FRANCETTA JACKSON, ET AL.,

Grievants,

v. DOCKET NO. 94-10-029

FAYETTE COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievants, Delbert Adkins, James Aliff, David Ball, Carolyn Blankenship, Francetta Jackson, Hilarie L. Jones, Shirley Keatley, Charles L. Kidd, Ruth Ann Kniceley, Jannes C. Londeree, Fred McLain, Jr., Bruce Miller, Kathleen Scott, Roberta Shearer, Lacy Byron Stover, Cecilia Warden, Janie Webb, and Pamela Scurlock (hereinafter Grievants), are properly certified teachers employed on a regular, full-time basis by the Fayette County Board of Education (hereinafter Board) and assigned to Mount Hope High School (hereinafter "MHHS"). Grievants filed a grievance at Level I on November 2, 1993, which was waived to Level II. A Level II hearing was held on November 30, 1993 before K. R. Carson, Hearing Examiner, at the Fayette County Board of Education Office. Mr. Carson rendered his decision December 17, 1993 in favor of the Board. Grievants appealed that decision to Level IV, and the parties agreed to submit the case on the record established atLevel II. The parties submitted proposed findings of fact and conclusions of law on or about March 4, 1994, at which time the case became mature for decision. (See footnote 1)

Background

The West Virginia State Board of Education, at its February 19, 1993 meeting classified MHHS as "seriously impaired," due, in part,to its high drop-out rate. A team of three consultants appointed by the State Board of Education conducted a visitation of MHHS in May 1993, to provide recommendations for correction of the "seriously impaired" status. The consultants issued their report in August 1993, setting forth nineteen (19) recommendations for improvement of MHHS.

In September 1993, the faculty at MHHS developed their responses to the improvement consultant team's nineteen recommendations, which were submitted to the Office of Accreditation and Recognition at the West Virginia Department of Education. At about the same time, a group of concerned parents approached the Superintendent of the Fayette County Schools, as well as the Board, regarding some of the problems they perceived at MHHS and presented suggestions for corrections of the deficiencies.

The Board thereafter scheduled a public meeting on September 16, 1993 to discuss the situation at MHHS with the concerned parents and others. Several members of the MHHS faculty attended the meeting, including one of the grievants, Jannes Londeree. Noneof the faculty members discussed their concerns with the Board about MHHS or their responses to the consultants' recommendations at this meeting.

The Board, on September 20, 1993, appointed a ten member "task force", whose primary objective was to oversee the implementation of the nineteen recommendations for improvement at Mount Hope High. The task force was composed of two central office employees, two principals from outside Mount Hope, two parents, two teachers from Mount Hope (including grievant Jackson), Mount Hope Principal Domingues, and one student.

The Mount Hope High School Improvement Resource Team (Task Force) met on October 14, October 15, October 25 and November 5, 1993. Minutes were produced as a result of each meeting, along with observation forms summarizing the findings of the Task Force.

Discussion

Grievants allege that the Task Force as assigned by the Fayette County School Board was

> unnecessary and operates to harass and intimidate the Mount Hope High School staff. It also constitutes discrimination and favoritism in that other schools that also have been found to be seriously impaired have had no task force assigned to them. The relief we seek is the dissolution of the task force.

Grievants have not challenged the authority of the Board to appoint the Task Force. Indeed, W. Va. Code § 18-5-13 authorizes county boards of education to "control and manage all of the schools and school interests for all school activities and on school property. . . ." In addition, W. Va. Code § 18-5A-2 provides that schools shall establish local school improvementcouncils. Therefore, the Board

has the authority to constitute and appoint an improvement team such as the Task Force.

Nonetheless, Grievants allege that the operation of the Task Force has been conducted in such a way as to harass and discriminate against them and has resulted in favoritism towards other schools. Grievants have not established harassment, discrimination or favoritism in the operation of the Task Force at MHHS.

A. Harassment.

"'Harassment' means repeated or continual disturbance, irritation or annoyance of an employee which would be contrary to the demeanor expected by law, policy and profession." W. Va. Code § 18-29-2(n).

The main objective of the Task Force is to observe the progress of the improvement plan. Members of the Task Force are required to monitor on-site activities, including interviewing the Mount Hope staff. The observations of all Task Force members are reviewed at the Task Force meetings and consolidated into "observation forms" which are keyed to the improvement team's nineteen recommendations.

The two parents assigned to the Task Force, in their role as observers, regularly monitor the school, carrying clipboards and taking notes. Grievants object to being under "surveillance" by the two parents, neither of whom is a certified educator, and this "uninvited parental involvement" apparently forms the basis for the harassment claim.

Two specific complaints were raised by Grievants regarding the presence of the parents at MHHS. First, there was some concern that the observations of the parents would become part of the teachers' evaluations. Grievant Jackson testified that she raised this concern at the Task Force meetings. Grievant Jackson admitted that the majority of comments which were incorporated into the observation forms came from the two MHHS teachers on the Task Force, including herself. She further testified that her concerns about teacher evaluations were allayed as the parents' comments were dealt with directly at the Task Force meetings.

Second, an incident occurred in Grievant Kathleen Scott's special education classroom where a student was injured when his desk broke. The student had intentionally cut himself on the broken edge of the desk and was bleeding. A Task Force parent was outside the classroom in the hallway at the time. Grievant Scott testified that she believed the student cut himself because the parent was in the hallway. The parent did not enter the classroom or otherwise interfere with Grievant Scott's

handling of the injured student. Grievant Scott testified that she saw the parent when she went out into the hallway to get first-aid. While this incident apparently concerned Grievant Scott, there was no evidence presented that the parent harassed her or even that the student was aware of the parent's presence. This incident does not amount to the type of "repeated or continual disturbance" envisioned in W. Va. Code § 18-5A-2.

The State Legislature encourages, even dictates, parental involvement within the local schools. W. Va. Code § 18-5A-2 provides that a local school improvement council shall be established at every school. Local school improvement councils must have three parents or legal guardians of students as members. Indeed, one of the two parents on the Task Force is also a member of the local school improvement council.

There was no evidence presented that the Task Force was designed to harass the Mount Hope faculty, or that the parents have engaged in any type of continual disturbing or annoying behavior which would be contrary to the demeanor expected by law, policy or profession. See W. Va. Code § 18-29-2(m). The Task Force's main objective is to oversee the implementation of the nineteen recommendations for improvement of MHHS, and the inclusion of parents on the Task Force embodies the spirit of that mission as well as the clear legislative intent that parents be involved in their children's schools.

B. Discrimination.

Grievants contend that they have been discriminated against because no other school receiving a "seriously impaired" classification had a task force appointed to oversee implementation of an improvement plan. (See footnote 2)

MHHS has had a drop-out rate exceeding thirty percent (30%) for the past three years, resulting in the "seriously impaired" classification. Additionally, MHHS students have scored lower on the Comprehensive Test of Basic Skills (CTBS) than students in similarly situated schools. Grievants assigned various reasons for these problems, including the socio-economic background of the members of the community which contributed students to the school system. However, evidence was presented, and the Grievants' witnesses admitted, that Clay County, with a similar socio-economic background, boasted a "school of excellence". Meadow Bridge High School, in Fayette County, also has a similar socio-economic background as Mount Hope, yet Meadow Bridge was not seriously impaired and was not experiencing the same CTBS or drop-out problems as Mount Hope.

Interestingly, Grievants' witnesses testified that greater parental involvement would help improve MHHS' problems.

The evidence submitted does not substantiate that any other school had been classified "seriously impaired" for more than one year, while MHHS had been so-classified for at least threeconsecutive years. The appointment of the Task Force to oversee the implementation of the improvement plan is directly related to the actual job responsibilities of the faculty: to improve the performance of MHHS students and decrease the drop-out rate. As no other school has received the same classification as MHHS, the Grievants are not similarly situated to staff at other schools, and the Board's interest in improving MHHS' classification provides a legitimate, nondiscriminatory justification for appointment of the Task Force.

C. Favoritism.

Grievants contend that not appointing a task force to other schools receiving "seriously impaired" classifications constitutes favoritism by the Board. (See footnote 3)

As discussed above, MHHS is not similarly situated to any other school in that, unlike any other school, Mount Hope High School has received a "seriously impaired" classification for at least the past three years. Therefore, Grievants are not similarly situated to employees of the other schools. Further, the Board had a legitimate reason for appointing the Task Force to Mount Hope: to improve the quality of education and rectify the "seriously impaired" status of MHHS. Moreover, there is no evidence that the appointment of a task force to another school would be viewed as anegative, as the Grievants imply, and conversely, no evidence that to not appoint a task force is evidence of favoritism.

Grievants have presented no evidence that the Task Force is operating in such a manner as to harass or intimidate the Grievants. No evidence has been presented to support Grievants' claim of discrimination and/or favoritism in the appointment of the Task Force to MHHS.

In addition to the findings of fact and conclusions of law made in the foregoing narrative, the following are appropriate.

CONCLUSIONS OF LAW

1. "'Harassment' means repeated or continual disturbance, irritation or annoyance of an employee which would be contrary to the demeanor expected by law, policy and profession." W. Va.

Code § 18-29-2(n).

2. "'Discrimination' means any difference in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing by the employee." W. Va. Code § 18-29-2(m).

3. "'Favoritism' means unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of another or other employees." W. Va. Code § 18-29-2(o).

4. W. Va. Code § 18-5-13(1) authorizes county boards of education to "control and manage all of the schools and school interests for all school activities and on school property. . ."

5. W. Va. Code § 18-5A-2 provides that schools shall establish local school improvement councils and councils must havethree parents or legal guardians of students as members. Therefore, the West Virginia Legislature clearly encourages and dictates parental involvement in the public schools.

6. The Board has the authority to constitute and appoint an improvement team or task force. The mere appointment of an improvement team or task force and its assignment in a school does not in and of itself indicate harassment or discrimination.

7. MHHS is the only school which has received a "seriously impaired" classification for the last three consecutive years. Grievants are not similarly situated to other faculty at other schools and the Board's appointment of a task force to oversee the improvement of MHHS was justified in light of the classification. Therefore, Grievants have failed to make out a prima facie case of discrimination and/or favoritism in the non-appointment of a task force to any other school in Fayette County.

8. In order to prevail, a grievant must establish the truth of his or her allegations by a preponderance of the evidence. Black v. Cabell County Bd. of Educ., Docket No. 06-88-238 (Jan. 31, 1989).

9. The Grievants have not demonstrated that the Task Force operates to harass the MHHS staff, nor that the operation of the Task Force was discriminatory against MHHS or its faculty.

Accordingly, this grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County or Circuit Court of Fayette County, and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code §29-6A-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.

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MARY JO ALLEN

Administrative Law Judge

Date: May 18, 1994

Footnote: 1 *This case was transferred for administrative reasons to the undersigned from another Administrative Law Judge.*

Footnote: 2 *"'Discrimination' means any difference in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing by the employee." W. Va. Code § 18-29-2(m).*

A prima facie test is standard in discrimination and favoritism cases before this Grievance Board. An employee canraise a presumption of discrimination by proving by a preponderance of evidence that he is similarly situated, in a pertinent way, to other employees; that he has, to his detriment, been treated by his employer in a manner dissimilar to the other employees in a significant particular; and that such differences were unrelated to actual job duties and not agreed to by him in writing. The employer's presentation of a legitimate, nondiscriminatory reason for the disparate treatment will rebut the presumption, although the employee can overcome that rebuttal if he can prove that the stated reason is pretextual. Steele v. Wayne Co. Bd. of Educ., Docket No. 89-0-260 (Oct. 19, 1989).

Footnote: 3 *"'Favoritism' means unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of another or other employees." W. Va. Code § 18-29-2(o).*