have prevented her reduction in force is not supported by a preponderance of the evidence of record. To the contrary, MCBE established that it posted a Secretary I position in substantial compliance with this Grievance Board's decision, and Grievant, because of her seniority, was not able to obtain employment until a series of vacancies had been filled by more senior employees. Grievant has since been re-employed in accordance with W. Va. Code § 18A-4-8b.

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

CONCLUSIONS OF LAW

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.19 (1996); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code § 18-29-6. 2. W. Va. Code § 18A-4-8b generally provides that county boards of education which are required to reduce the number of employees in a particular job classification, will take such reduction-in-force (RIF) actions on the basis of seniority. Hopkins v. Raleigh County Bd. Of Educ., Docket No. 96-41-432 (Feb. 26, 1998).

3. Grievant failed to establish that the Mingo County Board of Education violated W. Va. Code § 18A-4-8b when it terminated her employment in the course of a RIF action.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Mingo 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: April 13, 1998

Footnote: 1

The parties indicated that this grievance was submitted as authorized by this Grievance Board's ruling in Stratton v. Mingo County Board of Education, Docket No. 97- 29-387 (Oct. 21, 1997).