WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

SHIRLEY SKIDMORE,
Grievant,

v. **Docket No. 2011-1665-BraED**

BRAXTON COUNTY BOARD
OF EDUCATION,
Respondent.

DECISION

Grievant, Shirley Skidmore, is a full-time Bus Operator employed by the Respondent, Braxton County Board of Education ("Board"). Ms. Skidmore filed a level one grievance form dated May 17, 2011, alleging that "she has suffered a pattern of harassment from the Chief Mechanic Fritz Dooley[1] that caused her emotional distress, humiliation, discomfort, and created a hostile work environment." Grievant set out the following specific incidents:

- On April 28, 2011, Mr. Dooley entered Grievant's bus and sprayed some sort of liquid deodorizer or disinfectant while verbally complaining to those present about the odor of Grievant and/or her perfume. This incident humiliated Grievant.
- On or about April 29, 2011, Mr. Dooley has refused to believe and attend to Grievant's reports of mechanic malfunctions on her bus (seat and air brakes). This compromised her comfort and the safety of her and her passengers.
- On or about April 29, 2011, Mr. Dooley refused to allow Grievant to use spare bus (#85) that she desired. Instead she was forced to use another spare (#66). There was no apparent reason behind this action other than to discomfort Grievant. When addressing Grievant about this situation, Mr. Dooley raised his voice causing (sic) Grievant, which made her uncomfortable and feel humiliated.
- Grievant believes that Mr. Dooley made, or caused to be made, spurious or trivial complaints about Grievant to transportation supervisor. Shawn Dilley. This resulted in three conferences between Grievant and

[1] Grievant's immediate supervisor is Fritz Deuly. Throughout the grievance form, his last name is misspelled as "Dooley" rather than the correct spelling which is "Deuly."

> Mr. Dilley during the 2010-2011 school year. This pattern of conduct has left Grievant anxious about her job and uncomfortable.

Grievant further stated that the alleged harassment:

> . . . stems from an incident involving a potential bus operator trainee. Mr. Dooley was angry with Grievant and raised his voice when addressing her causing [G]rievant humiliation and discomfort. This pattern of hostility of Mr. Dooley toward Grievant has continued since that time with other incidents not enumerated in this document.[2]

Grievant Skidmore seeks "cessation of harassment and appropriate safeguards to ensure no future incidents of harassment."

A level one conference was held with Braxton County Superintendent, Dennis Albright, presiding as the Chief Administrator, on September 1, 2011. Superintendent Albright issued a level one decision dated September 6, 2011, in which he held that Grievant failed to meet her burden of proof and denied the grievance. However, as a result of the discussions among the parties at the conference, Superintendent Albright directed the Supervisor of Transportation implement specific actions to help increase productivity and safety for mechanics and reduce contacts between bus operators and mechanics "thereby cutting down the opportunities for potential unprofessional and disrespectful conduct."[3]

Grievant appealed to level two on a form dated September 17, 2011, and a mediation was held on December 5, 2011. Grievant appealed to level three and a level three hearing was held in the Charleston Office of the West Virginia Public Employees Grievance Board on May 4, 2012. Grievant appeared at the hearing with her

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[2] This rather lengthy grievance statement was repeated herein to set forth the alleged continuing conduct that made up Grievant's claim of harassment by her supervisor.

[3] Level one decision. While Superintendent Albright denied the grievance, he put into place what appear to be appropriate safeguards to address Grievant's concerns in the future, which was the main relief Grievant was seeking.

representative, John E. Roush, Esquire, West Virginia School Service Personnel Association. Respondent was represented by Rebecca M. Tinder, Esquire, Bowles, Rice, McDavid, Graf & Love, PLLC. The parties submitted post-hearing Proposed Findings of Fact and Conclusions of Law which were received by the West Virginia Public Employees Grievance Board on June 5, 2012. The grievance became mature for decision on that date.

Synopsis

Grievant alleges that she has been subjected to a course of harassing conduct by her supervisor that created a hostile work environment. While Grievant and her supervisor do not always get along, Grievant did not prove that her supervisor subjected her to harassment or that she suffers from a hostile work environment. Additionally, while Superintendent Albright denied the grievance at level one, he took steps to address many of the concerns Grievant raised in her grievance, in an effort to soothe the friction between Grievant and her supervisor.

The following facts are found to be proven by a preponderance of the evidence based upon an examination of the entire record developed in this matter.

Findings of Fact

1. Grievant, Shirley Skidmore, is employed by the Respondent, Braxton County Board of Education, as a Bus Operator, and has been so employed for the last twelve years.

2. Fritz Deuly is the Board's Director/Chief Mechanic and Grievant's immediate supervisor. In the spring of 2009, Mr. Deuly assigned a Bus Operator trainee

to ride on Grievant's bus. Grievant refused to allow the trainee to ride on her bus because she did not believe the person was properly authorized to do so.

3. When Mr. Deuly discovered that Grievant refused to allow the trainee to ride on her bus, he confronted Grievant and they had a heated discussion about Grievant's refusal to follow his directive. The confrontation was brief and neither Grievant nor Mr. Deuly raised their voices.[4] Grievant received no disciplinary action as a result of her refusal to allow the trainee to ride her bus.

4. Grievant is very frank and opinionated in her dealings with co-workers. She does not hesitate to tell others how she believes they should do things when she believes it is necessary, which apparently occurs fairly frequently.[5]

5. Fritz Duely's immediate supervisor is Shawn Dilly. Mr. Dilly has held the position of Assistant Superintendent for the Board since June 22, 2009. Among the numerous supervisory duties assigned to his position, Mr. Dilly oversees the Board's transportation department. Mr. Dilly lacked prior transportation experience and relies heavily upon his subordinate supervisors, such as Mr. Deuly, as well as the Department of Education, as resources. Mr. Deuly deals with mechanics, bus operators and parents on a daily basis and, when necessary, forwards complaints to Mr. Dilly.

6. During the 2010-2011 school year, Mr. Dilly held three conferences with Grievant to discuss various complaints he had received about Grievant from parents,

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[4] Level three testimony of Charles Smith who witnessed the confrontation. Mr. Smith has been a Bus Operator for the Board for more than twenty-five years.

[5] Level three testimony of Grievant, Charles Smith and Jeffry Jenkins. Grievant noted that some people characterize her suggestions as being "bossy". Mr. Jenkins, an experienced mechanic, described her behavior as constantly telling him and others how to do their jobs.

coaches and teachers. The majority of those complaints came directly to Mr. Dilly, but a few were relayed to him from Mr. Deuly.

7. The majority of complaints received by Mr. Dilly relate to what he described as personality conflicts. Grievant was very strict with the rules of discipline on the bus which resulted in a number of complaints. One particular complaint came from a group of parents who alleged that Grievant breached student confidentiality. Mr. Dilly also received complaints from parents, students and substitute drivers regarding what they perceived as Grievant's excessive use of perfume.[6] Mr. Deuly did not relay an unusual number of complaints about Grievant to Mr. Dilly.

8. At one meeting, Mr. Dilly told Grievant that he felt she should watch her behavior because he believed that a group of parents might be trying to get her fired. At these meetings, Grievant alleged that Mr. Deuly was picking on her. Subsequently, Mr. Dilly had a discussion with Mr. Deuly about Grievant's allegations. Mr. Dilly did not believe that Mr. Deuly was picking on Grievant.

9. Between April 20, 2010, and April 28, 2011, Grievant submitted ten repair requests for her driver seat on Bus Number 82. Grievant complained that the left side of the seat sank down and the frame would rock from side to side in turns. Each time Grievant submitted the bus for repairs on the seat, the mechanics attempted to address the problem. The school bus maintenance records indicate that in the spring of 2010 the bottom of the seat was replaced and on a different occasion extra padding was added. During this year-long period several, attempts were made to tighten the seat. On two occasions in April 2011, the seat was inspected and the mechanics could find no

[6] One substitute bus operator alleged that she became ill from the excessive perfume in Grievant's bus and asked to drive a spare bus when substituting for Grievant thereafter.

problem with it.[7] Ultimately, the seat was removed from the bus and replaced with another seat to accommodate Grievant's complaints.[8]

10. Also in April 2011, Grievant was experiencing problems with the air brakes on bus number 82. Mr. Deuly and Mr. Jenkins inspected the brakes on bus number 82 and could find nothing wrong with them. Mr. Deuly has held the Automotive Service Excellence certification of "Master School Bus Technician" for several years. He explained to Grievant that he could not find a problem with the brakes, but he was going to take the bus off-line until it could be inspected by the State School Bus Inspector from the State Department of Education. It took several weeks for the State School Bus Inspector to get to bus number 82, but when he did inspect it, he could find nothing wrong with the brakes.

11. While bus number 82 was off-line awaiting inspection, Mr. Deuly had to assign a spare bus for Grievant to drive. Such assignments are a regular part of Mr. Deuly's responsibilities. Grievant requested that she be assigned bus number 85 while her bus was off-line. Mr. Deuly assigned Grievant bus number 65 instead. Bus number 85 had already been assigned to a different driver for a multiple-day assignment. The two buses were similar in most respects. The main difference was that bus 85, like bus 82 was manufactured by "Freight Liner" and bus 65 was manufactured by "International." As a result of the different manufacturers the buses handled a little differently, but both buses met all State requirements.[9]

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[7] Grievant's Exhibit 1, the maintenance record for bus number 82 from September 3, 2009, through June 21, 2011.
[8] Level three Testimony of Bus Operator/Mechanic Jeffrey Jenkins, Fritz Deuly and Grievant.
[9] Level three testimony of Fritz Deuly.

12. Fritz Deuly suffers from COPD.[10] As a result of this ailment, Mr. Deuly is negatively affected by chemical smells and other strong odors. He is also careful about contracting colds and viruses. Mr. Deuly sprays buses with a disinfectant and deodorizer to kill germs and neutralize odors before he works on the buses in an effort to avoid aggravating his COPD symptoms.[11]

13. On April 28, 2012, Grievant brought bus number 82 into the garage for repair. Director Dilly and Bus Operator/Mechanic Jenkins were present. Mr. Deuly entered Grievant's bus and sprayed it with disinfectant/deodorant. Grievant took this as a personal insult regarding her perfume. Mr. Deuly responded that he was spraying the bus for his health. Mr. Deuly had mentioned that Grievant's strong perfume bothered him in the past. While the exchange was not friendly, neither Grievant nor Mr. Deuly raised their voice.

14. At the conclusion of the level one hearing, Superintendent Albright denied the grievance but implemented the following steps to address some of Grievant's concerns:

- Required all bus operators to leave the garage area when not conducting Board business;
- Placed an "in box" in the entry foyer of the garage for employees to submit work requests and instructed employees on the use of the box;
- Required that a copy of the mechanic's completed work form be placed upon the seat of the bus operator so the operator would know what work was completed;
- Instituted a clearly defined system for the assignment of replacement buses; and,

[10] Chronic Obstructive Pulmonary Disorder (COPD) is a respiratory illness that makes it difficult for those afflicted to breathe.

[11] Jeffrey Jenkins testified that it was a common practice for other mechanics to spray the interior of buses with disinfectant before working in them to avoid colds and illnesses.

- Required that bus operators and mechanics attend an annual refresher session on the Employee Code of Conduct and the Board's harassment policies.[12]

Discussion

As this grievance does not involve a disciplinary matter, Grievant bears the burden of proving the grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). 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).

Grievant alleges that she has been subjected to harassment by her supervisor, Fritz Deuly, and that his actions have created a hostile work environment. She lists a number of specific incidents of alleged harassment by Mr. Deuly. WEST VIRGINIA CODE § 6C-2-2(l) defines "harassment" as "repeated or continual disturbance, irritation or annoyance of an employee that is contrary to the behavior expected by law, policy and profession." What constitutes harassment varies based upon the factual situation in each individual grievance. *Sellers v. Wetzel County Bd. of Educ*., Docket No. 97-52-183 (Sept. 30, 1997). "Harassment has been found in cases in which a supervisor has constantly criticized an employee's work and created unreasonable performance

[12] In addition to the facts set out herein, Grievant introduced evidence about a telephone conversation she overheard in which another bus operator suggested to his father that he ought to get "Shirley" to come sit with him while he was ill. The other bus operator said he was referring to a different "Shirley" who is a friend of his father's. This issue was not raised prior to the level three hearing and there is no indication that Mr. Deuly was involved in this conversation. Consequently, it is given no consideration or weight herein. Even if this evidence were considered, it would not have changed the outcome.

expectations, to a degree where the employee cannot perform her duties without considerable difficulty. *See Moreland v. Bd. of Trustees*, Docket No. 96-BOT-462 (Aug. 29, 1997)." *Pauley v. Lincoln County Bd. of Educ*., Docket No. 98-22-495 (Jan. 29, 1999). A single incident does not constitute harassment. *See, Johnson v. Dep't of Health and Human Res*., Docket No. 98-HHR-302 (Mar. 18, 1999); *Metz v. Wood County Bd. of Educ*., Docket No. 97-54-463 (July 6, 1998); *Breck v. Putnam County Bd. of Educ*., 2011-1541-PutED (Sept. 25, 2012).

As examples of harassment, Grievant lists a series of incidents in which she disagreed with her supervisor: when he assigned a trainee to ride with her; when he attempted to repair her bus seat and brakes; when he did not assign the replacement bus she wanted; when he sprayed her bus with disinfectant/deodorizer; and, when Director Dilly met with Grievant to discuss complaints. In each of these instances, Mr. Deuly was performing his duty in a reasonable way. The fact that Mr. Deuly did not do things the way Grievant wanted him to did not constitute harassment.

Mr. Deuly either personally inspected Grievant's bus, or assigned another mechanic to do so, every time she reported a problem with it. Even though none of the mechanics could find a problem with her driver seat, they made several repairs to it and eventually replaced it. With regard to the brakes, Mr. Deuly, an ASE certified Master School Bus Technician, inspected the brakes of bus 82. Even though he could find no problem with the brakes, he took the bus off-line so it could be inspected by the State Bus Inspector. There was simply nothing further Mr. Deuly could have reasonably done to address those issues.

Director Dilly testified that the meetings he had with Grievant were mostly dealing with complaints he had received from parents and other staff. He indicated that Mr. Deuly occasionally forwarded complaints to him about Grievant but that was no more frequent than complaints Deuly forwarded about other Bus Operators. Even though Grievant believed these meetings resulted from complaints made by Mr. Deuly, that simply was not the case.

Obviously, Mr. Deuly could have assigned the replacement bus Grievant wanted to her. However, that bus was being utilized on another assignment, and he assigned Grievant a comparable bus to use while bus 82 was off-line. This was within Mr. Deuly's discretion and it was a reasonable exercise of this discretion given the circumstances.

One can understand why Grievant was offended when Mr. Deuly sprayed disinfectant/deodorizer on her bus when she brought it in for repair. She believed this was a personal affront related to her hygiene and her perfume. However, Mr. Deuly uses the same product on most buses he inspects and works on, because he suffers from COPD. Additionally, Grievant's perfume does aggravate his condition. Mr. Deuly could have been more sensitive to Grievant's feelings in this instance but he clearly did not spray the disinfectant on the bus to harass her.[13]

Undoubtedly, Mr. Deuly and Grievant Skidmore both have strong personalities and they tend to clash from time to time. Yet, there is no evidence that Mr. Deuly's actions were outside reasonable performance of his management functions, or that he

[13] Given the fact that Grievant's heavy use of perfume had been an issue with others, as well as Mr. Deuly, she also could have been more considerate by wearing a little less of it.

treated Grievant any differently than he treated other bus operators in seeing to repairs or assigning a replacement bus. Grievant failed to prove that she has been subjected to "harassment" as that term is defined in W. VA. CODE § 6C-2-2(l).

The Grievance Board generally follows the analysis of the federal and state courts in determining what constitutes a hostile work environment. *See Lanehart v. Logan County Bd. of Educ.*, Docket No. 97-23-088 (June 13,1997). The United States Supreme Court has indicated that "whether an environment is 'hostile' or 'abusive' can be determined only by looking at all the circumstances . . . includ[ing] the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance*." Harris v. Forklift Systems, Inc*., 510 U.S. 17, 23, 114 S. Ct. 367, 371, 126 L. Ed. 2d 295 (1993). Further, "[i]n characterizing the negative workplace environment, courts have drawn a continuum between rudeness and ostracism, on one side of the spectrum, and severe or pervasive harassment on the other side, generally finding that 'rudeness or ostracism, standing alone' is insufficient to support a hostile work environment claim[.]" *Figueroa Reyes v. Hospital San Pablo del Este*, 389 F. Supp. 2d 205, 213 (D.P.R. 2005); *Johnson v. Killmer*, 219 W. Va. 320, 325, 633 S.E.2d 265, (2006).

There was nothing threatening or humiliating regarding how Mr. Deuly addressed Grievant. While their exchanges were less than friendly, all of the witnesses except Grievant, testified that Mr. Deuly never raised his voice at Grievant, even when she refused to allow a trainee to ride with her as Mr. Deuly had ordered. Mr. Deuly's action of spraying the disinfectant/deodorizer on Grievant's bus, in her presence, might be

characterized as rude, but it certainly did not reach the level of interfering with the performance of Grievant's duties or creating a hostile work environment. Grievant did not prove by a preponderance of the evidence that she was subjected to a hostile work environment or that she was being harassed. Consequently, the grievance is DENIED.

Conclusions of Law

1. In non-disciplinary matters, Grievant bears the burden of proving this grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2008); *Howell v. W. Va. Dep't of Health & Human Res.*, Docket No. 89-DHS-72 (Nov. 29, 1990). 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).

2. WEST VIRGINIA CODE § 6C-2-2(l) defines "harassment" as "repeated or continual disturbance, irritation or annoyance of an employee that is contrary to the behavior expected by law, policy and profession." What constitutes harassment varies based upon the factual situation in each individual grievance. *Sellers v. Wetzel County Bd. of Educ.*, Docket No. 97-52-183 (Sept. 30, 1997). "Harassment has been found in cases in which a supervisor has constantly criticized an employee's work and created unreasonable performance expectations, to a degree where the employee cannot perform her duties without considerable difficulty. *See Moreland v. Bd. of Trustees*, Docket No. 96-BOT-462 (Aug. 29, 1997)." *Pauley v. Lincoln County Bd. of Educ.*, Docket No. 98-22-495 (Jan. 29, 1999); Breck v. Putnam County Bd. of Educ., 2011-1541-PutED (Sept. 25, 2012).

3. Grievant did not prove by a preponderance of the evidence that she was subjected to harassment by her supervisor, as “harassment” is defined by W.VA. CODE § 6C-2-2(I).

4. The Grievance Board generally follows the analysis of the federal and state courts in determining what constitutes a hostile work environment. *See Lanehart v. Logan County Bd. of Educ.*, Docket No. 97-23-088 (June 13,1997).

5. "[W]hether an environment is 'hostile' or 'abusive' can be determined only by looking at all the circumstances . . . includ[ing] the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance*." Harris v. Forklift Systems, Inc*., 510 U.S. 17, 23, 114 S. Ct. 367, 371, 126 L. Ed. 2d 295 (1993).

6. "In characterizing the negative workplace environment, courts have drawn a continuum between rudeness and ostracism, on one side of the spectrum, and severe or pervasive harassment on the other side, generally finding that 'rudeness or ostracism, standing alone' is insufficient to support a hostile work environment claim[.]" *Figueroa Reyes v. Hospital San Pablo del Este*, 389 F. Supp. 2d 205, 213 (D.P.R. 2005); *Johnson v. Killmer*, 219 W. Va. 320, 325, 633 S.E.2d 265, (2006).

7. Grievant did not prove by a preponderance of the evidence that she was subjected to a hostile work environment.

Accordingly, the grievance is DENIED.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. *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 (2008).

DATE: NOVEMBER 27, 2012

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WILLIAM B. MCGINLEY
ADMINISTRATIVE LAW JUDGE