KAREN SUE CONNER

v. Docket No. 94-01-1107

BARBOUR COUNTY BOARD OF EDUCATION

D E C I S I O N

At all relevant times, Grievant was employed as a bus operator by Respondent Barbour County Board of Education (BCBE). She asserts that two performance evaluations she received for the 1993-94 school year are "inaccurate and unfair," and seeks removal of them from her personnel file. At level two, BCBE admitted that Grievant was denied an immediate opportunity to place a written response on the evaluations, but otherwise contended that the evaluations accurately reflected Grievant's performance for the time in question. The parties agreed that a decision could be based on the record adduced at level two, and thereafter submitted a briefing schedule for written argument.1 Fact/law proposals were received from Grievant and BCBE on June 5, 1995 and June 14, 1995, respectively.

1Of record is a copy of the transcript/exhibits of the November 17, 1994, level two hearing.

The facts in this case, as near as can be determined from the record, are as follows. Charles Zinn, BCBE's Director of Transportation, was Grievant's immediate supervisor during the 1993-94 school year. On June 8, 1994, BCBE's last day of school, Mr. Zinn approached Grievant in the parking lot at the bus garage and handed her two completed evaluation forms, one dated September 20, 1993, and the other, June 2, 1994. BCBE's evaluation form lists two performance areas. One

area, "Duties and Responsibilities," contains seven items to be rated by a check mark as either "Needs Improvement" or "Satisfac tory." The second performance area, "Performance Standards," has nine items to be rated. In addition, there are lined spaces under the headings, "Merits," "Weaknesses," and "Recommenda tions," areas which can be filled in by the evaluator. The bottom of the form contains areas for the evaluator's and the evaluatee's signature.

The September 20, 1993, evaluation contained a hand-written notation "need work" instead of a check mark in the "Satisfacto ry" column for two items, "Performs all duties in a legal, safe and courteous manner" and "Follows directions and demonstrates good judgment." In addition, a check mark was in the "Needs Improvement" column for "Accepts responsibility in a cooperative manner." Under "Recommendations," Mr. Zinn wrote "Work on developing a better rapport with other drivers & students. Update bus schedule." Mr. Zinn's signature, but not Grievant's, appeared on the document.

The June 2, 1994, evaluation contained no areas marked "Needs Improvement." Rather, the handwritten notation "need work" again appeared in the "Satisfactory" column for one item previously marked in the September 20, 1993, evaluation, "Per forms all duties in a legal, safe and courteous manner," as well as in three new areas, two of them being, "Demonstrate positive attitude toward students" and "Performs assigned duties effi ciently with/without close supervision." The last item with the written "need work" comment was "Accepts responsibility in a cooperative manner," rated on the September 1993 evaluation in the "Needs Improvement" column. Under "Weaknesses," Mr. Zinn wrote "Rapport with other drivers" and "Lack of trust." Under

"Recommendations," Mr. Zinn wrote, "Work to improve yourself and don't worry about what other drivers are doing. If relationship is improved, working conditions will improve among other driv ers." This document also contained Mr. Zinn's signature.

With respect to the September 20, 1993, evaluation, Grievant stated she had no idea why any areas were downgraded except that she did resist an "extension" to her route during the period in question.2 Grievant also denied knowledge as to why areas were downgraded in the June 2, 1994 evaluation. She admitted that Mr. Zinn had counseled her about using a hand-held tape recorder on the bus, but insisted that fog, not her use of the tape recorder, had caused her to miss a turn-off on one of the roads on her route one morning.

2The transcript does not contain page numbering. Mr. Zinn testified about the particular items on the evaluation. He stated that it was not safe for Grievant to drive her bus and operate a tape recorder. He cited the missed road and also the fact that Grievant had failed to pick up a first-grader at the child's bus stop one morning after the child's brother had already gotten on the bus. Mr. Zinn also said a truck driver had complained that Grievant had pulled out in front of him with her bus. According to Mr. Zinn, when he attempted to discuss these matters with Grievant, she became defensive. Mr. Zinn pointed out that, while Grievant's route was extended in some areas when the school year began, her route was shortened in other areas, and that such things usually worked "both ways." Finally, he related that ten or fifteen drivers had complained to him about "conflict" with Grievant.

He said the drivers had claimed Grievant was "taping" them, and even calling them, in order to keep track of what they were doing, and also what he, Mr. Zinn, was doing. Mr. Zinn opined that these actions on Grievant's part did not reflect a positive work attitude.

Mr. Zinn introduced two October 1993 documents into the record. One pertained to incidents in which Grievant used a recording device on her bus, and the other documented the occasion she neglected to pick up the child at the bus stop. Grievant responded that it was dark and rainy the day she left the child who had not yet boarded the bus. According to Grievant, after she had traveled about a half-mile from that bus stop, some children informed her that she had left a little girl standing there. She said when she got to the bus garage, she told "Howard" about what the children said, but he told her not to say anything about it.3 Grievant denied calling other bus drivers to discover Mr. Zinn's whereabouts, but admitted to having asked some drivers if it was true that Mr. Zinn had eaten at a restaurant with some drivers, the same drivers who were given new buses, according to her.

Mr. Zinn never offered any reason why he did not give Grievant her September 1993 evaluation at the time he prepared and signed it in September 1993. Undoubtedly, the non-issuance of an employee's evaluation at the time it was prepared and signed by a supervisor, is an abuse of the process to evaluate school employees in an open and honest manner. Given the circumstance where Grievant was handed a slightly down-graded, nine-month old evaluation by her supervisor, the primary purpose of the evaluation process to commend or to enhance a worker's performance was defeated. Grievant was denied the benefit of

concrete information about aspects of her job performance which her supervisor believed to be less than satisfactory.

Perhaps Mr. Zinn did attempt to discuss various problems with Grievant as the problems arose, and perhaps Grievant may have not been entirely receptive to those overtures. Neverthe less, that is no excuse for Mr. Zinn not to give Grievant a formal evaluation he prepared until nine months after the fact. The September 1993 evaluation must be purged from Grievant's

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3The record is silent as to the identity of Howard.

personnel file. Notwithstanding the fact that Mr. Zinn gave Grievant her June 20, 1994, evaluation in less than a profes sional manner, there is no showing that the evaluation was "inaccurate and unfair," as she claims. That evaluation will stand.

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

Findings of Fact

1. Grievant, a bus operator, was given two evaluations by her supervisor in the school parking lot, hardly an appropriate place to give an employee her evaluation, on June 8, 1994, the last day of school in the 1993-94 school year. One of the evaluations was dated September 20, 1993, and the other, June 20, 1994.

2. With respect to the September 1993 evaluation, while one performance area was found to be unsatisfactory, and two other areas otherwise found satisfactory contained a written comment, "Need Work," the evaluation as a whole was not nega tively-worded or otherwise job threatening in tone or content.

3. The September 1993 evaluation was not given to Grievant in a timely manner so that she could heed the sugges tions to improve.

4. Grievant's June 1994 evaluation was much like the September 1993 evaluation in tone and content.

5. In fact, written comments on the June 1994 evaluation were rather weak in light of the situation of the missed road and the forgotten child which occurred during the evaluation period. While the weather may have been dark and rainy the morning Grievant failed to pick up the child at the bus stop, she should have checked into the matter the moment the children on the bus told her she left someone behind. This would not have been hard to do, considering the child's sibling was aboard the bus. Later, at the bus garage, when Grievant could have at least informed officials that she had been told by the bus riders that she had missed a child, she instead heeded "How ard's" advice and neglected even then to report the incident.

Conclusions of Law

1. School officials must conduct the evaluations of school employees in an open and honest manner. Brown v. Wood County Bd. of Educ., 400 S.E.2d 213 (W.Va. 1990); Wilt v. Flanagan, 294 S.E.2d 189 (W.Va. 1982).

2. The Grievance Board cannot grant relief unless the record reveals an abuse of the evaluation process which defeats the primary purpose of the process to commend or enhance a worker's performance. See Myers v. Wetzel County Bd. of Educ., Docket No. 94-52-530 (May 19, 1995).

3. Grievant failed to demonstrate that the June 1994 evaluation was inaccurate and unfair; therefore, that evaluation will stand.

4. The board of education abused the evaluation process by not providing Grievant with a copy of a September 1993 evaluation until nine months after the evaluation had been prepared and signed by her supervisor; therefore, Grievant is entitled to relief on the issue.

Accordingly, this grievance is GRANTED, in part, and BCBE is ordered to remove the September 20, 1993, evaluation from all of Grievant's personnel records; all other relief is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Barbour 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 appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate Court.

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NEDRA KOVAL

Administrative Law Judge

Date: June 28, 1995