JOYCE WEBB,

Grievant

v. **Docket No. 97-BOD-091**

BOARD OF DIRECTORS/SHEPHERD COLLEGE,

Respondent

D E C I S I O N

Grievant, Joyce Webb, employed by the Board of Directors as an Associate Professor of Communications at Shepherd College (Respondent), filed a level one grievance on November 19, 1996, in which she alleged that she had been arbitrarily removed as Chair of the Department of Communications. Following denials at levels one and two, Grievant elected to waive consideration at level three as is permitted by W. Va. Code §18-29-4(c), and advanced her appeal to level four on February 24, 1997. At Respondent's request, an evidentiary hearing was conducted on May 2, 1997, to supplement the lower level record. The matter became mature for decision with the submission of post-hearing proposed findings of fact and conclusions of law, and a response by Respondent on July 28, 1997.

The underlying facts of this matter are not in dispute and may be set forth as the following formal findings of fact.

Findings of Fact

1. Grievant, Joyce Webb, has been employed by the Board of Directors at Shepherd College for approximately seventeen years, and presently holds the position of Associate Professor of Communication.

2. In February 1994, Grievant assumed the position of Chair of the Department of Communications. The department consists of four faculty members, including Grievant.

3. Department Chairs at Shepherd College are appointed by the President, based upon a recommendation of the department members, for an academic year, subject to renewal the

succeeding two years.

4. Grievant received no additional salary for her duties as Department Chair, but was to be compensated with release time from teaching; however, the release time was not consistently provided.

5. By letter dated July 5, 1994, Grievant's appointment as Department Chair was renewed for the 1994-95 academic year. (See footnote 1) The appointment was again confirmed for the 1995-96 academic year.

6. In Spring 1996, the Communication Department members again nominated, and the President approved, Grievant as Chair.

7. In May 1996, Vice President of Academic Affairs Mark Stern issued an evaluation of Grievant in her position as Chair, and noted several deficiencies in her performance.

8. In September 1996, a new academic organization was implemented at Shepherd College. This plan replaced Deans with Division Chairs, who were assigned numerous responsibilities, including the supervision of department and program heads. The Department of Communications was placed in the Division of Arts & Humanities which was Chaired by Dr. Farrell Coy.

9. In November 1996, Grievant was notified by Dr. Coy that she was to be relieved of her duties as Department Chair. Respondent argues that Departmental Chair is a will and pleasure appointment and that an individual may be removed from that position for any reason not unlawful or violative of public policy. Nevertheless, Respondent claims a substantial legal basis for its action, and cites a loss of confidence by the Vice President of Academic Affairs, the Division Chair, and department members, administrative “weakness” in the conduct of the department, her mistreatment of department members, and insubordination to the Division Chair, as reasons for Grievant's removal. Even if Grievant's removal as Chair was improper, Respondent asserts that she is not entitled to reinstatement because a replacement has been named, and because Division Chairs may allocate duties to Department Chairs at their discretion, it would be an award without result.

Grievant does not respond to the at-will argument raised by Respondent, but asserts that Dr. Coy lacked the authority to remove her as Department Chair. Grievant argues that department heads serve at the will and pleasure of the President, not the Division Chair or the Vice President of Academic Affairs. Grievant also argues that the action was arbitrary and capricious in that the stated reasons for her removal were not justified by the facts. Specifically, Grievant cites the testimony of

George Wilson and Dr. Kevin Williams to dispute the claim that she had lost the confidence of the members of the department. Grievant acknowledges that Dr. Sally Hresan stated her lack of confidence; however, that had been true even before the election of Department Chair. Grievant suggests that the true reason for her removal was that Dr. Coy had not liked her for a long time and was now in a position where he could punish her. She opines that having a predisposition toward her, Dr. Coy and Dr. Stern inflated the concerns of Dr. Hresan to a level of crisis in the department which did not exist. Although she received no remuneration for the position, Grievant requests reinstatement as Department Chair to regain her reputation and continue her work in that capacity.

Discussion

Because Grievant acknowledges that department heads serve at the will and pleasure of the President of the institution (Grievant's post-hearing Brief at 3), it is undisputed that her appointment could be terminated with or without cause at any time. Williams v. Brown, 427 S.E.2d 775 (W. Va. 1993); Myer v. W. Va. Racing Comm'n, Docket No. 95-RC-290 (May 3, 1996); Samples v. Glenville State College, Docket No. 94-BOD-564 (July 28, 1995). Unlike other disciplinary matters, the employer is not required to establish good cause and may remove an employee from a position for a good reason, a bad reason, or no reason, so long as it does not contravene public policy. Williams, supra. See Harless v. First Nat'l Bank, 169 W. Va. 673, 246 S.E.2d 270 (1978); Higginbotham v. W. Va. Dept. of Public Safety, W. Va. State Police, Docket No. 97-DPS-018 (Mar. 31, 1997).

Grievant has not alleged that the action violated any public policy, but simply challenges the reasons given for her removal as Department Chair. Although her claims regarding the reasons given by Respondent for the action may be meritorious, further evaluation will serve no useful purpose given the standard for such acts relating to at-will employees. Grievant was notified of her appointment by letters from the President of Shepherd College and was required to sign and return them to indicate her acceptance; however, she makes no assertion that document constituted a contract. Absent a claim of a public policy violation, or that her at-will status was modified by any type of contract, Grievant has not established a basis for obtaining relief under this argument. See Coyne v. Bd. of Directors, Docket No. 95-BOD-453 (Apr. 4, 1996).

Grievant's remaining argument, that Dr. Coy lacked authority to remove her as Department Chair, must also fail. The Shepherd College Handbook provides that “Chairs will be elected by amajority

vote of the full-time members of the department subject to the recommendation of the Dean and the approval of the President." Grievant correctly notes that a listing of "Division Chairperson Responsibilities" provides that they are to "[s]upervise department and program heads" but does not include the authority to appoint or remove Department Chairs. The Handbook also does not address the removal of Department Chairs, but may be interpreted to state that approval of the President is required inasmuch as approval at that level is necessary for appointment.

At the level four hearing, Dr. Stern stated that Dr. David Dunlop, President of Shepherd College, removed Grievant as Chair, but that he was not aware whether he had set forth the decision in writing. Certainly, Respondent made no such document a part of the record. The memorandum from Dr. Coy which removed Grievant was directed to Dr. Stern, President Dunlop "(for your information)", and others. The wording of the memorandum is decisive in stating that the action is that of Dr. Coy. Although the Division Chair is not specifically endowed with the authority to remove Department Chairs, it may not be unreasonable to include such authority as part of their supervisory responsibility. In any event, the level two decision issued by President Dunlop upheld the action, thereby placing his approval, albeit after the fact, on Grievant's removal.

Even if it should be determined that Grievant's removal as Chair was improper, she would only be entitled to reinstatement for the remainder of the 1996-97 academic year. Since that time has passed, and Grievant has shown no monetary or other loss, or any damage to her reputation, she would be entitled to no viable relief. See Hupp v. Univ. of W. Va. Bd. of Trustees, Slip Opinion No. 23346 (July 17, 1997).

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

Conclusions of Law

1. An at-will employee is subject to discipline for any reason which does not contravene some substantial public policy principle. Higginbotham v. W. Va. Dept. of Public Safety, W. Va. State Police, Docket No. 97-DPS-018 March 31, 1997); Hendricks v. W. Va. Dept. of Tax & Revenue, Docket No. 96-T&R-215 (Sept. 24, 1996).

2. Because Grievant did not allege a substantial contravention of pubic policy, and no contravention of public policy regarding Grievant's removal as Department Chair is apparent from the

record, the termination cannot be ruled improper.

3. Grievant failed to prove that the termination of her appointment as Department Chair was improperly processed by the Division Chair.

4. The relief requested by Grievant provides no substantive, practical consequences for either party, is illusory, and unavailable from the Grievance Board. Keys v. W. Va. Div. of Environmental Protection, Docket No. 97-DEP-176 (Sept. 3, 1997); Miraglia v. Ohio County Bd. of Educ., Docket No. 92-35-270 (Feb. 19, 1993).

Accordingly, the grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Jefferson 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: September 12, 1997 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

The reason Grievant's reappointment was made so shortly after her initial appointment was that she assumed the chair midway through the first year of a three year cycle.