CHARLES A. MILLER

v. Docket No. 95-17-243

HARRISON COUNTY BOARD OF EDUCATION

DECISION

Grievant, Charles A. Miller, employed by the Harrison County Board of Education (Board) as a teacher, filed an appeal directly to level four on June 12, 1995, as the result of a Board decision to terminate his employment. The matter became mature for decision following the level four hearing conducted on August 7, 1995, when both parties waived the opportunity to submit post-hearing proposed findings of fact and conclusions of law.

At level four, the Board provided the undersigned with the record developed during the termination proceedings and declined to offer additional evidence. Grievant also stated that he had no new evidence to submit but stated that he believed the termination was unfair after only one unsatisfactory evaluation and having an improvement team in place only two weeks. Grievant also complained that too manypeople were present at a pretermination meeting held on May 9, 1995. (See footnote 1)

Evidence presented at the June 6, 1995, hearing establishes that Grievant had been employed by the Board as a mathematics teacher since 1977, and was most recently assigned to Bridgeport High School (BHS). Grievant's evaluations have been generally satisfactory over the years; however, concerns regarding student discipline were noted on a 1988 observation form. Grievant was placed on an Improvement Plan in January 1990. The deficiency identified in this document was that he "lacks control of students in his classroom and management skills of these students which results in constant classroom disruption of the learning process."

Subsequent observations indicated improvement was made and Grievant was ranked satisfactory for all fifty criteria listed on the 1990-91 evaluation. Notwithstanding the ranking, Grievant's evaluator commented that "I gave Mr. Miller satisfactory in all areas but he still need[s] to improve in the areas

of class management and discipline." The 1991-92 evaluation shows seven of eleven criteria listed under the section "Fosters Classroom Environment Conducive to Learning" were rated as "Satisfactory But Needs Improvement." Student discipline and control were specifically cited as needing improvement. Grievant's 1992-93 evaluation was notmade a part of the record.

Lindy Bennett, Principal at BHS, conducted observations of Grievant on November 18, 1993, March 8 and May 2, 1994. Problems with classroom control and discipline were addressed on each form. Incredibly, Grievant's 1993-94 evaluation indicates that he was rated satisfactory in all areas. Under the section "Suggestions," Principal Bennett wrote "Improvement in classroom control explanation and examples of problems would be most beneficial." The section titled "Identified Deficiencies" was blank.

Observations dated December 2 and 15, 1994, and January 31, 1995, continued to document problems with classroom control and discipline. On February 3, 1995, Grievant was given an evaluation on which he was rated unsatisfactory in five of six areas. Attached to the evaluation was a three page listing of identified deficiencies and a plan of improvement. The plan was to be in effect no later than February 15 and would continue through March 16, 1995. Grievant was also offered, but declined, the services of an improvement team at this time.

Mr. Bennett developed an Improvement Plan Addendum on March 16, 1995, after concluding that the goals of the February plan had not been met. This five page document provided very specific actions to improve Grievant's performance over the next two weeks. Grievant was advised that if the plan was not fully implemented by March 30, 1995,termination would be considered.

On March 24, 1995, Grievant accepted the opportunity to receive assistance from an improvement team which was in place by March 30, 1995. In addition, Bobbie Gelpi, Coordinator of Mathematics, and Jim Romeo, an assistant principal at BHS, were identified as resource people available to Grievant. At this time the improvement period was extended until April 13, 1995. The improvement team met with Grievant on April 12 at which time it was noted that while Grievant had made limited progress, serious deficiencies remained. On April 27, Mr. Bennett provided Grievant an opportunity to verify that he was complying with the improvement plan. Not being persuaded by Grievant's response, Mr. Bennett requested that Grievant be dismissed for unsatisfactory performance. Following an informal meeting on May 11, 1995, Superintendent Robert Kittle imposed a suspension effective that date. Grievant was subsequently dismissed on June 6, 1995.

Principal Bennett, Assistant Principal Romeo, and Coordinator Gelpi testified of their efforts on Grievant's behalf. Four teachers and a parent/substitute teacher at BHS testified regarding the noise and disruption which they had observed in Grievant's classroom. Grievant offered no witnesses and cross-examined only Ms. Gelpi for the limited purpose of establishing that all of his classes were lower-level.

When given the opportunity to respond to theadministration's presentation, Grievant stated that he did not see two of the 1993-94 observations, and that he did not understand how he could be a satisfactory employee for seventeen years and then suddenly be unsatisfactory. He acknowledged that he had some disruptive students in his classroom, but suggested that it was typical to have that type of student in the lower-level classes. Grievant stated that he sometimes sent troublesome students to the office but that after they returned from detention or a suspension, there would be no change in their behavior.

Grievant appeared to take no responsibility for maintaining discipline as indicated by his statements that "everyone is responsible for their own behavior . . . you cannot control another person's behavior. . . and you can't blame me, you know, for somebody else's actions. I mean I'm not responsible for your behavior or anybody else's behavior but my own." Grievant offered no additional evidence at level four.

W.Va. Code §18A-2-8 provides that a board of education may suspend or dismiss any employee at any time for eight specified reasons, including unsatisfactory performance. A charge of unsatisfactory performance is contingent upon the results of an employee evaluation in compliance with W.Va. Code §18A-2-12 and State Board of Education Policies 5300 and 5310.

Grievant's complaint that his employment was terminatedafter only one unsatisfactory evaluation and only two weeks' assistance from an improvement team is not an accurate representation of events. The Board followed the procedures set forth in West Virginia State Board of Education Policy 5310 and Code §18A-2-12 by putting Grievant on notice of his deficiencies through evaluation, developing a plan of improvement for him to follow and correct the deficiencies, and provided the services of an improvement team to offer further resource assistance for him.

Notwithstanding overall satisfactory evaluations, Grievant's deficiencies in discipline and classroom control have been included on the documents for several years. (See footnote 2) When Grievant's lack of control escalated to the point that another plan of improvement was developed, he

was originally given approximately six weeks to demonstrate some improvement. The period of improvement was ultimately extended to three months. Although Grievant lacked the assistance of an improvement team until March 30, 1995, that situation was by his own choice, having declined those services previously. It must be concluded that Grievant was given a "reasonable period of time for remediation of the deficiencies" required by W.Va. Code§18A-2-12.

In addition to the foregoing narration it is appropriate to make the following formal findings of fact and conclusions of law.

FINDINGS OF FACT

1. Grievant has been employed by the Harrison County Board of Education as a teacher since 1977. During the 1994-95 school year Grievant was assigned to Bridgeport High School.

2. Grievant's observation forms and annual evaluations have indicated a deficiency in classroom management and discipline since at least 1988. Grievant successfully completed a plan of improvement for this deficiency in 1990.

3. Observation forms dated December 2 and 15, 1994, and January 31, 1995, documented Grievant's deficiency in classroom control and discipline.

4. On February 3, 1995, Grievant was given an evaluation in which he was rated unsatisfactory in five of six areas. On the same date Grievant was provided a plan of improvement to be implemented by no later than February 15.

5. Grievant declined the assistance of an improvement team offered in February 1995.

6. Principal Lindy Bennett developed an Improvement Plan Addendum given to Grievant on March 16, 1995, after the goals set forth in the original plan had not been met. The period of improvement was extended to March 30, 1995.

7. On March 24, 1995, Grievant requested assistance from an improvement team. Said team was in place by March 30 and the period of improvement was extended to April 15. The assistant principal and math coordinator were also assigned as resource consultants for Grievant.

8. The improvement team met with Grievant on April 12, and after reviewing the situation, concluded that no significant progress had been made toward the correction of the

deficiencies.

9. On April 27, Grievant was given one last opportunity to convince Principal Bennett that improvement had been made. Principal Bennett was not persuaded and recommended that Grievant be dismissed.

10. Superintendent Robert Kittle and others met with Grievant on May 11, 1995. Subsequent to that meeting, the Superintendent suspended Grievant immediately.

11. The Board voted to accept Superintendent Kittle's recommendation that Grievant's employment be terminated for unsatisfactory performance, effective June 6, 1995.

CONCLUSIONS OF LAW

1. In cases dealing with disciplinary matters, the burden of proof rests with the employer to prove the charges by a preponderance of the evidence. Baker v. Fayette County Bd. of Educ., Docket No. 94-10-427 (Jan. 24, 1995); Lilly v. Fayette County Bd. of Educ., Docket No. 89-10-436 (Dec. 11, 1992).

2. The Board has established by a preponderance of the evidence that Grievant was fully apprised of his deficiencies through evaluation, provided a plan of assistance, an improvement team, and resource contacts to assist him in the remediation of the cited deficiencies. The Board also established Grievant was given a reasonable period of time to improve but failed to remediate the deficiencies.

3. The Board has fully complied with the provisions of W.Va. Code §§18A-2-8 and 18A-2-12 and State Board of Education Policies 5300 and 5310 in dismissing Grievant for unsatisfactory performance.

Accordingly, the grievance is DENIED.

DATED 8/31/95 SUE KELLER, SENIOR ADMN. LAW JUDGE

Footnote: 1*After being advised of his rights to representation at level four Grievant chose to appear pro se.*

Footnote: 2*The November 18, 1993, and March 8, 1994, observation reports were not signed by Grievant, who claims to have never seen the documents. Mr. Bennett testified that Grievant did review the documents but did not sign them. Whether Grievant did or did not review these two observation reports is not controlling in this matter inasmuch as they did not immediately precede the evaluation and plan of improvement.*