

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

BRIAN M. POWELL,

Petitioner,

v.

Civil Action No. 06AA-3
Judge Louis H. Bloom

STEVEN L. PAINE, STATE
SUPERINTENDENT OF SCHOOLS,

Respondent.

ORDER

By Order of the Supreme Court of Appeals of West Virginia, this matter was remanded to the Court for reinstatement of the teaching license of the petitioner, Brian M. Powell ("Powell"). Powell is now before the Court seeking further relief in the form of employment-related benefits and attorneys fees.

Upon review of the briefs filed by the parties and the pertinent law, the Court is of the opinion that it does not have authority to award Powell employment-related benefits or attorneys fees in this matter.

FINDINGS OF FACT

1. The respondent, Steven L. Paine, State Superintendent of Schools ("Respondent"), suspended Powell's teaching certification for a period of four years on December 9, 2005.¹
2. Pursuant to the West Virginia Administrative Procedures Act, Powell appealed Respondent's decision to the Circuit Court of Kanawha County.
3. After hearing oral arguments, this Court affirmed the Respondent's decision to suspend Powell's teaching license.

¹ The Court need not repeat the detailed factual history in this matter as it is not in dispute. Rather, the Court will simply review the important aspects of the underlying dispute.

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4. Powell then filed a successful appeal to the Supreme Court of Appeals of West Virginia. By Order dated November 21, 2007, the Supreme Court of Appeals reversed and remanded the matter to this Court "for reinstatement of [Powell's] teaching license." *Powell v. Paine*, 221 W.Va. 458, 655 S.E.2d 204, 211 (2007).

5. Thereafter, Powell filed a Proposed Order asserting that in addition to reinstatement of his teaching license, he is also entitled to (1) "all employment related benefits he otherwise would have received" and (2) attorneys fees.

6. The Respondent opposes Powell's proposed order in as much as Powell seeks employment-related benefits and attorneys fees. Additionally, the Respondent asserts that Powell's teaching license has already been reinstated.

CONCLUSIONS OF LAW

1. When the Supreme Court of Appeals of West Virginia remands a case to circuit court, "the remand can be either general or limited in scope." Syl. pt. 2, *State ex rel. Frazier & Oxley, L.C. v. Cummings*, 214 W.Va. 802, 591 S.E.2d 728 (2003). In particular, the Supreme Court of Appeals has explained,

Limited remands explicitly outline the issues to be addressed by the circuit court and create a narrow framework within which the circuit court must operate. General remands, in contrast, give circuit courts authority to address all matters as long as remaining consistent with the remand.

Id.

2. Accordingly, upon remand, a circuit court "must proceed in accordance with the mandate and the law of the case as established on appeal." *Id.* at 736, 810. Further, a circuit court must "implement both the letter and the spirit of the mandate, taking into account the appellate court's opinion and the circumstances it embraces." *Id.*

