CURTIS D. MARTIN,

Grievant,

v. **Docket No. 99-12-384**

GRANT COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Curtis D. Martin (Grievant) challenges the Grant County Board of Education's (GCBOE) termination of his contract as a substitute bus operator. This grievance was filed directly at level four on September 7, 1999. A level four hearing was held in the Grievance Board's office in Elkins, West Virginia, on November 8, 1999. Grievant was represented by counsel, John E. Roush, and the GCBOE was represented by counsel, Dennis V. DiBenedetto. This matter became mature for consideration upon receipt of the parties' fact/law proposals on December 10, 1999.

The following findings of fact are made from a preponderance of the evidence introduced at the level four hearing.

Findings of Fact

1. Prior to the summer of 1999, Grievant had been employed as a substitute bus operator by GCBOE for approximately eight years.

2. During most of the 1998-1999 school year, Grievant served in a long-term substitute bus assignment.

3. In July of 1999, GCBOE decided to drop Grievant's name from the substitute bus operator list, due to concerns about Grievant's guilty plea to a battery charge involvinghis former wife, which had occurred in May of 1999.

4. GCBOE did not formally notify Grievant of the decision to terminate his contract, either before or after the July board meeting.

5. Grievant first discovered his contract had been terminated in August of 1999, when he

applied for a regular bus operator position. He was informed at that time by former Superintendent Harold Garber that he was no longer employed by GCBOE, so he would not be considered for the position for which he had applied. (See footnote 1)

6. To date, Grievant still has received no written notice regarding the termination of his contract or the reasons for it.

Discussion

The parties agree that the instant case involves a termination for disciplinary reasons; in such cases, the burden of proof is upon the employer to prove the charges against the employee by a preponderance of the evidence. W. Va. Code §18-29-6; Hoover v. Lewis County Bd. of Educ., Docket No. 93-21-427 (Feb. 24, 1994); Landy v. Raleigh County Bd. of Educ., Docket No. 89-41-232 (Dec. 14, 1989). W. Va. Code § 18A- 4-15 provides that "[s]ubstitute service employees who have worked thirty days for a school system shall have all rights pertaining to suspension, dismissal and contract renewal as is granted to regular service personnel." 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 arbitrarilyor 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). W. Va. Code § 18A-2-8 further provides that "[t]he charges shall be stated in writing served upon the employee within two days of presentation of said charges to the board."

GCBOE does not dispute that Grievant has never received written notice that his contract was terminated, nor of any charges against him. The only explanation for this lack of notice was given in the form of testimony from Robert Parks, a board member, who stated that it was normal protocol for the superintendent to notify substitutes whose names were to be dropped from the list after the board made such decisions. Since the former superintendent, Mr. Garber, had left his position in October of 1999, no further explanation of Mr. Garber's obvious "dropping of the ball" was offered. Instead, GCBOE offered evidence from various witnesses at the level four hearing regarding alleged incidents which had occurred on the bus which Grievant drove during the 1998-1999 school year, as purported justification for his dismissal. This was in spite of the fact that Mr. Parks testified that the reason the board voted to terminate Grievant was for his battery conviction, not for any incidents occurring on his

bus.

Due to GCBOE's admitted failure to notify Grievant at any time of his termination, it is not necessary to examine the underlying justifications offered to support the board's decision. This Grievance Board has held in numerous cases that, when a board of education has failed to comply with statutory notice requirements, an employee is entitled to reinstatement to his or her position. See Dyer v. Lincoln County Bd. of Educ., Docket No. 97-22-246 (Sept. 11, 1997); Parker-Howes v. Webster, Docket No. 94-51-531 (Jan.31, 1995); See also Morgan v. Pizzino, 256 S.E.2d 592 (W. Va. 1979).

Accordingly, the undersigned finds that Respondent has failed to provide Grievant notice of his termination, as required by W. Va. Code § 18A-2-8, entitling Grievant to be returned to his previous position as a substitute bus operator. Grievant has requested that he be given back pay with interest, as though he had worked as a substitute during the 1999-2000 school year, to date. Accordingly, Respondent must calculate, considering Grievant's seniority and the available substitute bus runs that have been assigned since the beginning of the school year, how much pay he would have received if he had continued employment for the 1999-2000 school year, plus interest at the statutory rate.

Consistent with the foregoing findings and discussion, the following conclusions of law are appropriate in this matter.

Conclusions of Law

1. In disciplinary matters, the burden of proof is upon the employer to prove the charges against the employee by a preponderance of the evidence. W. Va. Code §18-29-6; Hoover v. Lewis County Bd. of Educ., Docket No. 93-21-427 (Feb. 24, 1994); Landy v. Raleigh County Bd. of Educ., Docket No. 89-41-232 (Dec. 14, 1989).

2. “Substitute service employees who have worked thirty days for a school system shall have all rights pertaining to suspension, dismissal and contract renewal as is granted to regular service personnel.” W. Va. Code § 18A-4-15.

3. 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 or capriciously. Bell v. Kanawha CountyBd. 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).

4. The charges against an employee must be stated in writing and served upon the employee within two days of presentation of said charges to the board. W. Va. Code § 18A-2-8.

5. Grievant was given no notice of the termination of his contract as a substitute bus operator, as required by statute.

Accordingly, this grievance is **GRANTED**, and the Grant County Board of Education's action in terminating Grievant's contract is vacated. Respondent is **ORDERED** to return Grievant's name to the substitute rotation list as though he had not been dismissed. Respondent is **FURTHER ORDERED** to pay Grievant back pay with interest, as set forth in this decision.

Any party may appeal this Decision to the Circuit Court of Kanawha County or theCircuit Court of Grant 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. However, the appealing party is required by W. Va. Code § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

Date: December 23, 1999 _____

DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

The denial of Grievant's application for this position is the subject of a separate grievance.