

14-0521

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

TONYA R. BOHAN,  
Petitioner,

v.

Civil Action No. 13-AA-142  
Judge Louis H. Bloom

THE BOARD OF EDUCATION  
OF THE COUNTY OF LEWIS,  
Respondent.

**FINAL ORDER**

This honorable court has reviewed the record and level III decision of the administrative law judge in the above-styled appeal in accordance with West Virginia Code §6C-2-5 and in accordance with the guidelines provided by the West Virginia Supreme Court of Appeals in *Randolph County Board of Education v. Scalia*, 387 S.E.2d 524 (W.Va. 1989) and *Martin v. Randolph County Bd. of Education*, 465 S.E.2d 399 (W.Va. 1995).

**FINDINGS OF FACT**

1. Tonya R. Bohan, Petitioner, is employed by Respondent as a substitute secretary.
2. The Board of Education of the County of Lewis, Respondent, is a quasi-public corporation created by statute for the management and control of the public schools of Lewis County.
3. Pursuant to West Virginia Code §18A-4-15, Respondent calls substitute secretaries from a list of substitute secretaries in seniority order on a rotating basis when a substitute is needed to fill the position of a regularly employed secretary who is absent on a temporary basis. The substitute secretary, whose turn it happens to be, is called and offered the assignment. If he or she declines the assignment, the next substitute on the list is called and offered the assignment

and so on until a substitute accepts the assignment. When the need for a substitute secretary arises again, the next substitute on the list is called and offered the assignment until that position is filled. When the bottom of the list is reached, the process starts again at the top of the list following the same procedure.

4. On July 29, 2012 Petitioner received a call to substitute as a secretary at Jane Lew Elementary School. Petitioner accepted the position, but was suspicious because she believed that substitute secretaries were not normally utilized at schools during the summer when students are not present. Petitioner contacted Respondent's administration and learned that her suspicions were justified. She was told not to report to work at Jane Lew Elementary School. However, Petitioner was still "placed at the bottom of the rotating list"<sup>1</sup> of substitute secretaries for the next callout.

5. The next substitute opportunity after the one described in the paragraph above occurred on August 13, 2012. Debbie Lough, a less senior substitute secretary than Petitioner, received this call out and worked from August 14, 2013 until August 24, 2012 at Jane Lew Elementary School.

#### CONCLUSIONS OF LAW

6. West Virginia Code §18A-4-15(a) provides that in certain circumstances, a substitute can fill the absence of a regular employee on a temporary basis.

7. West Virginia Code §18A-4-15(b), provides in pertinent part, the following concerning

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<sup>1</sup> Actually, Petitioner stayed at the same place on the list. By "placing at the bottom of the list," it is meant that the next substitute to be called and offered an assignment would be the substitute directly below Petitioner on the list. The rotation would continue all the way through the list, then return to the top and continue until Petitioner was reached. Petitioner went from the next substitute to receive an opportunity to work in the position of an absent secretary to a situation in which every other substitute secretary on the list, below and above Petitioner, would receive an opportunity to work before petitioner would receive another opportunity.

the method of calling out substitutes:

Service personnel substitutes shall be assigned in the following manner:

(1) The substitute with the greatest length of service time in the vacant category of employment has priority in accepting the assignment throughout the period of the regular service person's absence or until the vacancy is filled on a regular basis pursuant to section eight-b [ 18A-4-8b] of this article. Length of service time is calculated from the date a substitute service person begins assigned duties as a substitute in a particular category of employment.

(2) All service personnel substitutes are employed on a rotating basis according to their lengths of service time until each substitute has had an opportunity to perform similar assignments.

8. School personnel laws and regulations must be strictly construed and in favor of the employees that they were designed to protect. *Morgan v Pizzino*, 256 S. E.2d 592 (W. Va. 1979).

9. This court holds that a cancelled assignment does not constitute an opportunity for a substitute service employee in a particular rotation within the meaning of the statute. Hence, when a substitute service employee accepts an offer to fill in the for an absent employee and that offer is rescinded or canceled, the substitute employee is entitled to be offered the next substitute assignment available in his or her classification title.

#### DECISION

Accordingly, this court **REVERSES** the decision of the Administrative Law Judge and **ORDERS** Respondent to follow the practice outlined above in the future.

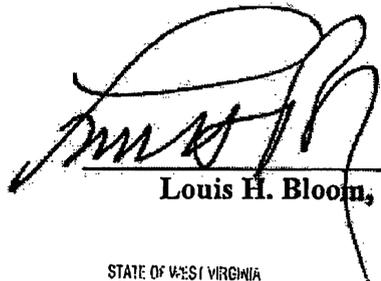
At the suggestion of this court, the parties have agreed that the appropriate award of back pay to which Petitioner is entitled be fixed at three days' pay at the rate of pay received by Petitioner when working as a substitute secretary in the 2012–2013 school year. This court finds this sum to be reasonable and **ORDERS** that Respondent compensate Petitioner for this amount

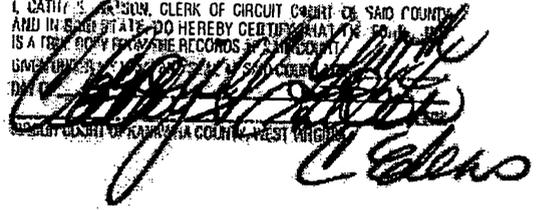
within thirty days of entry of this order. This court directs that the parties each bear its own costs.

The objections and exceptions of all parties aggrieved by this order are hereby reserved.

The circuit clerk is directed to send an ateste copy of this order to all parties and to strike the matter from the docket.

ENTERED this 9 day of April 2014.

  
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Louis H. Bloom, Judge

STATE OF WEST VIRGINIA  
COUNTY OF RAMPOAH, SS  
I, CATHY S. ELLISON, CLERK OF CIRCUIT COURT OF SAID COUNTY  
AND IN SAID STATE DO HEREBY CERTIFY THAT THE FOREGOING  
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.  
GIVEN UNDER MY HAND AND SEAL OF SAID COURT  
THIS 9th DAY OF APRIL 2014.  
  
Cathy S. Ellison  
Clerk

Prepared by,

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Approved as to form by:

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4/11/14  
J. Roush  
D. Spatafore  
C. Ellison

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. \_\_\_\_\_

(Circuit Court Civil Action No. 13-AA-142)

LEWIS COUNTY BOARD OF EDUCATION

Petitioner

v.

TONYA R. BOHAN

Respondent

CERTIFICATE OF SERVICE

I, Denise M. Spatafore, do hereby certify that I served the foregoing **Notice of Appeal** on the Respondent by sending a true and correct copy, via U.S. Mail, postage pre-paid, this 8th day of May, 2014, addressed as follows:

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Charleston, WV 25311  
*Counsel for Appellant*

  
Denise M. Spatafore (WV Bar No. 5546)