DELMER BLANKENSHIP,

Grievant,

v.

DOCKET NO. 97-29-486

MINGO COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Delmer Blankenship, filed the following grievance on September 10, 1997:

> It is my desire and demand to have the attached reprimand removed from my personnel file at the Mingo County BOE central office. I object to this reprimand and feel that the administration of the MCBOE has been unjust to me when it was their fault that my building had to be cleaned by parents. No custodians were hired. I do not have that authority to hire personnel.
>
> Also, I object to the statement that my school (Gilbert Grade) was un- fit to re-open - all schools need to be cleaned prior to the start of each year. My evaluation completed by Mr. Jim May of 5/23/97 did not show any comments that I run a dirty building.

Grievant is the Principal of Gilbert Grade School, and his grievance originated at level two. A level two hearing was held on October 21, 1997, and a decision denying the grievance was issued by the Superintendent's designee, John Fullen, on October 31, 1997. Grievant appealed to level four on November 5, 1997, and a level four hearing was held on January 27, 1998. Grievant was represented by West Virginia Education Association representative Kathleen Smith, and the Board was represented by W. Graham Smith, Esq. at level two, and by Interim Superintendent John W. Fullen at level four. This matterbecame mature for decision upon receipt of the parties' proposed findings of fact and conclusions of law on February 23, 1998.

SUMMARY OF EVIDENCE

Grievant's Exhibits

Ex. 1 -

Grievance documents.

Ex. 2 -

August 23, 1997 Bell Atlantic telephone statement, and map of Gilbert Grade School.

Ex. 3 -

Newspaper articles.

Ex. 4 -

September 4, 1997 Memorandum from Superintendent Everett Conn to Delmer Blankenship.

Testimony

Grievant testified in his own behalf and presented the testimony of John Fullen, Pamela Varney, Jessica Houck, and Jim May. The Board presented the evidence of Everett Conn. (See footnote 1)

FINDINGS OF FACT

I find, by a preponderance of the evidence, the following facts:

1. Grievant is the Principal of Gilbert Grade School.

2. Gilbert Grade School is an old building, with three floors, housing approximately 233 students.

3. During the 1996-97 school year, three custodians, one day and two evening, were assigned to Gilbert Grade School.

4. Regular custodians do not work during the summer when school is not in session. Their jobs end when the teachers' jobs end, around June 8 through 10. 5. Mo maintenance or cleaning crews are hired for the summers to do heavy cleaning, waxing, or painting.

6. Regular custodians are to report for school the same day the teachers report, around August

21, or a week before the students are to return.

7. Principals in Mingo County have worked out arrangements with the regular custodians to have them come in earlier than the first reporting day, and trade those days for days off during the school year, in order to ensure the buildings are clean before school starts.

8. In the Spring of 1997, two of the custodians assigned to Gilbert Grade School were terminated as part of a reduction in force, and the third transferred out of that school.

9. During the Summer of 1997, Gilbert Grade was used for a Title I program, as well as summer school. A part-time custodian was hired for 3 hours a day during that time period.

10. No regular custodians were on duty when Grievant returned to work about August 4, 1997.

11. Grievant called the Central Office to inquire about custodial help. He spoke to Assistant Superintendent John Fullen, and Pam Varney, the Central Office clerk/receptionist, who is responsible for calling out substitutes. He spoke to them four or five different times trying to get some custodial help at Gilbert Grade School. Ms. Varney informed him she was not authorized by the Central Office to call out a substitute custodian for Gilbert Grade School. 12. Edna McCloud was hired as a custodian for Gilbert Grade on August 7, effective August 21, 1997. Grievant attempted to call Ms. McCloud to see if she would agree to come in early to clean the school, and learned she was out of the country.

13. In the meantime, Assistant Superintendent Jim May stopped by the school while Grievant was present in early August. He noted that the school was in “pretty bad shape”, and there was a water problem on the ground floor. Grievant told him he had not been able to get any custodial help from the Central Office.

14. Mr. May told Pam Varney that day to get Grievant a substitute custodian. Frank Duty was hired and reported to work from August 20 through August 25, 1997.

15. Roger Endicott, a friend of Grievant, who is also a custodian at the middle school, volunteered to help clean the school, and Grievant paid him out of his own pocket.

16. Jessica Houck, a parent and PTO President, visited the school on August 4, 1997, and found it was not clean or ready to open. She asked Grievant about the situation, and he informed her that, at that time, he had no custodial help, despite requests to the Central Office. Mrs. Houck volunteered to assist Grievant in cleaning the school several times, but he declined her assistance.

17. Finally, as the day for opening was drawing nearer, Grievant accepted Mrs. Houck's offer,

and she recruited approximately eight to ten other volunteers, most of them parents of children at Gilbert Grade, and they spent approximately eight hours a day on August 18 and 19, cleaning the school.

18. Grievant did not suggest the parents volunteer, nor did he recruit them to work. They did so of their own accord. 19. The days the parents were cleaning the school, a reporter from the Willliamson Daily News stopped by the school and interviewed them. Grievant did not call the newspapers, nor did he suggest the parents call the newspapers.

20. Several articles appeared during the next few days in various newspapers about the parents cleaning Gilbert Grade School. G. Ex. 3.

21. Superintendent Everett Conn was very upset and angry with Grievant about the newspaper articles and about the state of the school building.

22. Grievant spoke with a reporter on August 25 to set the record straight with regard to the status of the school.

23. On August 26, 1997, school opened. Mrs. Houck and Assistant Superintendent May visited the school that day, and found it to be clean and presentable for students. Assistant Superintendent May informed Assistant Superintendent John Fullen that the school was “very clean” that day.

24. Superintendent Conn did not visit the school at any time during the month of August or on opening day.

25. On September 4, 1997, Superintendent Conn issued a letter of reprimand to Grievant, as follows:

> 1. As principal of Gilbert Grade School you allowed your school to commence the 1997-98 school year in a dirty, unsanitary and deplorable condition to the end that it was unfit to re-open to the detriment of the best interests of your school and to the students therein, which resulting in wide publicity that adversely reflected upon me as Superintendent, upon your employer, the Board of Education of the County of Mingo and upon the taxpayers of Mingo County.
>
> 2. West Virginia 18A-2-9 provides, in part, that school principals shall supervise the management and operation of the school to which they are assigned, and upon your appointment you assume the administrative management and operation of the school to which you are assigned. Clearly, all supervision and management including, but not limited to the care of your school are your direct responsibilities and duties. By allowing your school to open in the filthy condition to which it had fallen represented and (sic) insult to all of our schools, our personnel and our students. Such a condition cannot be tolerated. . . .

G. Ex. 4.

ISSUE

The issue to be decided is whether the Board has proven by a preponderance of the evidence the charges in the reprimand issued to Grievant by Superintendent Conn on September 4, 1997. I find that it has not.

DISCUSSION

The Board characterized Grievant's alleged conduct in allowing the school to open in an unsatisfactory condition as insubordination. W. Va. Code § 18A-2-8. Insubordination involves the "willful failure or refusal to obey reasonable orders of a superior entitled to give such order." Riddle v. Bd. of Directors/So. W. Va. Community College, Docket No. 93- BOD-309 (May 31, 1994); Webb v. Mason County Bd. of Educ., Docket No. 26-89-004 (May 1, 1989). In order to establish insubordination, an employer must demonstrate that a policy or directive that applied to the employee was in existence at the time of the violation, and the employee's failure to comply was sufficiently knowing and intentional to constitute the defiance of authority inherent in a charge of insubordination. Conner v. Barbour County Bd. of Educ., Docket No. 94-01-394 (Jan. 31, 1995). "Employees are expected to respect authority and do not have the unfettered discretion to disobey or ignore clear instructions." Reynolds v. Kanawha-Charleston Health Dept., Docket No. 90-H-128 (Aug. 8, 1990). As a rule, few defenses are available to the employee who disobeys alawful directive; the prudent employee complies first and expresses his disagreement later. Maxey v. W. Va. Dept. of Human Resources, Docket No. 93-HHR-424 (Feb. 28, 1995).

It is well-settled that a county board of education must exercise its statutory authority to discipline tenured employees reasonably and in a manner which is not arbitrary or capricious. Surber v. Mingo County Bd. of Educ., Docket No. 96-29-015 (Dec. 30, 1996); see, e.g., Rovello v. Lewis County Bd. of Educ., 381 S.E.2d 237 (W. Va. 1989). If the action is challenged, the board must prove, by a preponderance of the evidence, that the employee engaged in the conduct complained of, and that the punishment imposed was commensurate with the offense. Perkins v. Greenbrier County Bd. of Educ., Docket No. 94-13-019 (Aug. 12, 1994); W. Va. Code § 18-29-6.

It is clear that the reprimand is simply inaccurate. Grievant did not "allow. . . his school to commence the 1997-98 school year in a dirty, unsanitary and deplorable condition", nor was it "unfit

to re-open". The evidence conclusively demonstrates that by the day school opened on August 26, 1997, it was "very clean", and presentable for students. In fact, Mrs. Houck wrote a letter to the editor in support of Grievant following the appearance of the newspaper articles. G. Ex. 3.

Superintendent Conn testified he was angry at Grievant because he must have allowed the school to get into such a bad condition before the cleaning took place and held him accountable for that. However, that is not what the letter of reprimand says, nor was Grievant ever given an unsatisfactory evaluation with regard to the cleanliness of Gilbert Grade School, or any other school he has supervised. Superintendent Conn admitted he had not visited Gilbert Grade School, and was embarrassed by the newspaper articles, when he wrote Grievant's letter of reprimand. With regard to the second paragraph of the letter, while it is true that principals have responsibility for the supervision and management of their schools under W. Va. Code § 18A-2-9, neither that Section, nor any other Code Section, gives principals the authority to hire personnel; that is a duty left to the Superintendent and the Board. Clearly, Grievant made reasonable efforts to get Gilbert Grade School cleaned before school opened, including paying money out of his own pocket. Grievant did not want the parents to help clean the school, because he knew what the backlash would be. Unfortunately, Grievant was put between the proverbial rock and a hard place, and had to accept the parents' offers to volunteer to clean the school, when it became clear he would receive no help from the Central Office. As a result, the school opened in a "very clean" and presentable manner and not in a "dirty, unsanitary and deplorable condition".

The Board has failed to prove the charges against Grievant in the letter of reprimand. The school was clean and presentable when it opened, and Grievant had no authority to hire custodians for his school, but made every reasonable effort to make sure Gilbert Grade School opened in a satisfactory condition on August 26, 1997. There is no evidence that Grievant's conduct constituted insubordination as defined by law.

CONCLUSIONS OF LAW

1. In a disciplinary matter, the Board has the burden of proving the charges against the employee. W. Va. Code § 18A-2-8.

2. The Board has failed to prove that Grievant allowed Gilbert Grade School to open in a "dirty, unsanitary and deplorable condition" on August 26, 1997. In fact, the school was clean and

presentable on that day. 3. The Board has failed to prove that Grievant failed to attend to his duties of supervising and managing the operations of Gilbert Grade School in August 1997, when two of his previous custodians had been reduced in force by the Board, and the third had transferred out, and no action had been taken by the Superintendent or the Board to hire any custodians for Gilbert Grade School.

4. The Board has failed to prove that Grievant was guilty of insubordination in any manner relating to the charges set forth in the letter of reprimand.

Accordingly, this grievance is **GRANTED** and the Board is hereby **ORDERED** to remove the September 4, 1997 letter of reprimand from Superintendent Conn from Grievant's personnel file.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mingo 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.

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MARY JO SWARTZ

Administrative Law Judge

Dated: April 17, 1998

Footnote: 1

Although this is a disciplinary proceeding in that it involves a letter of reprimand, the grievance proceeded through the lower levels with the Grievant presenting his evidence first. The undersigned agreed to continue with that sequence at level four to avoid any confusion.