CHARLES W. JARVIS,

Grievant,

v. DOCKET NO. 95-MCVTC-110

CALHOUN-GILMER CAREER CENTER ADMINISTRATIVE COUNCIL,

Respondent.

D E C I S I O N

Grievant, Charles W. Jarvis, was dismissed from employment effective the end of the 1994-95 school year from the Calhoun-Gilmer Career Center Administrative Council, for unsatisfactory performance under W. Va. Code § 18A-2-8. Grievant was notified of the Director's recommendation for dismissal on February 24, 1995, followed by a special meeting of the Administrative Council on March 7, 1995, at which Grievant appeared in person and by representative. The Council voted to uphold the Director's recommendation for dismissal and Grievant was notified of his dismissal on March 8, 1995. Grievant appealed his dismissal to Level IV on March 13, 1995. The parties agreed a Level IV decision may be made on the record developed below, which includes the transcript and exhibits of the March 7, 1995, Administrative Council meeting. The parties submitted proposed findings of factand conclusions of law on or about May 2, 1995, at which time this case became mature for decision.

Based upon a thorough review of the transcript, exhibits, and pleadings submitted by the parties, the undersigned adopts, in somewhat modified form, the Career Center's proposed findings of fact as follows:

Findings of Fact

1. Grievant was employed for six years by the Career Center under a continuing contract of employment as an instructor of building construction.

2. The Career Center is one of seven multi-county vocational-technical centers established under W. Va. Code § 18-2B-2. The participating county boards of education are Calhoun and Gilmer.

3. The Career Center is regulated by West Virginia Board of Education Policy 2500, "Establishment Procedures and Operating Policies for Multi-County Vocational-Technical Centers." (Superintendent's Exh. 2). Personnel actions involving the Career Center's employees must comply with Chapter 18A of the West Virginia Code (the same statutes which apply to county boards of education personnel).

4. Elizabeth Parmer has been the Career Center's Director since 1991. The Director's duties are like those of both a county superintendent of schools and a high school principal. She also serves as secretary to the Administrative Council.

5. The Director is responsible for evaluating the Career Center's professional personnel. By way of relevant training, she completed the Center for Professional Development's professional development academy for administrators, the Center's workshop for the evaluation of professional personnel under W. Va. Code § 18A-2-12, and a two-day follow-up seminar about evaluating instructional personnel conducted by Dr. John Andes. (Superintendent's Exh. 1).

6. As part of her duties since 1991, the Director annually evaluated Grievant, who has been employed by the Career Center since 1989. The evaluations, and Grievant's unsatisfactory performance, led the Director to notify Grievant on February 24, 1995, that she would ask the Administrative Council to terminate his employment. The termination letter identified the basis for the recommendation as Grievant's "unsatisfactory performance as indicated by the documents attached to this letter." (Superintendent's Exh. 5 at 8).

7. Attached to the termination letter were Grievant's performance evaluations for the 1993-94 school year (which included an improvement plan based upon that evaluation), as well as Grievant's performance evaluation for the 1994-95 school year. (Superintendent's Exh. 6, 7). The Director, who wrote the evaluations, testified without contradiction they were fair, accurate, open, honest, and were conducted in accordance with state law and policy. The Director also participated in developing the improvement plan. She shared the evaluations and the improvement plan with Grievant as and when they were developed.

8. Grievant was rated "unsatisfactory" in three of the six evaluation categories in the 1993-94

performance evaluation. The evaluation contained a narrative explanation for each of the indicators of every evaluation category. Grievant did not dispute any of them. The Director met with Grievant to discuss the 1993-94 performance evaluation on March 1, 1994, March 3, 1994, March 17, 1994, and March 21, 1994. Grievant did not attach an addendum to the evaluation.

9. The 1993-94 performance evaluation was based upon the Director's personal written observations of Grievant's performance on September 13, 1993, October 6, 1993, November 2, 1993, and January 28, 1994 (Superintendent's Exh. 13, 15-17), all of which were shared with Grievant when made. The evaluation was also based upon the Director's September 21, 1993, memorandum to Grievant concerning his failure to implement a prior improvement plan (Superintendent's Exh. 14). Together, the observation reports, memorandum, and related documents show the Director not only observed Grievant, but actively worked to improve his performance. Superintendent's Exh. 17.

10. An improvement plan was developed by the Director and Grievant as a result of Grievant's 1993-94 performance evaluation. Superintendent's Exh. 6.

11. The plan listed improvement actions to occur in the balance of the 1993-94 school year (April 11-June 8, 1994), as well as the first semester of the ensuing year (September 1, 1994-January 24, 1995). It also listed, for each improvement area,improvement activities and resources available. Grievant signed the improvement plan and has not contested any aspect of the plan.

12. An improvement team was also appointed in conjunction with the plan to provide additional input and resources to Grievant. The team was immediately informed of their appointment and were available to Grievant for the balance of the 1993-94 school year.

13. Before the 1994-95 school year began, the Director met with Grievant to discuss the improvement plan. At that time, the Director verified that Grievant had already sought assistance from one improvement team member, but not the others. Grievant signed a document acknowledging the improvement plan would continue to be in effect throughout the first semester of the 1994-95 school year. (Superintendent's Exh. 18).

14. Early in the new school year, concerned that Grievant was not making the most effective use of the improvement team, the Director, acting on the recommendation of Tony Smedley, who conducted the evaluation workshop at the Center for Professional Development, recommended the improvement team hold formal scheduled meetings.

15. The improvement team met with Grievant on October 5, 1994, October 25, 1994, November 29, 1994, December 20, 1994, and January 25, 1995. (Superintendent's Exh. 21, 22, 24, 25, 27). Minutes or written summaries were kept of each meeting. Grievant's performance and suggestions for improvement were discussed at these meetings. A representative of Grievant's employee associationattended and participated in the meetings of November 29, December 20, and January 25. The consensus at these meetings was Grievant was not making satisfactory improvement. In fact, the employee's representative told Grievant at the December 20 meeting, "it was time to put up or shut up." (Superintendent's Exh. 25).

16. The last meeting of the team was January 31, 1995, after the first semester ended and the improvement period expired. The members of the team provided the Director with written summaries of the team's process and observations about the outcome. (Superintendent's Exh. 31, 31.) In writing the reports, the team members were not aware of Grievant's history of poor performance (Tr. 78).

17. Grievant received his 1994-95 performance evaluation on February 17, 1995. (Superintendent's Exh. 7).

18. Grievant was rated "unsatisfactory" in all six categories, which included a narrative explanation for each of the indicators of every evaluation category.

19. The 1994-95 performance evaluation was based upon the Director's personal written observations of Grievant on September 16, 1994, November 2, 1994, January 17, 1995, and February 13, 1995 (Superintendent's Exh. 19, 23, 26, 34), each of which was shared with Grievant when made.

20. The 1994-95 evaluation ended with this note to Grievant:

> I will recommend to the administrative council that your contract be terminated at the end of the 1994-95 school year. I will make this recommendation for the following reasons:
>
> 1. Unsatisfactory instructional performance for a period of six (6) years.
>
> 2. You have had six (6) improvement plans and one (1) improvement

team. The instructional performance is still unsatisfactory.

To substantiate that Grievant's instructional performance was unsatisfactory for six years, resulting in six improvement plans, evaluations and improvement plans dated May 30, 1990, May 24, 1991, December 5, 1991, March 31, 1992, and a 1992-93 performance evaluation and improvement plan, were presented by the Director, without objection, at the Administrative Council hearing. (Superintendent's Exh. 35-39).

21. Grievant was notified and appeared in person and by representative at the Administrative Council hearing on March 7, 1995.

22. Following the hearing, the Administrative Council voted to terminate Grievant's employment from the Career Center for unsatisfactory performance.

Discussion

Grievant did not challenge or rebut the substance of any of his evaluations or observations. Grievant asserts: 1) The improvement plan developed following his 1993-94 performance evaluation exceeded one semester in length in violation of West Virginia Board of Education Policy 5310 ("Policy 5310"); 2) the Director, in preparing Grievant's 1994-95 performance evaluation, was "influenced" by statements made by Grievant's wife in the community directed toward her; 3) the improvement team members didnot recommend dismissal; and, 4) Grievant's students scored more above the state average than any other program in the school.

Policy 5310 clearly states in Section 11.2 that the "improvement plan shall: . . . c) contain the time frame for monitoring and deadlines for satisfactory improvement, but in no case shall an improvement plan be for more than one semester in length, ..." (Grievant's Exh. 1).

The improvement plan developed by the Director and Grievant following his 1993-94 performance evaluation was designed to encompass the last semester of the 1993-94 school year and the first semester of the 1994-95 school year, clearly in excess of one semester. However, not only did Grievant not object to this timeframe when the plan was developed, he agreed in writing to its extension through the first semester of the 1994-95 school year on August 26, 1994. (Superintendent's Exh. 18). Thus, the Career Center did not violate Policy 5310 by extending the

improvement plan over a second semester with Grievant's written approval.

The Director made notes on Grievant's 1994-95 performance evaluation in the category "Communication", specifically "confidentiality", that the only breach of confidentiality she was aware of was things Grievant said to his wife about the evaluation process which apparently were communicated by Grievant's wife in the community. Despite Grievant's characterization in his pleadings, the Director never stated in her testimony she was "influenced" by statements made by Grievant's wife in preparing his 1994-95 performance evaluation. The Director also pointed tovarious other concerns about Grievant's communications to support the "unsatisfactory" rating in that category. Grievant has failed to prove the Director was unduly influenced by factors other than his performance in preparing his 1994-95 performance evaluation, upon which her recommendation for dismissal is based.

It is true the improvement team members did not recommend dismissal of Grievant in their written summaries. However, they all agreed that Grievant needed to improve his instructional performance. As noted above, the improvement team members were not aware Grievant had six years of prior poor performance before the 1993-94 improvement plan. Thus, the fact the team members did not specifically recommend Grievant's dismissal does not support any finding the Director acted arbitrarily or capriciously in making such a recommendation.

Finally, Grievant presented evidence to show his students scored more above the state average than any of the other programs in the Career Center. (Grievant's Exh. 2). While this evidence shows Grievant's students were learning the material, it does not necessarily reflect his overall abilities as an instructor.

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. Lilly v. Fayette County Bd. of Educ., Docket No. 89-10-436 (Dec. 11, 1992).

2. Multi-county vocational-technical centers must abide by the requirements of W. Va. Code §§ 18A-2-8 and 18A-2-12 indismissing a professional employee for unsatisfactory performance. West Virginia State Board of Education Policy 2500.2d(2).

3. The Career Center complied with the requirements of W. Va. Code §§ 18A-2-8 and 18A-2-

12, and Grievant has failed to demonstrate any violation of these Code sections in his dismissal.

Accordingly, this grievance is **DENIED**.

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

_____

MARY JO SWARTZ

Administrative Law Judge

Dated: May 22, 1995