No. 24366 -- State of West Virginia ex rel. Judy Monk v. Honorable David Knight, Judge of the Circuit Court of Mercer County, The Mercer County Board of Education, and Gregory Dalton

Workman, C. J., concurring, in part, and dissenting, in part:

I concur with the majority that the lower court was in part correct[1] but I find it deeply troubling that the majority opinion endorses collateral attacks of Grievance Board decisions. This is a significant departure from existing law and to this aspect of the majority opinion, I strenuously dissent.

[1]Judge Knight's decision held, "Where two employees are 'tied' in reference to the qualifications under the law for a position, the Board of Education should be allowed to choose the candidate of their choice; the Board should first make a decision of whether or not they wish to do this. Then and only then should some random choice procedure be used to decide who obtains the job and that procedure should be established by the employees and approved by the county, which was not done in this case."

Ms. Monk filed a grievance after the teaching position at issue was awarded to Mr. Dalton. Monk's grievance proceeded to Level IV where the hearing examiner found that the principal erred in relying on Dalton's specialized training because it was not included in the job posting. Next, the examiner found Monk and Dalton to be equally qualified, and he ordered a drawing to break the tie.[2] Monk was awarded the position after drawing a higher number than Dalton. A few days later, Dalton filed a grievance which read, "I am in total disagreement with Judge Jerry Wright's Level IV decision and with the November 3, 1995 "random employee" selection by the Mercer County Schools. I feel that I should remain in the teaching position that I was hired for at PikeView High School." Dalton's grievance was denied, and the hearing examiner held that "a grievant is not permitted to attack collaterally a prior Level IV decision involving the same teaching position and the same employees." The circuit court reversed the hearing examiner and considered the Monk and Dalton cases together despite the fact that neither party intervened in the other party's grievance. The circuit court neglected to address the collateral attack issue. The lower court held that the Board of Education could break ties between candidates for a position using its discretion. Thereafter, Dalton was awarded the position after the Board considered each candidate's specialized training. Subsequently, Monk filed a petition for prohibition.

[2] The record is silent with regard to when Dalton first learned of the Monk grievance. Thus, this the first time we know he had knowledge of the grievance.

The administrative law judge ("ALJ") who dismissed Dalton's claim was absolutely correct in holding that collateral attacks are impermissible. Under West Virginia. Code § 18-29-4(d)(2) (1994 & Supp. 1997), ALJ decisions are final and binding upon the parties. The only remedy under the statute is that either party (to the grievance) may appeal to the circuit court on the grounds that the hearing examiner's decision was erroneous based upon any of the five enumerated grounds set forth in the statute. W. Va. Code § 18-29-7 (1994). In his decision, the ALJ cited a 1995 administrative decision which interpreted § 18-29-7 (1994). In Clay v. Mingo County Board of Education, Docket No. 95-29-208 (Aug. 30, 1995), the ALJ held that the statute provides no authority for an administrative law judge to interpret, clarify, or otherwise amend the decision of another administrative law judge at Level IV. Clearly, collateral attack of a Grievance Board decision is not allowed under the statute.[3]

Because the record is silent with respect to when Mr. Dalton learned of Ms. Monk's grievance, the majority may well be correct in concluding that Mr. Dalton had no other remedy for losing the teaching position except to file a grievance. Even so,

[3]See State v. Miller, 194 W. Va. 3, 459 S.E.2d 114 (1995) (stating that "[t]he doctrines of res judicata and collateral estoppel were well developed in the context of judicial proceedings, but may be applied to administrative actions as well"); Syl. Pt. 2, Vest v. Board of Educ., 193 W. Va. 222, 455 S.E.2d 781 (1995) (establishing guidelines to be utilized in determining whether administrative decision falls within parameters of either res judicata or collateral estoppel).

however, the employer's action would have more properly been the subject of the second grievance, not the decision of another administrative law judge.[4]

Because we do not have the complete record before us, it cannot be determined whether Dalton had any actual or constructive notice of Monk's grievance prior to the Level IV decision. By enacting the permissive intervention statute without any notice requirements, the legislature has created somewhat of a no man's land. Thus, the legislature should revisit this statute to consider requiring mandatory intervention and a requirement for notice to other employees who would be affected by a grievance decision. In the meantime, let us hope the majority opinion does not create confusion on the right to collaterally attack educational grievance decisions.

[4]Even where a second grievance on the same issue is properly filed, there is still potential for conflicting administrative decisions. The legislature provided a means for intervention by any employee who claims that the disposition of a grievance may substantially and adversely affect his or her rights where the existing parties do not adequately represent his or her rights. W. Va. Code § 18-29-3(u) (1994). Thus, under this statute, an employee who has notice of an ongoing grievance may intervene to protect his or her rights. There is, however, no requirement that one in such a situation receive notice of the grievance, nor any mandatory duty to intervene.