ETHEL MYERS

v. Docket No. 94-52-530

WETZEL COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant Ethel Myers, employed as a custodian by Respondent Wetzel County Board of Education (WCBE), alleges that she received certain evaluation materials and a written improvement plan which were "not conducted in accordance with State Board of Education Policy No. 5300 and 5310, [WCBE] Policy, and were arbitrary and capricious." She seeks the removal of these docu ments from her personnel records. WCBE denies wrongdoing and counters that, based on the facts in this case, its personnel actions were justified. The grievance was heard at level four on February 3, 1995, and became mature for judgment at the end of an agreed-upon briefing and rebuttal period, March 21, 1995.1

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1Adverse decisions were rendered at levels one, two and three on May 26, August 10 and August 24, 1994, respectively. At the level four hearing, Grievant basically supplemented the evidentiary record adduced at level two. Both parties submitted post-hearing written argument.

There is little dispute about the essential facts which gave rise to the grievance.2 Grievant, an employee of WCBE for approximately twenty-four years, bid upon and received the head custodian's position at New Martinsville School (NMS), effective the beginning the 1990-91 school year. Currently, she is one of nine full-time custodians who work several shifts at NMS's two separate buildings to provide custodial services from 6:30 a.m.

until 11:00 p.m.3 Grievant's working hours are from 6:30 a.m. to 2:20 p.m. T2.24-26.

During her nearly four-year tenure at NMS, Grievant was absent from work approximately 289 days. She missed 120 days in 1990-91, 55 days in 1991-92, 73 days in 1992-93, and, by May 1994, 41 days in 1993-94. Grievant attributes most of these absences, which she stresses are excused absences, to work-re lated injuries which occurred in early 1991, mid-June 1993, and possibly, January 1994. See, T2.11-15, for example.

WCBE's Policy GDN, "Evaluation of Service Personnel" requires at least one formal evaluation per year of service employees who have completed their probationary status. The policy states, "All employees have the right to know what is

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2References to the July 15, 1994 level two hearing and February 3, 1995, level four hearing shall be cited T2._, and T4._, respectively. Exhibits are cited with the date of submission, either 7/15/94 or 2/3/95.

3One building on the campus houses kindergarten and first grade, K/1, and the other houses the second through eighth grades, 2/8.

expected of them and how well they are performing." Joint Ex. 1 (2/3/95).

The record is silent about Grievant's first year perfor mance. Perhaps this is due to the fact that she missed 120 days during the 1990-91 school year. In any event, on February 26, 1992, NMS evaluator "L.West" rendered "Observation #1" of Grievant's work for the first portion of the 1991-92 school year on a "Custodian's Observation/Evaluation Form." The three-page

form includes a checklist upon which the evaluator can rate numerous aspects of a custodian's performance either "Exempla ry," "Satisfactory" or "Deficient," an area for the evaluator and evaluatee to sign and date the document, and areas for which both evaluator and custodian can add written comments.4 In all but one of the rated performance criteria, Grievant was rated either exemplary or satisfactory. In a performance area regarding the regulation and control of the heating, ventilation and air conditioning systems, no rating was given. Instead, the notation "[t]raining needs to be provided" ap peared. Under "Comments," Mr. West wrote, "Please keep lines of communication open with all custodians." Grievant signed the form without comment.

4Three performance criteria are listed under "I. Maintains positive work habits," twenty-three are listed under "II. Performs duties efficiently and productively," two under "III. Maintains and/or upgrades skills," three under "IV. Maintains positive attitude," and one accompanies, "V. Performs related duties as assigned by the principal." The assessment areas are found nearly word for word on WCBE's job description for "Custodian" under the heading of "Performance Responsibilities." WCBE Ex. 2 (7/15/94).

Mr. West's second observation/final evaluation of Grievant for the 1991-92 year was rendered on May 27, 1992. The ratings were much the same as the previous observation report, and it was again noted, "[t]raining needed" with respect to the heat ing, cooling and ventilation systems. Mr. West noted, "Need to inform custodians of work that is not being done or not done

correct." Grievant signed this form without comment.

On February 24, 1993, NMS Assistant Principal Brian Jones issued Grievant an observation/final evaluation for the 1992-93 school year. He rated Grievant either exemplary or satisfactory in all categories and made no further notation on the evaluation form.

Mr. Jones rendered Grievant's first observation for the 1993-94 school year on January 3, 1994. With one exception, Grievant's work was rated satisfactory in all areas. Marked deficient was an area pertaining to the regularly-scheduled maintenance of motors and other mechanical equipment. Mr. Jones did not add any written comments, and Grievant signed the form without comment. A second observation report was rendered on April 21, 1994.

On the second observation report, Mr. Jones found Grievant's performance exemplary in one area and satisfactory in nineteen areas. However, without any further written comment, Mr. Jones cited deficiencies in seven areas, including atten dance; initiative; regulation and control of the heating, ventilation and air conditioning systems; regularly-scheduled maintenance on motors and other mechanical equipment; ongoing general maintenance, upkeep and repair; working cooperatively with co-workers, and performing assigned duties. Grievant signed the form but wrote that she did "not agree" with the observation.

On April 27, 1994, Mr. Jones met with Grievant and issued a separately-prepared final evaluation for the 1993-94 school year. The ratings were nearly identical to those of the second observation except that two areas formerly rated deficient were now rated satisfactory, "takes initiative in performing assigned

tasks" as well as "conducts an ongoing program of general maintenance, upkeep and repair." Mr. Jones commented upon Grievant's total absences over a four-year period, and counseled her to "[t]ake advantage of both formal and informal training to become more knowledgeable on the heating and air conditioning," "[o]pen communication avenues with other custodians," and "complete job responsibilities in a timely fashion." Grievant signed the form later that day, see, WCBE Ex. 2 (7/15/94), but commented, "I do not agree."5

Mr. Jones also issued an improvement plan on April 27, 1994. The plan advised Grievant to

Avoid unnecessary chronic absenteeism. Become knowl
edgeable on both K/1 and 2/8 heating and air condi
tioning units through formal and informal training.
Avoid excessive notes to evening custodians. Improve
communication to all custodians through verbal conver
sation.

5All of the evaluation documents were contained in Gr. Ex. 1 (7/15/94).

The plan was to be in effect until the "end of the first semes ter of the 1994-95 school year." Grievant also signed this form on April 27, 1994, and added a written comment, "I don't agree." Gr. Ex. 2 (7/15/94).

As a follow-up to the April 27, 1994, evaluation conference with Grievant, Mr. Jones prepared a written statement explaining the seven deficiencies found in the April 21, 1994 observation and the April 27, 1994, final evaluation. This letter, dated April 29, 1994, was signed by Mr. Jones and initialed by

Grievant. Thereafter, Grievant filed this action.

Discussion

The evaluations of school personnel, a process by which to inform workers of their performance, must be conducted in an "open and honest" manner, and an evaluation will not be removed from an employee's files unless the evidence shows an abuse of discretion on the employer's part to the extent that the primary purpose of the evaluation process has been defeated. See Brown v. Wood County Bd. of Educ., 400 S.E.2d 213 (W.Va. 1990); Wilt v. Flanigan, 294 S.E.2d 189 (W.Va. 1982); Higgins v. Randolph County Bd. of Educ., 286 S.E.2d 682 (W.Va. 1981); Brown v. Wood County Bd. of Educ., Docket No. 54-86-262-1 (May 5, 1987). Grievant bears the burden of proof that her evaluation docu ments, including an improvement plan, were unfair and inaccurate and that good cause exists for their removal from her personnel file. See Rupich v. Ohio County Bd. of Educ., Docket No. 89-35-719 (June 29, 1990); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988).

Grievant claims the evaluations unfairly and inaccurately targeted three specific performance areas, her attendance, her knowledge of the heating/cooling systems, and her communications with other custodial staff. She admits to high absenteeism, but claims she should not be faulted because the lost time was largely due to work-related injuries. Grievant also admits "some deficiencies" with respect to her knowledge of the school's heating and cooling, but believes the deficiencies are not "necessarily" her fault because the training sessions were not helpful. Finally, Grievant identifies her practice of leaving notes for her "fellow custodians" as a possible source of communication problems. Grievant claims her only means of

communicating with some of the custodians is by leaving written notes because their work hours do not coincide with hers.6 As head custodian, Grievant must operate at a higher level than NMS's other custodians. According to W.Va. Code 18A-4-8, a Custodian IV "is employed as head custodian. In addition to providing services as defined in 'Custodian III,' their duties may include supervision of other custodial personnel." A Custodian III may be required to "operate heating or cooling systems and to make minor repairs." It is abundantly clear from the record that Grievant knows very little about NMS's heating and air conditioning systems.

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6In her level four post-hearing brief, Grievant identified only three specific areas of concern and did not contest or discuss the other deficiencies listed on her 1993-94 evaluations. Therefore, any other performance deficiencies listed in the evaluation will not be addressed.

When Grievant was asked by her representative at level two to "describe" that system (for which she is responsible at NMS's K/1 and 2/8 buildings), she replied, "It's just on the wall, flip a switch." Further questioning also revealed her total lack of knowledge about the system. See T2.21-22, 37-39. More over, while Grievant asserted that training sessions on the heating and cooling systems were not helpful for one reason or another, she displayed very little overall initiative in seeking knowledge about them.

In fact, Grievant admitted that she just asked another custodian to look at the heating system when a malfunction occurred. Grievant also conceded that the custodian who assist

ed her had been given no more formal training on the system than her. Grievant explained that the other custodian was "a man and he's more mechanical-wise than I am on things like that." T2.50-52. Seemingly, Grievant feels a woman is unable to learn about the mechanics of the heating and cooling systems.7 Grievant also seems to lack firm understanding and clear convictions with respect to her role as the supervisor of NMS's eight other custodians with whom she must communicate. When

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7For example, Grievant stated that, although she had attended an in-service meeting about a computerized heating and cooling system, she had learned very little from the demonstration. She offered various excuses, such as the fact that the training involved a group session and people were crowded about the computer. Given Grievant's overall lack of assertiveness and perhaps her belief that she could not learn about mechanical things, it is understandable that she had not exerted any real effort to get close enough to the computer to see what was happening.
asked during cross examination whether her duties included supervision of the custodians, she responded, "I guess." When asked whether it was her responsibility to "see that the work is done" at NMS, her initial response was merely, "I try." T2.32. When Grievant was asked whether other custodians had complained to NMS's administrators about a "lack of appropriate communica tions" between them, Grievant replied that she was sure they had. The only explanation she was able to give about the situa tion was that she had "a feeling" about it. T2.32. This lack of clarity on Grievant's part must impact upon her ability to

communicate with her subordinates, whether orally or through written messages.

The record reflects that, over time, Grievant has failed to fully assume a positive leadership role and all of the associat ed responsibilities of head custodian. While Grievant's high rate of absenteeism has possibly contributed to her difficulty in establishing some more positive feelings about her own authority and her leadership role among the custodial staff, it does not totally account for an obvious failure after nearly four years to effectively function as a head custodian, as demonstrated by her demeanor and responses to pertinent ques tions. In any event, there has been no showing on Grievant's part that her 1993-94 evaluation materials, including the two observations, final evaluation and improvement plan were unfair or inaccurate. Grievant has simply failed to demonstrate any factual or legal basis for the removal of the evaluation materi als from her personnel files.

Based on the record as a whole, due consideration of the parties' arguments and the applicable law, the following find ings of fact and conclusions of law are properly made.

Findings of Fact

1. Grievant is a Custodian IV at a school, specifically, a working head custodian with supervisory responsibilities for several other custodians.

2. During Grievant's approximately four years' tenure at her assigned school, she had taken an inordinate number of sick leave days, 289 in all. During the 1993-94 school year, she had missed forty-one days by Spring 1994, many of them consecutive days following a work-related injury which occurred in January 1994.

3. Grievant never claimed that her several work-related injuries resulted in any physical impairment or handicap for which she should receive adjusted duties or other accommodation.

4. Grievant was the first custodian to enter the school buildings in the morning and, among other things, was responsi ble for ensuring that the heating and/or cooling system was working properly.

5. Grievant generally deferred any heating and cooling problems to another custodian, and, overall, displayed little initiative to learn about those systems.

6. Grievant felt that her practice of writing notes to her subordinates had been the source of complaints about her ability to communicate with staff.

7. At level four, Grievant appeared to be a very pleasant and likable person. However, as measured by her responses (at level two as well as level four) and overall demeanor, she clearly lacked a proper degree of assertiveness, confidence, initiative and understanding of her leadership role and respon sibilities as head custodian.

8. Grievant's absences and overall demeanor likely impacted upon her leadership role as the manager of custodial operations at the school and her ability to communicate, as supervisor, with the other custodians.

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. Flanigan, 294 S.E.2d 189 (W.Va. 1982).

2. The record in this case does not support that Grievant's 1993-94 evaluation was dishonest or inaccurate in

depicting Grievant's frequent absences, albeit excused absences for personal and/or work-related illnesses, lack of knowledge of the heating/cooling systems or communication problems with her supervisees.

3. The Grievance Board will not normally intrude into the evaluation process unless the evidence shows an abuse of discre tion which defeats the primary purpose of the evaluation process to commend, remediate or enhance a worker's performance. Higgins v. Randolph County Bd. of Educ., 286 S.E.2d 682 (W.Va. 1981); Brown v. Wood County Bd. of Educ., Docket No. 54-86-262-1 (May 5, 1987).

4. Grievant has failed to demonstrate a factual or legal basis in support of her request that the evaluation materials in question be removed from her personnel files.

Accordingly, this grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Wetzel 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: May 19, 1995