THE WEST VIRGINIA EDUCATION AND STATE EMPLOYEES

GRIEVANCE BOARD

MICHAEL BAUMANN,

Grievant,

v. **Docket No. 06-06-021**

Janis I. Reynolds

Senior Administrative Law Judge

CABELL COUNTY BOARD OF EDUCATION,

Respondent,

and

KAREN OLDHAM,

Intervenor.

D E C I S I O N

Grievant, Michael Baumann, an Assistant Principal at Cabell Midland High School, filed this grievance against the Cabell County Board of Education ("CCBOE" or "Board") on November 3, 2005. The Statement of Grievance says: (See footnote 1)

> Violations of WV Code 18A-4-7a, 18-29-2, section "p", 18-29-3, section "h" reprisal and retaliation by principal toward witness by attempting to redress grievance by denying grievant after-school detention monitor. Grievant was the most qualified applicant for the position.
>
> RELIEF SOUGHT: Relief sought is to be granted the position and any compensation due. County stop all reprisal toward grievant and family members at school. Take action under 18-29-3,"h".

This grievance was denied at Levels I and II and waived at Level III. Grievant appealed to Level IV on January 19, 2006. Dr. Karen Oldham asked to intervene on May2, 2006, and this request was granted. Intervenor's request for a continuance was denied. A Level IV hearing was held on May 12, 2006, (See footnote 2) and July 28, 2006, at the offices of CCBOE by the agreement of the parties, and October 12, 2006, at the Grievance Board's office in Charleston. This case became mature for decision on November 13, 2006, after receipt of the parties' proposed findings of fact and conclusions of law. Grievant was represented by Susan Hubbard from the West Virginia Education Association, CCBOE was represented by Attorney Howard Suefer of Bowles Rice McDavid Graff and Love, and Intervenor Oldham was represented by Attorney Brent Wolfingbarger.

Past History

This grievance is related to a prior grievance filed by Teresa Grant about a hostile work environment created by Intervenor when Intervenor served as Mrs. Grant's Assistant Principal and Principal. See Grant v. Cabell County Board of Education Docket No. 05-06- 345 (Feb. 28, 2006), Grant I. Grievant and Intervenor testified in that grievance, and Grievant also gave a statement in a prior investigation concerning Intervenor's complaints about Mrs. Grant and others. Intervenor was aware of Grievant's presence at the Level IV hearing. The undersigned Administrative Law Judge found Intervenor had created a hostile work environment in Grant I, and this grievance was granted.

Synopsis

Grievant asserts Intervenor, his supervisor and the Principal at Cabell Midland High School, retaliated against him for giving a statement in CCBOE's investigation intoIntervenor's multiple complaints and for subsequently testifying in the Grant I grievance about these complaints. (See footnote 3) This retaliation is demonstrated by Intervenor's failure to select Grievant for an extracurricular position and other numerous complaints alleged by Intervenor about Grievant.

Intervenor Oldham avers she never retaliated against Grievant, and Grievant could not be selected for the extracurricular position because of his duties as a bus monitor and Assistant Principal.

Respondent asserts Grievant has not met his burden of proof and demonstrated any retaliation,

and that as Principal of Cabell Midland High School, Intervenor has the authority to recommend the person she thinks should be in the position. Respondent avers that because Intervenor Oldham had not heard the testimony of Grievant in Grant I hearing, that grievance did not serve as the impetus for the Grievant's nonselection for the position. After a detailed review of the entire record, the undersigned Administrative Law Judge makes the following Findings of Fact.

Findings of Fact

1. Grievant has been employed by CCBOE for 21 years. At the time he filed this grievance, he had been an Assistant Principal eight years, six of which were at Cabell Midland High School. His main areas of responsibility were the tenth grade and athletics. He is one of five Assistant Principals at Cabell Midland High School, and one of their chief duties is discipline for their grade level.

2. Grievant and Intervenor both worked together at Cabell Midland High School as Assistant Principals for several years.

3. During the 2003 - 2004 school year, Intervenor made numerous complaints about many of the faculty members and the principal at Cabell Midland High School. The majority of these complaints focused on her Principal, Bob Lake, and teacher Teresa Grant, but she also filed some complaints about Grievant.

4. During that same school year, Intervenor's husband filed a citizen's complaint that again alleged many of the same complaints Intervenor had made earlier in the school year and had been found to be without merit. A lengthy investigation was conducted by Central Office Staff members Allyson Schoelein and Dennis Miller, and again these complaints were found to be without merit. Grievant, like many of the faculty members at Cabell Midland High School, was asked to participate in this investigation and he did.

5. Mrs. Grant filed a grievance against Intervenor alleging a hostile work environment had been created by Intervenor's numerous and continuous complaints. Grant I.

6. During the 2004 - 2005 school year, Intervenor was employed as the Principal at Huntington High School.

7. During the 2004 - 2005 school year, the Assistant Principals at Cabell Midland High School agreed to cover after-school detention without receiving additional compensation, so the money could be used for tutoring. 8. Intervenor was named as the Principal at Cabell Midland High

School for the 2005 - 2006 school year and became Grievant's supervisor.

9. Grievant started the 2005 - 2006 school year by asking the Assistant Principals to cover after-school detention, but some of the Assistant Principals refused. Intervenor told Grievant the Assistant Principals were too busy to take on this duty, but confusingly also told Grievant that if he wanted to continue to have after-school detention for his own students that was all right. Before the position was posted, Grievant continued to conduct after-school detention for his tenth grade students.

10. On, or about, September 13, 2005, Grievant and Intervenor received subpoenas to appear at the October 4, 2005 hearing in Mrs. Grant's grievance about a hostile work environment at Cabell Midland High School.

11. Intervenor decided she wished to post the after-school detention position, and it was posted September 20 - 26, 2005. The position was to be for four days a week and run from 3:20 p.m. to 4:20 p.m. (See footnote 4)

12. Grievant applied as did two teachers. Ms. Ragalyi was one of the teachers, and she had three years of seniority. She had been at Cabell Midland High School for two years, had never worked as an Assistant Principal, and had never done after-school detention.

13. Grievant had to obtain a release form from Intervenor to attend the October 4, 2005 hearing. 14. On October 4, 2005, both Grievant and Intervenor attended and testified at the Grant I hearing at the Grievance Board's Charleston office. During his testimony, Grievant was close to tears as he discussed his great concern that Intervenor would retaliate against him and/or his children because of his testimony. (See footnote 5)

15. After Intervenor received the applications for the after-school detention position, she talked to Linda Adkins, Manager of Human Resources. Intervenor told Ms. Adkins Grievant was unavailable to fulfill the duties of the position, and Ms. Adkins told her she could not select an individual who was not available.

16. On, or about October 11, 2005, Ms. Ragalyi began working in the after-school detention position.

17. On October 13, 2005, Grievant filed a request for an informal conference wanting to know why he was not selected for the after-school detention position and the criteria for the selection.

18. On October 17, 2005, Intervenor responded stating she could not answer his questions at

this time as CCBOE had not yet approved her recommendation for the position.

19. On October 18, 2005, Ms. Ragalyi was hired by CCBOE for the after-school detention position.

20. On October 19, 2005, Grievant again filed a request for an informal conference wanting to know why he was not selected for the after-school detention position and again requesting the criteria for the selection. 21. On October 31, 2005, Intervenor responded stating Grievant "cannot perform the expectations of the after-school detention and maintain his regular expectation as an Ast. [sic] Principal @ Cabell Midland High School. There is an overlap of time and duty expectation."

22. Intervenor incorrectly testified at Level IV that Grievant's bus duty ends between 3:30 p.m. and 3:40 p.m.

23. Grievant's bus duty usually ends at approximately 3:15 p.m., and he is free to go home after that time, unless he has other activities he needs to do.

24. Intervenor made several complaints about Grievant during the 2005 - 2006 school year, some of these complaints were investigated by Intervenor's supervisor, Todd Alexander, and found to be without merit. Mr. Alexander was placed in the supervisory position over Grievant by the Grant I decision issued February 28, 2006, because the undersigned Administrative Law Judge was concerned the witnesses would be retaliated against by Intervenor.

25. Although Intervenor attempted at the Level IV hearing to demonstrate Grievant did not perform his duties adequately, there was no evidence to support these allegations or any indication his evaluations had ever reflected any problems with his work performance. (See footnote 6)

26. The work relationship between Grievant and Intervenor is clearly strained, but there was no evidence Grievant ever acted in an unprofessional manner to Intervenor.

27. There is no policy preventing Assistant Principals from holding extracurricular assignments, and many Assistant Principals hold paid extracurricular positions. The majority of these positions are as coaches of major sports, such as football and basketball, which are very time consuming.

28. In the Grant I and II decisions, the undersigned Administrative Law Judge found Intervenor to lack credibility.

29. In February 2006, Intervenor removed Grievant from supervision of girls' sports stating she had received "complaints" from coaches. Two softball coaches asked Intervenor why their final

evaluation forms did not look like the form they had been shown by Grievant. Apparently, these coaches did not understand the difference between the observation forms and performance evaluations, which are different. They also questioned why the evaluation was better than the rating they received on the observations they had been shown by Grievant. These coaches did not see their questions as complaints, but Intervenor saw them as that. Shortly thereafter, Intervenor removed Grievant fromoverseeing girls' sports and took the key he used to check on the facilities, even though he continued to need this key to check these same facilities for boys' sports.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2004); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code § 18-29-6. "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." Leichliter v. W. Va. Dep't of Health & Human Res., Docket No. 92-HHR-486 (May 17, 1993).

I. Credibility

An issue to address is credibility, as Intervenor used the Level IV hearing to put Grievant's character into question. Additionally, Grievant asserted Intervenor's reasons for denying him the position were incorrect and the real reason was to retaliate against him. In situations where the existence or nonexistence of certain material facts hinges on witness credibility, detailed findings of fact and explicit credibility determinations are required. Jones v. W. Va. Dep't of Health & Human Res., Docket No. 96-HHR-371 (Oct. 30, 1996); Pine v. W. Va. Dep't of Health & Human Res., Docket No. 95-HHR-066 (May 12, 1995). An Administrative Law Judge is charged with assessing the credibility of the witnesses. See Lanehart v. Logan County Bd. of Educ., Docket No. 95-23-235 (Dec. 29,1995); Perdue v. Dep't of Health and Human Res./Huntington State Hosp., Docket No. 93-HHR-050 (Feb. 4, 1993). "The fact that [some of] this testimony is offered in written form does not alter this responsibility." Browning v. Mingo County Bd. of Educ., Docket No. 96- 29-154 (Sept. 30, 1996).

The Grievance Board has applied the following factors to assess a witness's testimony: 1)

demeanor; 2) opportunity or capacity to perceive and communicate; 3) reputation for honesty; 4) attitude toward the action; and 5) admission of untruthfulness. Additionally, the administrative law judge should consider 1) the presence or absence of bias, interest, or motive; 2) the consistency of prior statements; 3) the existence or nonexistence of any fact testified to by the witness; and 4) the plausibility of the witness's information. (See footnote 7) See Holmes v. Bd. of Directors/W.Va. State College, Docket No. 99-BOD- 216 (Dec. 28, 1999); Perdue, supra.

In Grant I, the undersigned Administrative Law Judge found the testimony of the teachers at Cabell Midland High School, including Grievant, was straightforward, heartfelt, reasonable, and consistent, and noted, "several witnesses were in tears because of their concern that Oldham would harass their children the way [Teresa Grant's] child had been harassed because of their testimony." Grievant was one of the witnesses referred to in that quote. (This was the reason the undersigned Administrative Law Judge ordered the supervision of the witnesses in Grant I be removed from Intervenor.) The undersigned Administrative Law Judge found Grievant's testimony to be truthful at that time andcontinues to find it truthful. Grievant's testimony was straightforward, plausible, and consistent.

The undersigned Administrative Law Judge did not find Intervenor to be credible in the Grant I and II decisions, and noted, "[A] factor to be considered in making and explaining credibility determinations is [the] possibility that [the] witness is biased and may consciously or unconsciously shade his or her testimony for or against one of the other witnesses or parties." Chin v. Dep't of Treasury, 44 M.S.P.R. 201 (1990). The undersigned Administrative Law Judge found Intervenor's interpretation of events to be profoundly skewed and rather paranoid in Grant I, and her credibility was nil. The testimony and evidence presented in Grant II did nothing to change this determination.

In this Level IV hearing, Intervenor's testimony was rambling, not on point, and non- responsive. During her testimony, Intervenor added information in an attempt to place Grievant in a negative light.

This type of testimony had nothing to do with the issue at hand. Through her own response to the grievance a Level I, Intervenor indicated the reason Grievant could not receive the position was his unavailability, thus, the key issue in this grievance is Intervenor's incorrect testimony about when Grievant's bus duty ended. Intervenor testified Grievant's bus duty ended between 3:30 and 3:40. The evidence revealed his bus duty ended on, or about, 3:15.

As principal of Cabell Midland High School, Intervenor is expected to know the duty assignments

of her staff, as she is the one who finalizes these assignments. If she does not know these assignments, she has the documentation to obtain the correct data. Additionally, Intervenor continued to state this incorrect data even after the grievance was filed, and it was clear she was wrong.

After this reasoning for nonselection did not appear to be successful, Intervenor attempted to bolster her decision by indicating Grievant was not performing his duties in a competent manner. Again, it must be stated that the issue of Grievant's performance was NOT a part of this grievance, and indeed, no evidence produced by Intervenor demonstrated Grievant was other than a competent employee.

Further, Intervenor indicated Grievant was too busy to perform the duties of after- school detention, but the record is clear, Intervenor gave Grievant permission to conduct his own after-school detention during the busy first weeks of school, and Grievant was free to leave after his bus duty ended.

The undersigned Administrative Law Judge would think it would be better to have Grievant in the building for an extra hour, and if a question arose and he certainly could have been consulted by dropping by the after-school detention room. Additionally, if there was some paperwork that Grievant needed to complete, he could perform this task during after-school detention.

There appear to be two alternatives to use in assessing Intervenor's incorrect data. One, Intervenor was not knowledgeable of the time Grievant's duty ended, did not check to see if there was conflict, and based her decision on her incorrect information. Two, Intervenor was aware of the time Grievant's bus duty ended, but chose to ignore the correct data and selected Ms. Ragalyi as a form of retaliation. One thing is clear, whichever of the two reasons given above is correct, Intervenor erred in selecting Ms. Ragalyi. Grievant was free to perform the duties of the position, and if he did not fill the position, he could go home after the school day ended. (See footnote 8)

II. Retaliation

Grievant asserts he has been retaliated against for his prior participation in the grievance process, testifying in the Grant I hearing.

Reprisal is defined in W. Va. Code § 18A-29-2(p) as "the retaliation of an employer or agent toward a grievant or any other participant in the grievance procedure either for an alleged injury itself or any lawful attempt to redress it." To demonstrate a prima facie case of reprisal a grievant must establish by a preponderance of the evidence the following elements:

1) that he/she engaged in protected activity, e.g. filing or participating in a grievance;

2) that he/she was subsequently treated in an adverse manner by the employer or an agent;

3) that the employer's official or agent had actual or constructive knowledge that the employee engaged in the protected activity;

4) that there was a causal connection (consisting of an inference of a retaliatory motive) between the protected activity and the adverse treatment; and/or

5) the adverse action followed the employee's protected activity within such a period of time that retaliatory motivation can be inferred.

See Webb v. Mason County Bd. of Educ., Docket No. 89-26-56 (Sept. 29, 1989); Conner v. Barbour County Bd. of Educ., Docket Nos. 93-01-543/544 (Jan. 31, 1995). See alsoFrank's Shoe Store v. W. Va. Human Rights Comm'n, 179 W. Va. 53, 365 S.E.2d 251 (1986); Gruen v. Bd. of Directors/Concord College, Docket No. 95-BOD-281 (Mar. 6, 1997).

If a grievant establishes a prima facie case of reprisal, the employer may rebut the presumption of retaliation by offering legitimate, non-retaliatory reasons for the adverse action. If the respondent rebuts the claim of reprisal, the employee may then establish by a preponderance of the evidence that the offered reasons are merely pretextual. Webb, supra.

Intervenor, the Principal of Cabell Midland High School, testified Grievant's bus duty ended at 3:30 p.m. to 3:40 p.m. When that explanation did not work, she then attempted to demean Grievant's performance and assert unproven complaints about Grievant's work ethic and professional demeanor. (See footnote 9) While the undersigned Administrative Law Judge generally agrees with Respondent's assertion that a principal has the right and authority to organize his/her school and the duties of his/her supervisees, in this case Intervenor's decision was tainted with both a lack of knowledge and retaliation.

Additionally, the record is replete with examples of assistant principal and principals having extracurricular assignments. Many of these duties are much more time-consuming and labor intensive than after-school detention, one hour a day, four days a week.

Grievant has met his burden of proof and established Intervenor engaged in retaliation. Each element of the retaliation test is met. One, Grievant engaged in the protected activity of testifying in the grievance. Two, he was both subsequently treated inan adverse manner by the employer's agent, Intervenor, as he was not hired to fill a position for which he had both the qualifications and experience, and had previously served for no compensation.

Three, Intervenor had actual knowledge Grievant engaged in the protected activity of testifying in Grant I. As Intervenor was Grievant's supervisor at the time of the Grant I hearing, it was necessary for him to give notice that he had been subpoenaed and would be absent. Additionally, Intervenor testified at the Grant I hearing herself, and had two employees accompany her to this hearing. There is only one witness room at the Grievance Board's Charleston office, and Intervenor was aware Grievant was a friend of Mrs. Grant.

Four and five, there was a causal connection (consisting of an inference of a retaliatory motive) between the protected activity, the Level IV testimony, and the adverse treatment, and the adverse action followed the employee's protected activity within such a period of time that retaliatory motivation can be inferred. The subpoenas were received on, or about, September 13, 2005, the position posted on September 20, 2005, the hearing was held on October 4, 2005, and Ms. Ragalyi informally received the position, on or about, October 12, 2005.

Grievant has met his burden of proof and established retaliation by Intervenor. Respondent's and Intervenor's rationale for denying Grievant the position, that he was unavailable to perform the after-school detention duties because of his bus monitor duties and because of his numerous assistant principal duties are incorrect and not supported by the evidence. Intervenor and Respondent have not rebutted the presumption.

The above-discussion will be supplemented by the following Conclusions of Law.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2004); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code § 18-29-6. "The preponderance standard generally requires proof

that a reasonable person would accept as sufficient that a contested fact is more likely true than not." Leichliter v. W. Va. Dep't of Health & Human Res., Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the employer has not met its burden. Id.

2. In situations where the existence or nonexistence of certain material facts hinges on witness credibility, detailed findings of fact and explicit credibility determinations are required. Jones v. W. Va. Dep't of Health & Human Res., Docket No. 96-HHR-371 (Oct. 30, 1996); Pine v. W. Va. Dep't of Health & Human Res., Docket No. 95-HHR-066 (May 12, 1995). An Administrative Law Judge is charged with assessing the credibility of the witnesses. See Lanehart v. Logan County Bd. of Educ., Docket No. 95-23-235 (Dec. 29, 1995); Perdue v. Dep't of Health and Human Res./Huntington State Hosp., Docket No. 93-HHR-050 (Feb. 4, 1993). "The fact that [some of] this testimony is offered in written form does not alter this responsibility." Browning v. Mingo County Bd. of Educ., Docket No. 96-29-154 (Sept. 30, 1996). 3. Reprisal is defined in W. Va. Code § 29-6A-2(p) as "the retaliation of an employer or agent toward a grievant or any other participant in the grievance procedure either for an alleged injury itself or any lawful attempt to redress it."

4. To demonstrate a prima facie case of reprisal a grievant must establish by a preponderance of the evidence the following elements:

1) that he/she engaged in protected activity, e.g. filing or participating in a grievance;

2) that he/she was subsequently treated in an adverse manner by the employer or an agent;

3) that the employer's official or agent had actual or constructive knowledge that the employee engaged in the protected activity;

4) that there was a causal connection (consisting of an inference of a retaliatory motive) between the protected activity and the adverse treatment; and/or

5) the adverse action followed the employee's protected activity within such a period of time that retaliatory motivation can be inferred.

See Webb v. Mason County Bd. of Educ., Docket No. 89-26-56 (Sept. 29, 1989); Conner v. Barbour

County Bd. of Educ., Docket Nos. 93-01-543/544 (Jan. 31, 1995). See also Frank's Shoe Store v. W. Va. Human Rights Comm'n, 179 W. Va. 53, 365 S.E.2d 251 (1986); Gruen v. Bd. of Directors/Concord College, Docket No. 95-BOD-281 (Mar. 6, 1997).

5. Grievant has met his burden of proof and has demonstrated he was retaliated against by an agent of CCBOE.

Accordingly, this grievance is **GRANTED**. Respondent is Ordered to compensate Grievant for the 2005 - 2006 school year as if he had held the position from the date Ms. Ragalyi started her duties.

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

Janis I. Reynolds

Senior Administrative Law Judge

Dated: May 16, 2007

Footnote: 1

The portion of the grievance dealing with lice and Grievant's son is no longer part of this grievance.

Footnote: 2

Grievant did not attend the first day of hearing because of a very serious car accident involving his daughter.

Footnote: 3

Subsequently, Mrs. Grant and her husband filed another grievance alleging retaliation by Intervenor. See Grant & Grant v. Cabell County Board of Education Docket No. 06-06-012 (Oct. 17, 2006), Grant II. This grievance was also granted. The undersigned Administrative Law Judge found Intervenor had retaliated against Mrs. Grant and her husband by filing peace bonds against them the day after Grant I hearing. The complaints alleged in the peace bonds were the same as the ones previously asserted by Intervenor and her husband and found to be without merit.

Footnote: 4

Intervenor had incorrectly posted the position as five days a week.

Footnote: 5

This sentiment was stated by many of the witnesses.

Footnote: 6

For example, multiple witnesses were called to show Grievant did not turn in his white cards within five days. (White cards are slips Assistant Principals fill out after a student is referred to the Assistant Principal for discipline. One copy is given to the referring teacher.) At the end of all this testimony, the evidence revealed that many of the Assistant Principals did not turn in their white cards within five days, and the real issue teachers had with the Assistant Principals, in general, was that the discipline was not severe enough.

Additionally, Intervenor complained Grievant did not answer her pages quickly enough, was curt when he answered these pages, and at times did not respond to her pages. No evidence was submitted to demonstrate that anyone ever saw Grievant intentionally not respond to Intervenor's pages. As testified to by Grievant and Assistant Principal Brenda Scott, there are times when an Assistant Principal would be unavailable, or it would be inappropriate to answer a page, such as conducting a parent conference, dealing with a recalcitrant student, or being in the bathroom. Further, Ms. Scott testified she had occasionally forgotten to charge her pager, left it at home, or was unavailable to answer a page. There was no evidence that she had ever received complaints about her "refusal" to answer.

Footnote: 7

The undersigned Administrative Law Judge originally obtained this list of factors to use when assessing credibility from The United States Merit System Protection Board Handbook. Harold J. Asher and William C. Jackson, Representing the Agency before the United States Merit Systems Protection Board 152-53 (1984).

Footnote: 8

The fact Grievant testified he frequently stayed after his bus duty ended, does not changed the fact he could leave unless there was something scheduled.

Footnote: 9

It should also be noted that the purpose of Intervenor's cross-examination appeared to be to humiliate Grievant's witnesses.