JAMES T. INGRAM, JR.,

Grievant,

v. **Docket No. 03-30-220**

MONONGALIA COUNTY BOARD

OF EDUCATION,

Respondent.

DECISION

James T. Ingram, Jr., ("Grievant") filed this grievance directly at level four on July 25, 2003, following the termination of his employment with the Monongalia County Board of Education ("MCBOE"). A level four hearing was held in Westover, West Virginia, on October 8, 2003. Grievant was represented by counsel, John E. Roush of the West Virginia School Service Personnel Association, and Respondent was represented by counsel, Kelly J. Kimble. This matter became mature for consideration upon receipt of the parties' fact/law proposals on November 4, 2003.

The following findings of fact are made based upon a preponderance of the evidence of record.

Findings of Fact

1. Grievant was hired by MCBOE as a regular custodian during the 2000-2001 school year.

2. Grievant was assigned to Easton Elementary School in the spring of 2001.

3. Grievant's evaluation for the conclusion of the 2000-2001 school year was performed by Principal Robert Snider on May 24, 2001. Grievant was given unsatisfactory ratings in several categories, including "accepts supervision," "accepts changes in daily work routine," willingness to perform duties, and knowledge and understanding of his job. It was noted at the conclusion of the evaluation that Grievant "was not prepared or familiar with custodial responsibilities," and that Grievant would be placed on a plan of improvement at the beginning of the 2001-2002 school year.

4. The principal of Easton Elementary School did not return at the beginning of the 2001-2002

school year, and Dr. Louis Hlad, Director of Personnel, served as interim principal. Apparently, the improvement plan proposed by the prior principal was never implemented.

5. Dr. Hlad evaluated Grievant on November 28, 2001, and gave him satisfactory ratings in all areas. He noted that Grievant was “working on becoming a better custodian.”

6. LeJay Graffious became principal of Easton Elementary School in December of 2001.

7. Mr. Graffious was advised by Dr. Hlad that Grievant needed a lot of attention and guidance in order to accomplish his job duties. He was also advised by the previous principal, Mr. Snider, that Grievant “socialized more than he cleaned and did not work up to his potential.”

8. Mr. Graffious met with Grievant shortly after assuming his position as principal. He discussed with Grievant what his expectations would be, and outlined how Grievant could accomplish his job duties. The areas discussed were establishing acleaning schedule, staying busy, socialization during duty time, and inappropriate socializing with staff. This meeting was also memorialized in writing by Mr. Graffious for Grievant.

9. Mr. Graffious conducted informal observations of Grievant throughout the spring of 2002, and he gave Grievant guidance regarding problem areas. Grievant was having trouble using his time efficiently, and specific problems included failure to fill the toilet paper and towel dispensers, and the stairs and bathrooms tended to be dirty even after Grievant had cleaned.

10. A formal observation of Grievant was conducted by Mr. Graffious on April 16, 2002. Grievant was noted as needing improvement in five performance areas, including “general appearance of work area,” demonstration of initiative, “work judgments,” “quality of work,” and “acceptance of responsibility.” The observation further noted specific items that were not cleaned efficiently.

11. Grievant's performance evaluation at the conclusion of the 2001-2002 school year reflected “needs improvement” ratings in all of the categories noted in the April 16 observation, plus the additional category of “meets assigned schedules/deadlines.” Mr. Graffious noted that Grievant had “two attributes that prohibit[ed] him from obtaining a satisfactory evaluation” in these areas. These attributes were a tendency to be distracted-- resulting in too much time spent socializing with teachers, students and other staff--and Grievant's failure to establish routines to attend to the daily needs of the school.

12. Grievant was placed on an improvement plan at the beginning of the 2002- 2003 school

year. Grievant was given a daily schedule to follow, specifying areas to be cleaned and specific cleaning to be performed. Formal observations were conducted byPrincipal Graffious on September 13 and 26, and on October 1, 2002. Deficiencies were still noted in all the previous problem categories, except that “general appearance of work area” had reached an acceptable level by the October 1 observation. Each observation included specific notations on the daily schedule of areas or items which had not been cleaned sufficiently or not at all.

13. Because Grievant's work had improved somewhat, the improvement plan was extended on October 1, 2002, to be completed by October 17, 2002.

14. An observation performed on October 8, 2002, continued to note specific areas which needed cleaning, such as light fixtures, tops of doors, windowsills, tops of bulletin boards, and there were cobwebs in one stairwell landing.

15. Mr. Graffious performed a formal evaluation of Grievant on October 15, 2002. Grievant was rated as meeting standards in all areas except “quality of work,” and he was given an “almost” meets standards rating in “general appearance of work area.” It was noted that Grievant had improved in all areas, but the school was still not at a satisfactory level. Grievant continued to be distracted easily, but he competently completed assigned tasks when specific directions were given. The Principal opined that Grievant needed to use better judgment regarding taking initiative, and be able to assess areas that need attention and take appropriate action.

16. Mr. Graffious continued to conduct observations of Grievant throughout November and December of 2002 and in January of 2003. It was noted that Grievant was not following the set schedule, resulting in some areas being dirty again by the end of his shift, after Grievant had cleaned them. “Needs improvement” ratings were again given inthe previous problem areas, specifically noting Grievant's failure to clean corners and windowsills.

17. On December 13, 2002, Mr. Graffious and Ed Rancjik, Supervisor of Facilities, met with Grievant after having inspected the cleanliness and condition of the building. Grievant was given specific directions regarding areas which needed improvement, including dusting, cleaning corners, moving furniture to clean under and behind it, cleaning baseboards, changing the mop water more frequently, and following the schedule so that restrooms and stairwells were clean at the end of the shift.

18. An observation dated January 14, 2003, noted that Grievant still needed to adjust his

schedule so that restrooms and stairs would be clean at the end of his shift, he needed to use his time more wisely, and needed to socialize less and use his time to dust, clean corners and computers. It was observed that Grievant's acceptance of responsibility was improving, and he was more responsive to suggestions. He received “needs improvement” ratings in appearance of work area, initiative, and quality of work.

19. A new improvement plan was formulated on February 10, 2003, to extend through March 24, 2003. At that time, an improvement team was appointed, including, Paul Croston, a custodian and local service personnel representative, Mr. Ranjik, and Mr. Graffious. The specific deficiencies described included lack of in-depth quality of work and lack of initiative. Grievant was instructed to clean his assigned areas and maintain without having to be told to do so, according to the schedule promulgated previously.

20. The improvement team performed an unscheduled inspection of the school on March 13, 2003, and observed Grievant on March 25, 2003. Some improvement was found, but there were still several specific areas of the school where floors were dirty,dusting had not been done, and restrooms were not clean. Grievant had also failed to pick up litter on school grounds after being told to do so by the principal.

21. Grievant was evaluated on March 31, 2003, and improvement was noted. However, Grievant's quality of work and acceptance of responsibility were still not satisfactory. The improvement team decided to extend the plan for another thirty days.

22. An observation performed on April 10, 2003, noted that some restrooms were not clean and stairwells were dirty and had not been cleaned the day before. Another observation on April 18, 2003, noted that some dust was found in the kitchen and one classroom, and that four specific projects had been given to Grievant the week before and had not been accomplished.

23. The improvement team conducted a final inspection on April 28, 2003, concluding that, although there had been some improvement in Grievant's cleaning habits, he had “not maintained the cleanliness of the facility nor . . . shown any further improvement.” L III Exhibits, p. 80. They also acknowledged that Grievant could not maintain the cleanliness of the school while working alone, and could only meet expectations with constant supervision. Although they discussed several options, including relocating Grievant to a different facility, changing his shift hours, or imposing progressive discipline, the committee ultimately concluded that Grievant's work would never be

satisfactory, the facility would not be cleaned, and that Grievant would never fully comprehend the scope of his responsibilities. Therefore, it was concluded that the only alternative would be to recommend that his contract not be renewed for the upcoming school year. 24. By letter dated June 13, 2003, Superintendent Michael Vetere informed Grievant that he was being suspended, pending a termination hearing before the Board (See footnote 1) , for incompetency and unsatisfactory performance.

25. Following a Board hearing on July 22, 2003, Grievant's employment was terminated on July 28, 2003.

Discussion

In disciplinary matters, the employer bears the burden of establishing the charges against the 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). A preponderance of the evidence is evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proven is more probable than not. Petry v. Kanawha County Bd. of Educ., Docket No. 96-20-380 (Mar. 18, 1997). 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 County Bd. of Educ., Docket No. 91-20-005 (Apr. 16, 1991). See Beverlin v. Bd. of Education, 158 W. Va. 1067, 216 S.E.2d 554 (1975).

W. Va. Code § 18A-2-8 provides that “[A] board may suspend or dismiss any person in its employment at any time for: Immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, the conviction of a felonyor a plea of nolo contendre to a felony charge.” As set forth above, in the instant case, Respondent has dismissed Grievant based upon charges of incompetency and unsatisfactory performance. The statute further provides that an employee may not be charged with unsatisfactory performance “except as the result of an employee performance evaluation.” Respondent contends that Grievant was given every opportunity to improve and, after numerous meetings, evaluations, observations, and improvement plans, it became clear that he simply could not satisfactorily perform his job duties.

Grievant makes two arguments. First, he contends that Mr. Graffious had unreasonable expectations regarding the level of cleanliness of the school, and second, he believes that, since he was making some progress pursuant to the improvement plan, Respondent acted prematurely in dismissing him when it did. Neither of Grievant's arguments are supported by the evidence. Clearly, Mr. Graffious' expectations, whether unreasonable or not, were shared by the members of the improvement team, who inspected the school on several occasions and found it to be below acceptable standards of cleanliness. As to the premature “pulling of the plug,” this argument neglects to note that, while Grievant would improve regarding specific tasks which he was directed to do, he continually persisted in not cleaning well, and he worked well only with constant supervision.

Grievant's work was consistently unacceptable from the time he began his assignment at Easton Elementary School and for the two years following. Respondent has gone far above and beyond what was legally necessary in order to provide Grievant the assistance and tools he needed to accomplish his job. Nevertheless, after repeated attempts to provide Grievant with guidance and specific instructions, he continued toinadequately clean the school. Grievant's slight improvements in specific areas do not negate the fact that his overall performance was consistently unsatisfactory. Grievant has failed to produce sufficient evidence to demonstrate that he successfully completed his improvement plans or that it was improper for the Board to terminate his employment.

The following conclusions of law support the decision reached.

Conclusions of Law

1. In disciplinary matters, the employer bears the burden of establishing the charges against the 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 exercised reasonably, not arbitrarily or capriciously. Bell v. Kanawha County Bd. of Educ., Docket No. 91-20-005 (Apr. 16, 1991). See Beverlin v. Bd. of Education, 158 W. Va. 1067, 216 S.E.2d 554 (1975).

3. “[A] board may suspend or dismiss any person in its employment at any time for: Immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory

performance, the conviction of a felony or a plea of nolo contendre to a felony charge." W. Va. Code § 18A-2-8.

4. Respondent has proven by a preponderance of the evidence that Grievant's job performance was unsatisfactory and that he failed to successfully complete a lengthy improvement plan, thus giving the Board sufficient reason to terminate his employment

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Monongalia 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: November 21, 2003 _____

DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

Because the statutory date for notice of non-renewal had passed, the Board proceeded with termination for cause.