THOMAS SNODGRASS,

Grievant,

v. **DOCKET NO. 97-52-384**

WETZEL COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Grievant, Thomas Snodgrass, submitted this grievance directly to level four, in accordance with W. Va. Code § 18A-2-8, challenging his indefinite suspension without pay by the Wetzel County Board of Education ("Board"). After a continuance for good cause shown, a level four hearing was held in this Grievance Board's office in Wheeling, West Virginia, on November 10, 1997. This matter became mature for decision on December 1, 1997, upon receipt of the parties' post-hearing submissions. (See footnote 1)

Discussion

In disciplinary matters, the employer bears the burden of establishing the charges by a preponderance of the evidence. W. Va. Code § 18-29-6; Nicholson v. Logan County Bd. of Educ., Docket No. 95-23-129 (Oct. 18, 1995); Landy v. Raleigh County Bd. of Educ., Docket No. 89-41- 232 (Dec. 14, 1989). Moreover, the authority of a county board of education to discipline an employee must be based upon one or more of the causes listed in W. Va. Code §18A-2-8, as amended, and must be exercised reasonably, not arbitrarily and capriciously. Bell v. Kanawha County Bd. of Educ., Docket No. 91-20-005 (Apr. 16, 1991). See Beverlin v. Bd. of Educ., 158W.Va. 1067, 216 S.E.2d 554 (1975).

Grievant is employed by the Board as a classroom teacher at Valley High School in Pine Grove, West Virginia. On August 19, 1997, the Board, pursuant to charges presented by Superintendent Martha Dean, suspended Grievant indefinitely without pay until certain legal proceedings against him

were resolved. The charges were presented, in part, as follows:

CHARGE NUMBER 1: IMMORALITY

Mr. Snodgrass had two criminal complaints regarding felonies sworn against him by the Marion County Sheriff's department, concerning events which occurred on June 27, 1997. The first complaint stated that the defendant did maliciously cause bodily harm to Kevin Moore, a deputy sheriff in Marion County, by kicking him in the face and shoulder. . . . The second complaint stated that the defendant did abuse a child, one Lee Snodgrass age 6 years and by the abuse did create a substantial risk of serious bodily injury or death to the said child by breaking car window glass on him. . . .

The Superintendent charges that such action constitutes immorality according to the meaning of the law. The actions of Mr. Snodgrass are considered immoral by community standards and have resulted in bringing notoriety to the school system.

CHARGE NUMBER 2: CRUELTY

Mr. Snodgrass, in the above incident is accused of creating a substantial risk of serious bodily injury or death to a child by his actions. Such behavior is deemed to be cruel behavior to a child of tender years.

Grievant was suspended, following a hearing held on August 19, 1997, based both upon the alleged conduct itself and the alleged notoriety caused by it, pursuant to a newspaper article regarding the incident. Superintendent Dean testified at level four that the charges were solely based upon her assumption that the statements in the criminal complaints were true and that Grievant committed the acts alleged. A transcript of the Board hearing held on August 19, 1997, was not offered as evidence in this grievance, so only the evidence introduced at level four may be used asthe basis for this Decision.

Grievant did not testify at level four, due to the fact that the criminal complaints against him are still pending, which is understandable. (See footnote 2) In fact, although the Marion County Grand Jury met in October, the complaints against Grievant were not presented by the prosecutor, and it is unknown whether they will ever result in formal charges.

The Board presented testimony from Grievant's former wife, Kim Haught, and her present husband, William Haught, regarding the incident which resulted in his suspension. Grievant's mother,

who was present during part of the incident, testified on his behalf as to the events which occurred that day, June 27, 1997. At that time, Grievant's son, Lee, was visiting with him pursuant to Grievant's court-ordered visitation rights. Mrs. Haught, her husband, and their daughter arrived at Grievant's residence to pick up Lee. Although it is disputed by the parties as to exactly when this particular visit was supposed to end, they do agree that Mrs. Haught arrived earlier than expected, which caused Grievant to become angry. Ultimately, an altercation occurred, which culminated with a rock being thrown through the front passenger side window of Mrs. Haught's car, where Mr. Haught was seated. According to Mr. and Mrs. Haught, Grievant threw the rock after Mr. Haught refused to get out of the car to talk with him.

When law enforcement officials arrived at the scene, a scuffle ensued when officers attempted to arrest Grievant, which was the basis for the charge of assault against a police officer. (See footnote 3) No one was seriously injured in the incident, although both Mr. and Mrs. Haught suffered some cuts from the broken glass. The children were seated in the back seat, and Mrs. Haught testified that Lee suffered a cut on his finger which required a band-aid later that evening. However, she did not provide any explanation as to how she concluded that the cut was actually caused by the incident in the car. (See footnote 4) Although Lee was seated on the opposite side of the back seat of the vehicle, and it was questionable whether he was actually injured, the officer still elected to charge Grievant with felony child abuse against Lee.

This Grievance Board has previously held that a board of education may conditionally suspend an employee based upon an indictment, provided there is a rational nexus between the indictment and the employee's ability to perform his assigned duties. Hoover v. Lewis County Bd. of Educ., Docket No. 93-21-427 (Feb. 24, 1994); Lemery v. Monongalia County Bd. of Educ., Docket No. 91-30-477 (Apr. 30, 1992); Kitzmiller v. Harrison County Bd. of Educ., Docket No. 17- 88-189 (Mar. 31, 1989). See Brown v. Dept. of Justice, 715 F.2d 662 (D.C. Cir. 1983). When an employee has been indicted, the suspension is based upon the indictment itself, not the conduct alleged therein, because the formal charge itself establishes reasonable cause to believe the employee engaged in the conduct. Kitzmiller, supra. However, in the instant case, no indictment has been issued, so Respondent must prove by a preponderance of the evidence that the conduct actually occurred and also that it constituted immorality and cruelty within the meaning of the statute. In addition, because the conduct with which Grievant is charged occurred at a time and place separate from his employment, the

Board must establish a “rational nexus” between the alleged off-dutymisconduct and the duties the employee performs. Rogliano v. Fayette County Bd. of Educ., 176 W.Va. 700, 347 S.E.2d 220 (1986); Golden v. Bd. of Educ., 169 W.Va. 63, 285 S.E.2d 665 (1981). The test for proving a rational nexus will be discussed later.

W. Va. Code §18A-2-8 provides that an employee may be dismissed or suspended at any time for, among other things, immorality or cruelty. Unfortunately, these terms are not defined by the statute and are, accordingly, ripe for subjective interpretation. However, the West Virginia Supreme Court has determined that the term “immorality” as used in the statute connotes conduct

> not in conformity with accepted principles of right and wrong behavior; contrary to the moral code of the community; wicked; especially, not in conformity with the acceptable standards of proper sexual behavior.

Golden, supra, at 668. Historically, grievances involving charges of immorality have generally involved either sexual misconduct or drug-related charges. See Austin v. Kanawha County Bd. of Educ., Docket No. 97-20-089 (May 22, 1997); Hurley v. Logan County Bd. of Educ., Docket No. 97-23-024 (April 14, 1997); Petry v. Kanawha County Bd. of Educ., Docket No. 96-20-380 (March 18, 1997); Camiolo v. McDowell County Bd. of Educ., Docket No. 92-33-245 (Jan. 26, 1993).

The only witnesses to the incident in which the car window was broken were Mr. and Mrs. Haught. (See footnote 5) Nevertheless, the undersigned does not have any reason to doubt that Grievant did, in fact, break the window in a fit of anger. In fact, Grievant's therapist testified at level four to Grievant's “impulse control” issues, which she believes to be isolated to his relationship with his former spouse and the incident which gave rise to this grievance. However, although Grievant did commit the act alleged, the undersigned cannot find, in good conscience, that this conduct rose to the level of immorality. While everyone, including Grievant, would likely agree that his conduct was improperand perhaps reckless, it would not be appropriately described as “contrary to the moral code of the community” or “wicked.”

As to the charge of cruelty, the few Grievance Board cases which have dealt with this concept have involved a teacher's alleged mistreatment of students under his or her supervision. See Austin, supra; Sinsel v. Harrison County Bd. of Educ., Docket No. 96-17-219 (Dec. 31, 1996); Eggleston v. Greenbrier County Bd. of Educ., Docket No. 94-13-395 (Dec. 29, 1994); Pinson v. Cabell County Bd. of Educ., Docket No. 06-87-100-1 (July 21, 1987). In these cases, in order for a teacher to be guilty

of cruelty, there must be a specific intent to inflict pain and suffering (usually directly upon a student), and such cases have involved patterns of physical and/or emotional abuse. See Sinsel, supra. It would be absurd to describe Grievant's loss of temper in these terms. If his outburst had occurred in the classroom, this would be quite a different situation. (See footnote 6)

In addition to failing to prove that Grievant's conduct constituted immorality or cruelty within the meaning of W. Va. Code §18A-2-8, Respondent has not established the required nexus to Grievant's job duties. As discussed by the Supreme Court in the Golden decision, a nexus between the conduct and a teacher's job duties is necessary, due to the lack of precise definition of terms like “immorality,” which could be subject to quite varied and subjective interpretations by boards of education. A rational nexus for suspension of a teacher exists:

> (1) if the conduct directly affects the performance of the occupational responsibilities of the teacher; or (2) if, without contribution on the part of school officials, the conduct has become the subject of such notoriety as to significantly and reasonably impair the capability of the particular teacher to discharge the responsibilities of theteaching position. (Citations omitted.)

Rogliano, supra, at 224.

Respondent argues that the incident of June 27, 1997, impacts directly upon Grievant's job duties, both because of his responsibility to be a “role model” for his students, and because his conduct allegedly calls into question his ability to control his temper in the classroom, thus putting the children's safety at risk. The undersigned does not agree with Respondent's allegations. The police records regarding the incident reflect that Grievant's anger was directed at his ex-wife, not at any children. Moreover, Grievant has an unblemished record of 12 years as a stable, responsible teacher with a good rapport with the students. It is hardly reasonable to conclude that one loss of temper, which, according to Mrs. Haught's own statements to police (Resp. Ex. 3), was the result of his belief that she was going to try to keep Grievant's son away from him, (See footnote 7) implicates a teacher's status as a role model or his ability to protect the safety of children.

The other Grievance Board decisions relied upon by Respondent in support of its arguments were quite radically different from the instant case. The conduct compromising a teacher's status as role model involved the filming of sexually explicit materials with a minor, Hurley, supra, and the conduct which gave rise to a belief that the teacher might harm children involved an employee who allowed a student to have sex with her boyfriend in the employee's house. Hansen v. Mineral County Bd. of

Educ., Docket No,. 92-28-192 (Dec. 29, 1992). Grievant's actions cannot justifiably be compared to such egregious acts. Respondent has not proven that Grievant's conduct had any direct effect upon his ability to teach. Respondent has attempted to prove the “notoriety” portion of the rational nexus test through a newspaper article which appeared in the Times West Virginian, a Fairmont newspaper, on June 28, 1997. The article was mailed anonymously to the Superintendent and Board members shortly after the incident occurred. No comments were made by the sender other than the notation at the top of the article, in handwriting, “Valley High School teacher[;] Baseball Coach,” which is presumed to be an attempt to explain Grievant's identity. The article itself mentioned Grievant's name, but it made no mention of his occupation or where he was employed. The article, entitled “Sheriff: Deputy hurt in domestic dispute,” outlines two incidents which occurred the previous day, both involving domestic disputes, one of which was the incident involving Grievant.

The above-described newspaper article does not, in and of itself, establish “notoriety” which would “significantly and reasonably impair” Grievant's ability to teach. It is assumed that one and the same person sent the article to the Superintendent and Board members, which person's identity is unknown, let alone whether such individual may have any relationship to the school system. As to the reaction of other individuals to the article, Superintendent Dean testified that she received two anonymous calls from “parents” who were concerned over the incident. However, since these individuals did not identify themselves, it is unknown whether they were actually parents, or for that matter, even citizens of Wetzel County.

The only other evidence of “notoriety” caused by the article was offered through the testimony of Russell McKean, Principal of Valley High School. Approximately one week after the incident, at a community Fourth of July celebration, Mr. McKean stated that two people inquired of him “what was going on” with regard to Grievant's situation. He could not remember who the two individuals were. Mr. McKean also testified that the area served by Valley High School is quitesmall, and that “word of mouth spreads quickly.” However, in spite of these claims, neither Mr. McKean nor Superintendent Dean could name any other individuals who seemed troubled by or even mentioned the article, with the exception of two other faculty members.

Much of Respondent's argument seems based upon its claim that the Board “expected” an outcry from parents if they allowed Grievant to return to the classroom at the beginning of the 1997- 1998 school year. However, the incident occurred quite early in the summer vacation, and the Board has

offered absolutely no evidence that there was any continued discussion regarding it during the remainder of the summer. This situation is quite different from others in which a board has received complaints from approximately half of a teacher's students, as in Lemery, supra, or where several parents have threatened to remove their children from the teacher's class, as in Rogliano, supra. Because of the Board's premature actions in this case, there is no evidence that the expected "outcry" would have occurred.

Grievant offered evidence regarding the circulation of the Times West Virginian in the communities served by Valley High School. Although the exact number of newspapers sold and distributed for the exact date was not provided, the paper's circulation manager testified that the average number of papers distributed in the communities in question was approximately 14 newspapers. This is hardly a sufficient number to establish that the incident had become notorious in the Valley High School area. In fact, the anonymous mailing of the article suggests that it may not otherwise have even been noticed by school officials.

In summary, Respondent has failed to prove that its suspension of Grievant for immorality and cruelty under W. Va. Code §18A-2-8 was proper. Grievant's conduct did not constitute immorality or cruelty, nor was it of sufficient notoriety to significantly and reasonably impair hiscapability to teach. The incident of June 27, 1997, further had no direct effect upon his ability to discharge his duties. When employment is discontinued for disciplinary reasons, the board of education must not only prove that the employee engaged in the conduct complained of, but also that the punishment imposed was commensurate with the offense. Perkins v. Greenbrier County Bd. of Educ., Docket No. 94-13-019 (Aug. 12, 1994). In this case, an indefinite suspension without pay was far too severe a reaction to the charges involved.

In addition to and in accordance with the foregoing discussion, the following findings of fact and conclusions of law are properly made.

Findings of Fact

1. Grievant has been employed by the Board as a Science teacher at Valley High School in Pine Grove, West Virginia, since 1985.

2. On June 27, 1997, Grievant was involved in a dispute with his former wife and her present husband regarding Grievant's visitation with his six-year-old son. The incident culminated with

Grievant breaking a window of his ex-wife's car. The only injuries suffered were cuts on the two adults in the car, and one minor cut on Grievant's son's finger.

3. When officers attempted to arrest Grievant at the scene of the incident, a struggle ensued.

4. As a result of the June 27 incident, two criminal complaints were filed against Grievant, one charging him with assault on a police officer and the other charging felony child abuse.

5. Based upon the two criminal complaints, Superintendent Martha Dean recommended to the Board that Grievant be suspended indefinitely without pay until the criminal charges against him were resolved. On August 19, 1997, after a hearing at which Grievant was present, the Boardaccepted the Superintendent's recommendation, suspending Grievant for “immorality” and “cruelty.”

6. Grievant's anger on June 27, 1997, was directed toward his ex-wife and her husband, due to his belief that she was going to prevent him from seeing his son in the future.

7. Grievant has had satisfactory performance evaluations during his entire tenure of employment, and he has a good rapport with his students.

8. On June 28, 1997, an article appeared in the Times West Virginian entitled “Sheriff: Deputy hurt in domestic dispute,” which discussed the incident involving Grievant and his former wife. The article stated Grievant's name, but made no reference to his occupation or place of employment.

9. The newspaper article described above was sent anonymously to Superintendent Dean and some Board members.

10. Superintendent Dean received two anonymous telephone calls from individuals, identifying themselves as “parents,” complaining about the incident and newspaper article.

11. The June 27 incident was mentioned to Principal Russell McKean one week later by two unidentified individuals and by two faculty members.

Conclusions of Law

1. In disciplinary matters, the employer must prove the charges against an employee by a preponderance of the evidence. W. Va. Code § 18-29-6; Nicholson v. Logan County Bd. of Educ., Docket No. 95-23-129 (Oct. 18, 1995); Landy v. Raleigh County Bd. of Educ., Docket No. 89-41- 232 (Dec. 14, 1989).

2. The authority of a county board of education to discipline an employee must be based upon one or more of the causes listed in W. Va. Code §18A-2-8, as amended, and must be

exercisedreasonably, not arbitrarily and capriciously. Bell v. Kanawha County Bd. of Educ., Docket No. 91- 20-005 (Apr. 16, 1991). See Beverlin v. Bd. of Educ., 158 W.Va. 1067, 216 S.E.2d 554 (1975).

3. "Immorality" and "cruelty" are two of the causes listed in W. Va. Code §18A-2-8 for which an employee can be suspended or dismissed at any time.

4. "Immorality" is conduct "not in conformity with accepted principles of right and wrong behavior; contrary to the moral code of the community; wicked; especially, not in conformity with the acceptable standards of proper sexual behavior." Golden v. Bd. of Educ., 169 W.Va. 63, 285 S.E.2d 665 (1981).

5. "Cruelty" is defined as "deliberately seeking to inflict pain and suffering; enjoying other's suffering; without mercy or pity." Webster's New World Dictionary, Second College Ed. (1984); Adkins v. Cabell County Bd. of Educ., Docket No. 89-06-656 (May 23, 1990).

6. Respondent did not prove by a preponderance of the evidence that Grievant engaged in "immoral" conduct as contemplated by W. Va. Code §18A-2-8.

7. Respondent has not proven by a preponderance of the evidence that Grievant's conduct was "cruel" as contemplated by W. Va. Code §18A-2-8.

8. In order to suspend a teacher for conduct which occurred at a time and place separate from his employment, a board of education must prove a "rational nexus" exists between the conduct and the employee's job duties. A nexus exists (1) if the conduct directly affects the performance of the occupational responsibilities of the teacher; or (2) if, without contribution on the part of school officials, the conduct has become the subject of such notoriety as to significantly and reasonably impair the capability of the particular teacher to discharge the responsibilities of the teaching position. Rogliano v. Fayette County Bd. of Educ., 176 W. Va. 700, 347 S.E.2d 220 (1986); Goldenv. Bd. of Educ., 169 W.Va. 63, 285 S.E.2d 665 (1981).

9. The Board did not prove by a preponderance of the evidence that Grievant's conduct on June 27, 1997, had any direct effect upon his performance as a teacher.

10. Respondent did not prove by a preponderance of the evidence that Grievant's conduct had become of such notoriety as to significantly and reasonably impair his capability to teach.

Accordingly, this grievance is **GRANTED**, and Respondent is **ORDERED** to immediately reinstate Grievant to his position as a teacher at Valley High School with all back pay, seniority and benefits,

effective at the beginning of the 1997-1998 school year.

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

DATE: December 15, 1997 _____ **V. DENISE MANNING**

Administrative Law Judge

Footnote: 1

Pursuant to Grievance Board policy, this grievance was placed in a priority position on the decision docket, because it involves a disciplinary suspension.

Footnote: 2

W. Va. Code §18-29-6 provides that, in disciplinary matters, an employee cannot be compelled to testify against himself.

Footnote: 3

Little mention was made regarding the "assault" on the police officer during the level four testimony, so, although the charge was made, Respondent did not prove that this portion of the events actually happened.

Footnote: 4

Grievant and his son were working outdoors at Grievant's farm when Mrs. Haught arrived to pick up the child. It is not hard to imagine that a child could receive a minor cut on his finger while playing outdoors in a farm setting.

Footnote: 5

Grievant's mother was no longer present when this occurred, and the children did not testify.

Footnote: 6

This Decision should, by no means, be construed to "downplay" or condone Grievant's actions. While not immoral or cruel, Grievant's loss of control was certainly inappropriate, or even "wrong," and he would be wise to not repeat such conduct under any circumstances in the future, whether personal or professional.

Footnote: 7

It is interesting to note that Mrs. Haught failed to explain why Grievant held such a belief or any possible role she may have had in creating it.