THE WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD

KEITH RITCHEA,
Grievant,

v. **Docket No. 2009-0991-OhiED**

OHIO COUNTY BOARD OF EDUCATION,
Respondent.

DECISION

Grievant Keith Ritchea grieves his termination by Respondent as a substitute bus operator for incidents of unprofessional conduct, running red lights, and speeding while serving as a bus driver. Following the County Superintendent's recommendation that he be terminated, Grievant requested a hearing before the Respondent. The Ohio County Board of Education approved the recommendation and terminated Grievant's substitute bus operator contract on January 29, 2009.

Pursuant to WEST VIRGINIA CODE §§ 18A-2-8(c) and 6C-2-4(a)(4), Grievant filed this grievance directly to level three of the grievance procedure. His statement of grievance states, "I was discharged unjustly and can show you through proof." He sought the following relief, "pay for the wages I have lost."

The undersigned Administrative Law Judge conducted a level three hearing at the Board's Westover office on May 14, 2009. Grievant appeared in person and represented himself. Respondent was represented by its counsel, William D. Wilmoth, Steptoe & Johnson PLLC. The case became mature for decision on June 18, 2009, following the receipt of the last of the parties' proposed findings of fact and conclusions of law.

Synopsis

Grievant's substitute bus operator contract was terminated by Respondent on January 29, 2009. The termination followed a hearing held before the Ohio County Board of Education on multiple charges of misconduct against Grievant brought by the County Superintendent. The evidence established that Grievant had been involved in incidents of unprofessional conduct, running red lights, and speeding while serving as a substitute bus operator for Ohio County Schools. As a result, the Respondent proved by a preponderance of the evidence that it properly exercised its authority pursuant to W. Va. CODE § 18A-2-8 in terminating Grievant's substitute bus operator's contract. This grievance is denied.

After a thorough review of the record, the undersigned Administrative Law Judge makes the following Findings of Fact:

Findings of Fact

1. Grievant was employed as a substitute bus operator for Respondent until a January 29, 2009 hearing on charges brought by Superintendent Lawrence Miller. At that time, Grievant's contract was terminated by a unanimous vote of the Ohio County Board of Education. The record of this case does not indicate the length of time Grievant was employed by Respondent.

2. On August 31, 2007, Gary Kestner, Respondent's Director of Transportation, reprimanded Grievant for unprofessional conduct toward the bus aide following a review of the bus video and audio. The reprimand resulted from Grievant using an inappropriate tone of voice toward the bus aide and being disrespectful.

3. Grievant did not contest the charge of unprofessional conduct toward the bus aide, and only stated in his defense that she was “all mouth.”

4. On April 11, 2008, Kathy Finsley, General Counsel/Human Resources Director for Respondent, observed bus #26 run a red light while traveling at a high rate of speed at the intersection of National Road and Park View Lane in Ohio County. The Transportation Director was contacted and he confirmed that the driver of the bus was Grievant.

5. Respondent has placed GPS tracking devices on all of its buses. The GPS device confirmed the speed and location of the bus on the date of the incident, April 11, 2008. A letter of reprimand was given to Grievant concerning this incident.

6. On October 1, 2008, Grievant was observed speeding through a bus stop. Grievant acknowledged that he failed to stop at the designated location to pick up the student and opted to stop on his way back.

7. On October 8, 2008, Grievant ran a red light at National Road and Junior Avenue while driving his assigned bus. Grievant acknowledged this infraction, and down played the incident as rolling through the stop, “as everyone else does.”

Discussion

The burden of proof in disciplinary matters rests with the employer, and the employer must meet that burden by proving the charges against an employee by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Board, 156 C.S.R. 1 § 156-1-3 (2008); *Ramey v. W. Va. Dep't of Health*, Docket No. H-88-005 (Dec. 6, 1988). "A preponderance of the evidence is evidence 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 proved is more probable than not." *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997). In other words, "[t]he 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).

Pursuant to West Virginia Code, school personnel may be suspended or dismissed at any time for immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, the conviction of a felony or a guilty plea or a nolo contendere to a felony charge. W. VA. CODE § 18A-2-8; *Kanawha County Bd. of Educ. v. Sloan*, 219 W. Va. 213, 632 S.E.2d 899 (2006).

The authority of a county board of education to terminate an employee must be based on one or more of the causes listed in W. VA. CODE § 18A-2-8 and must be exercised reasonably, not arbitrarily or capriciously. Syl. Pt. 2, *Parham v. Raleigh County Bd. of Educ.*, 192 W. Va. 540, 453 S.E.2d 374 (1994); Syl. Pt. 3, *Beverlin v. Bd. of Educ.*, 158 W. Va. 1067, 216 S.E.2d 554 (1975)*; Bell v. Kanawha County Bd. of Educ.*, Docket No. 91-20-005 (Apr. 16, 1991).

Respondent contends that Grievant's conduct on August 31, 2007, April 11, 2008, October 1, 2008, and October 8, 2008, constitutes insubordination, in that Grievant's failure to obey the speed limits, traffic regulations, and mistreatment of the bus aide continued after efforts were made to correct the unacceptable behavior. 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)(*per curiam*). *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). "[F]or there to be 'insubordination,' the following must be present: (a) an employee must refuse to obey an order (or rule or regulation); (b) the refusal must be wilful; and c) the order (or rule or regulation) must be reasonable and valid." *Butts, supra*.

Grievant offered no meaningful defense to the allegations against him. In fact, Grievant admitted to his unprofessional behavior toward the bus aide. Grievant argued about the weather and his speed on April 11, 2008, but did not dispute running the red light. In addition, Grievant acknowledged running through a bus stop on October 1, 2008. Once again, Grievant acknowledged that he failed to stop at a second red light on October 8, 2008. Grievant received reprimands and directives from his supervisor to obey traffic regulations; nevertheless, Grievant continued to refuse to follow the rules of the road.

It is only common sense, and Grievant reluctantly acknowledged, that his actions placed in harm's way the safety and welfare of the students being transported. In addition, his conduct may also be characterized as willful neglect of duty, which is conduct constituting a knowing and intentional act, rather than a negligent act. *Williams v. Cabell County Bd. of Educ.*, Docket No. 95-06-325 (Oct. 31, 1996); *Jones v. Mingo County Bd. of Educ.*, Docket No. 95-29-151 (Aug. 24, 1995); *Hoover v. Lewis County Bd. of Educ.*, Docket No.93-21-427 (Feb. 24, 1994). Willful neglect of duty encompasses something

more serious than incompetence. *Bd. of Educ. v. Chaddock*, 183 W. Va. 638, 398 S.E.2d 120, 122 (1990); *Sinsel v. Harrison County Bd. of Educ.*, Docket No. 96-17-219 (Dec. 31, 1996).

The record of this case demonstrates that Respondent correctly exercised its authority pursuant to W. VA. CODE § 18A-2-8 in terminating Grievant's substitute bus operator contract in a manner that was not arbitrary or capricious. Having received reprimands and directives from his supervisor to obey the speed limits and other regulations, Grievant's behavior as charged by Superintendent Miller can be characterized as insubordinate and the willful neglect of duty. The undersigned concludes that Respondent did not abuse its substantial discretion in disciplinary matters when it determined that Grievant's pattern of conduct outlined above warranted termination.

The following Conclusions of Law support the decision reached:

Conclusions of Law

1. The burden of proof in disciplinary matters rests with the employer, and the employer must meet that burden by proving the charges against an employee by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Board, 156 C.S.R. 1 § 156-1-3 (2008); *Ramey v. W. Va. Dep't of Health*, Docket No. H-88-005 (Dec. 6, 1988).

2. Pursuant to West Virginia Code, school personnel may be suspended or dismissed at any time for immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, the conviction of a felony or a guilty plea

or a nolo contendere to a felony charge. W. VA. CODE § 18A-2-8; *Kanawha County Bd. of Educ. v. Sloan*, 219 W. Va. 213, 632 S.E.2d 899 (2006).

3. The authority of a county board of education to terminate an employee must be based on one or more of the causes listed in W. VA. CODE § 18A-2-8 and must be exercised reasonably, not arbitrarily or capriciously. Syl. Pt. 2, *Parham v. Raleigh County Bd. of Educ.*, 192 W. Va. 540, 453 S.E.2d 374 (1994); Syl. Pt. 3, *Beverlin v. Bd. of Educ.*, 158 W. Va. 1067, 216 S.E.2d 554 (1975)*; Bell v. Kanawha County Bd. of Educ.*, Docket No. 91-20-005 (Apr. 16, 1991).

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)(*per curiam*). *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. Willful neglect of duty encompasses conduct constituting a knowing and intentional act, rather than a negligent act. *Williams v. Cabell County Bd. of Educ.*, Docket No. 95-06-325 (Oct. 31, 1996); *Jones v. Mingo County Bd. of Educ.*, Docket No. 95-29-151 (Aug. 24, 1995); *Hoover v. Lewis County Bd. of Educ.*, Docket No.93-21-427 (Feb. 24, 1994).

6. Respondent has proven by a preponderance of the evidence that Grievant engaged in conduct constituting insubordination and willful neglect of duty.

Accordingly, the grievance is **DENIED**.

Any party may appeal this Order to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Order. *See* W. VA. CODE § 6C-2-5. Neither the West Virginia Public 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 Civil Action number should be included so that the certified record can be properly filed with the circuit court. *See also* 156 C.S.R. 1 § 6.20 (eff. July 7, 2008).

Date: July 24, 2009

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Ronald L. Reece
Administrative Law Judge