THE WEST VIRGINIA EDUCATION AND STATE EMPLOYEES

GRIEVANCE BOARD

GREG SCOTT BLACKBURN,

Grievant,

v. **Docket No. 06-41-304**

Denise M. Spatafore

Administrative Law Judge

RALEIGH COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Gregg Scott Blackburn ("Grievant") filed this grievance directly at level four on July 17, 2006, following the termination of his employment as a substitute teacher for Respondent Raleigh County Board of Education. (See footnote 1) After several prehearing conferences, Grievant's change of counsel, and the case being held in abeyance per agreement of the parties for several months, a level four hearing was conducted on May 7, 2007, with all parties appearing telephonically. Grievant was represented by counsel, Michael P. Cooke, and Respondent was represented by counsel, Gregory W. Bailey. This matter became mature for consideration upon receipt of the parties' fact/law proposals on May 23, 2007.

Synopsis

Grievant was terminated from his employment as a substitute teacher, after he refused to allow his previous employer in another state to release his entire personnel file to Respondent, which

included an improvement plan involving alleged misconduct. This information came to Respondent's attention after he had been hired as a substitute and was applying for regular employment. After the information was specifically requested, Grievant instructed his counsel not to allow its disclosure. Grievant then lied to Raleigh County officials regarding the improvement plan, its completion, and whether or not it had been provided to them. Respondent was within its rights to request this relevant information regarding Grievant's suitability to teach, and his refusal to provide it was insubordination.

Findings of Fact

1. Grievant was temporarily employed by Respondent as a student teacher in the spring of 2003.

2. After completing his education, Grievant moved to Charlotte, North Carolina, where he taught science at Harding High School in the Charlotte-Mecklenburg School District during the 2003-2004 and 2004-2005 school years.

3. In March of 2005, Grievant submitted an application for regular employment with the Raleigh County Board of Education. During the summer of 2005, Grievant was interviewed for positions which would be available for the 2005-2006 school year at Independence High School and Woodrow Wilson High School.

4. Grievant also applied for employment as a substitute with Respondent, and he was placed on the substitute list for the upcoming 2005-2006 school year. 5. Grievant resigned from his employment with Charlotte-Mecklenburg schools on May 18, 2006, just prior to the conclusion of the school year.

6. During interviews for positions with Respondent during the summer of 2005, Grievant stated that he had been on an improvement plan while employed in North Carolina, but Grievant indicated that he had successfully completed the plan. He did not reveal the reasons for the improvement plan.

7. Bobby Meadows, principal of Independence High School, telephoned the principal of Harding High School, Curtis Carroll, to discuss Grievant's employment in North Carolina. During this conversation, Mr. Carroll indicated that Grievant's employment had been problematic, specifically with regard to Grievant making inappropriate comments to numerous female students and teachers. Mr. Carroll also stated that he was uncomfortable with Grievant's discussions of “weapons” in conversations with Mr. Carroll. Finally, he informed Mr. Meadows that Grievant had resigned in lieu of

termination.

8. On August 8, 2005, Respondent submitted an authorization for release of information, executed by Grievant, to Charlotte-Mecklenburg Schools. Along with the release, Respondent requested all information regarding Grievant's employment, specifically including “performance evaluations and improvement plans” during his employment.

9. In response to Respondent's request, the human resources department of Charlotte-Mecklenburg Schools issued a short memorandum, only stating that Grievant had been employed there from August 11, 2003, until May 18, 2005. No other information was provided. 10. On September 22, 2005, Superintendent Charlotte Hutchens wrote to Grievant, explaining that the employment information provided by the North Carolina system was incomplete. Grievant was asked to produce his evaluations during his employment there, which he had not done. Therefore, Superintendent Hutchens informed Grievant that he would not be hired to teach in any capacity in Raleigh County Schools “until you produce your . . . evaluations, your reasons for leaving your job early, and a letter from your principal . . . stating why you left your employment early.”

11. In response to the September 22 request, Grievant provided his first year evaluation, and a form “recommendation for rehire” executed by Mr. Carroll. However, this form also contained a notation that Grievant had resigned on May 18, 2005. None of the other requested information was provided, and Respondent never received the requested letter from the principal.

12. In late 2005, it came to Respondent's attention that Grievant had instructed his attorney in North Carolina to refuse release of his personnel file by Charlotte- Mecklenburg Schools. Grievant took this action because he believed the file to be “incomplete,” because it contained the improvement plan, but no indication that he had completed the plan. Nevertheless, in correspondence to Respondent in the fall of 2005, Grievant maintained that the improvement plan “no longer exists” in his North Carolina personnel file, Respondent had no right to request it, and even contended that “[d]ocuments showing the successful completion of that improvement plan have been given to as well as mailed and signed for by the Raleigh Office.” Adm. Exh. 9, Bd. Hearing. These statements are untrue, and this information has not been provided to Respondent to date. 13. Documents introduced at the level four hearing in this matter indicate that Grievant continues to battle the Charlotte-Mecklenburg school system regarding his improvement plan, its alleged completion, and removal of it from his personnel file, as recently as this year. Level Four, Gr. Ex. 1 and 5. To date,

although it has not been provided to Respondent, it still apparently is contained in the North Carolina personnel file.

14. In correspondence dated February 15, 2006, Superintendent Hutchens informed Grievant that, due to his instructions preventing the disclosure of his complete personnel file by Charlotte-Mecklenburg Schools, she would not recommend that he be employed by Respondent.

15. On June 22, 2006, the superintendent informed Grievant that she would be recommending termination of his employment as a substitute teacher, due to his refusal to provide information regarding his North Carolina employment, and Respondent's resulting inability to “judge your suitability as a classroom teacher.”

Discussion

In disciplinary matters, the employer bears the burden of establishing the charges 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). An employee of a county board of education may be suspended or dismissed only for immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, the conviction of a felony or a guilty plea or a plea of nolo contendere to a felony charge. If the disciplinary action is taken for unsatisfactory performance, it must follow an employee performance evaluation. W. Va. Code § 18A-2-8. “The authority of a county board of education to discipline anemployee 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 Educ.*, 158 W. Va. 1067, 216 S.E.2d 554 (1975).” *Graham v. Putnam County Bd. of Educ.*, Docket No. 99-40-206 (Sept. 30, 1999).

In this case, Respondent's stated reason for terminating Grievant's employment was his refusal, by instructing his attorney to prohibit the release of information, to provide the requested documentation of his improvement plan while employed in North Carolina. Although not specifically stated, it appears that, if proven, Grievant's refusal to provide information could be considered insubordination. “It is not the label a county board of education attaches to the conduct of the employee in the termination notice that is determinative. The critical inquiry is whether the board's

evidence is sufficient to substantiate that the employee actually engaged in the conduct." *Allen v. Monroe County Bd. of Educ.*, Docket No. 90-31-021 (July 11, 1990); *Duruttya v. Mingo County Bd. of Educ.*, Docket No. 29-88-104 (Feb. 28, 1990). Insubordination "includes, and perhaps requires, a wilful disobedience of, or refusal to obey, a reasonable and valid rule, regulation, or order issued . . . [by] an administrative superior." *Santer v. Kanawha County Bd. of Educ.*, Docket No. 03-20-092 (June 30, 2003); *Butts v. Higher Educ. Interim Governing Bd.,* 212 W. Va. 209, 569 S.E.2d 456 (2002). *See 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). The undersigned finds that Respondent has proven by a preponderance of the evidence that Grievant's conduct was insubordinate and that termination was justified. Based upon the evidence provided, Grievant was at the very least insubordinate, if not blatantly dishonest, regarding the improvement plan and the circumstances surrounding the conclusion of his employment in North Carolina. When employing classroom teachers, including substitutes, it is a school system's responsibility to ensure that the safety and welfare of the students will be protected. If Grievant had been placed on an improvement plan due to any inappropriate conduct toward students and/or teachers, this would bring into question his suitability to teach. Once it came to Respondent's attention that Grievant had engaged in some sort of misconduct which caused him to be placed on an improvement plan by his previous employer, it had every right to demand full information regarding that issue. Therefore, Grievant's instructions to his attorney to refuse to reveal that information, compounded with his dishonesty with Respondent as to whether or not that information had been provided, was clear insubordination.

The following conclusions of law support this decision.

Conclusions of Law

1. In disciplinary matters, the employer bears the burden of establishing the charges 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. An employee of a county board of education may be suspended or dismissed only for immorality, incompetency, cruelty, insubordination, intemperance, willful neglectof duty,

unsatisfactory performance, the conviction of a felony or a guilty plea or a plea of nolo contendere to a felony charge. If the disciplinary action is taken for unsatisfactory performance, it must follow an employee performance evaluation. W. Va. Code § 18A-2-8.

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 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)." *Graham v. Putnam County Bd. of Educ.*, Docket No. 99-40-206 (Sept. 30, 1999).

4. Insubordination "includes, and perhaps requires, a wilful disobedience of, or refusal to obey, a reasonable and valid rule, regulation, or order issued . . . [by] an administrative superior." *Santer v. Kanawha County Bd. of Educ.*, Docket No. 03-20-092 (June 30, 2003); *Butts v. Higher Educ. Interim Governing Bd.,* 212 W. Va. 209, 569 S.E.2d 456 (2002). *See 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).

5. Respondent has proven by a preponderance of the evidence that Grievant was properly terminated for insubordinate conduct.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County, or to the Circuit Court of Raleigh County. Any such appeal must be filed within thirty (30) daysof 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: June 19, 2007

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DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

Grievant has also contended that there is an additional grievance pending at level four regarding "seventeen questions" addressed to Respondent's personnel director. Grievant's counsel was informed in a prehearing conference conducted on January 12, 2007, that the Grievance Board had not received this grievance. No documentation or appeal of that grievance has ever been received at level four, and it is not pending before this Grievance Board.