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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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PATRICIA GAIL PETRY

v.

Docket Nos. 20-86-085

KANAWHA COUNTY BOARD OF EDUCATION

20-86-136-1

20-86-190-1

20-86-246-1

DECISION

Grievant, Patricia Gail Petry, is employed by the Kanawha County Board of Education as a fourth grade teacher at Sharon Dawes Elementary School. Commencing in September, 1985 grievant filed a series of grievances alleging that the principal of Sharon Dawes, Julia Hedge, had engaged in acts of harassment and retaliation toward grievant. Various level four hearings were scheduled beginning in March, 1986 and, upon remand, a level two hearing was conducted on May 6, 1986 on three of the grievances. Finally, after several continuances, level four hearings were commenced on September 12 and completed on October 1, 1986; findings of fact and conclusions of law were submitted on October 6 and October 17, 1986.

Grievant has been employed by Kanawha County Schools for twenty-one years and has taught at Sharon Dawes for eighteen years; prior to 1985 she had never filed a grievance. At the commencement of the 1985-86 school year Julia Hedge became principal at Sharon Dawes and a series of grievances ensued, beginning on September 9, 1985.¹ The second grievance was filed on December 21, 1985 and involved grievant's lesson plans and the alleged lack of confidentiality exhibited by principal Hedge in the handling of a grievance filed by grievant.² The third grievance was filed on February 28, 1986 on the refusal of principal Hedge to permit grievant to continue the use of absent or "dock" days instead of sick leave in relation to a long standing disability of grievant and the letter of reprimand issued by Hedge relating thereto. The fourth grievance was filed April 16, 1986, based upon turning in lesson plans and the fifth grievance alleged that grievant had not received her evaluation as of the end of April, 1986.³

¹ This grievance involved a complaint by a parent to principal Hedge and her reaction thereto. Grievant alleged that the principal had treated her unprofessionally and harassed her. A level two hearing was conducted on November 7, 1985. This grievance was consolidated and dismissed at the level four hearing. (No. 20-86-085).

² The gist of this grievance is that someone, presumably principal Hedge, placed a note concerning an informal grievance conference "face up" in grievant's mailbox where it was seen by one other teacher. There was also evidence that certain teachers were aware that grievant had filed a grievance but there is insufficient evidence to demonstrate that principal Hedge was the person who violated the confidence.

³ A hearing was conducted on the fifth grievance and the evaluation was received shortly after the hearing. Presumably, that grievance has been resolved and abandoned by grievant.

The sixth and final grievance was filed on June 23, 1986 and alleged that principal Hedge embarrassed grievant's mother when she had stopped by the school to take grievant to the doctor by chastising her for failing to use the sign-in procedure.⁴ Grievant also asserts in this grievance that her evaluation was marked "meets standards" in areas 5.2 and 6.1 and these ratings were arbitrary and retaliatory.⁵ Because principal Hedge was transferred at the conclusion of the 1985-86 school year the grievant narrowed the issues and sought relief only as to the comments of principal Hedge concerning her lesson plans, resolution of the sick leave issue and the letter of reprimand pertaining thereto and the removal of any records prepared by principal Hedge which adversely reflect upon grievant's competency. The following discussion will focus on those areas.

LESSON PLANS

A teacher observation form dated November 5, 1985 was completed by principal Hedge and one of the comments made thereon was that "Lesson plans need to be turned in on time each Monday morning." (Grievant's Exhibit No. 5). Grievant testified that

⁴ Grievant asserts that her mother was not a stranger at the school, having been there on several occasions; that the senior Mrs. Petry had retired after thirty-five years service as a cook for Kanawha County Schools and deserved an apology. Grievant alleges that this was another instance of unprofessional conduct and a continued "act of retaliation" by principal Hedge.

⁵ 5.2 on the Teacher Evaluation Form is the "Accepts the Child as a Worthy Individual" classification and 6.1 is the "Personal Characteristics" classification. Although grievant received an overall "Exceeds Standards" she alleges that these two ratings were arbitrary.

she had been late only once and that when she and principal Hedge had a conference on the observation principal Hedge could find no record of any time grievant had been late with her lesson plans. Grievant prepared an addendum to the observation form on November 12, 1985 objecting to the foregoing comment and requesting that it be deleted. Grievant objected when principal Hedge wrote notes upon the addendum and returned it to grievant; she requests that a "clean" copy be put in her personnel file in the Central Office and the "dirty" copy destroyed.⁶

Several witnesses testified that grievant was very conscientious about preparation of her lesson plans and has had them delivered to school even when she was off work ill.⁷ One witness, Karen Gray, testified that she had been late with her lesson plans at least ten times during the 1985-86 school year and principal Hedge made no written reference to the tardiness on her observation form or on her evaluation form; that she had

⁶ Counsel for the school board asserts that this matter was resolved at the level two hearing when grievant and her representative were shown the original "clean" copy and it was made a part of the record of that proceeding. (See Level II transcript, Employer's Exhibit No. 2). At that hearing principal Hedge testified that she had written on a copy as a communication to grievant and that the original was "clean". (T. 70). Grievant denies there is a "clean" copy in her personnel file at the Central Office.

⁷ Patricia Jurak testified that she probably did more substitute work than any other teacher at Sharon Dawes because she is an IMC teacher and that in all of the rooms in which she substituted grievant's lesson plans were the most thorough and comprehensive.

received eighteen of eighteen "exceeds standards" ratings on her evaluation. (Grievant's Exhibit No. 19).

Counsel for the school board contends that grievant received an overall rating of "exceeds standards" and there was no evidence that grievant did not receive an open and fair evaluation. Moreover, it is asserted that mere disagreement with certain evaluation results does not rise to the level of a grievable event in that a teacher who disagrees with the evaluation is entitled to submit a letter stating his or her position and have this letter placed in his or her personnel file; that grievant did not exercise her right to submit such a letter.

SICK LEAVE OR "DOCK" DAYS

Grievant has suffered a chronic foot problem since 1977 and during the administration of Robert Kittle an exception to the Sick Leave Policy was made in grievant's case whereby grievant was permitted to take the days she was required to be off work due to the foot problem as days docked instead of as sick leave time. The only condition was that before grievant could use dock days she was required to use her three personal days and this exception applied only to her chronic foot problem. This policy continued during the Superintendent Lakey administration and was accepted by grievant's two former principals, Mr.

Homer Phelps and Mrs. Diana Adkins.⁸

Principal Hedge followed this procedure during the first part of the 1985-86 school year but on January 6, 1986 advised grievant that she would be bound by Board Policy IV-J-1 requiring that an employee exhaust sick leave prior to requesting dock days; she informed grievant that she was changing the days grievant had missed on January 3 and 6 from "dock" to "sick". (Grievant's Exhibit No. 8).⁹ Grievant wrote Superintendent Acord on January 29, 1986 about the foregoing and by letter dated February 7, 1986 Superintendent Acord advised grievant that because there was nothing in writing concerning the previous understanding about sick leave and because he had no specific recollection of the matter, grievant would be required to follow existing leave requirements. (Grievant's Exhibit No. 13). Grievant contends that principal Hedge wrote a reprimand to grievant's personnel file charging that grievant had not completed or turned

⁸ Mr. Phelps was principal of Sharon Dawes from 1971-83 and testified that grievant wanted to use dock days instead of sick leave because there might be a time when she would be hospitalized for a long period. It was his understanding that the Central Office and Horace Mann Insurance Company had participated in the agreement with grievant. In June, 1986 grievant established the existence of the previous agreement with Horace Mann and county school officials. (Grievant's Exhibit No. 15).

⁹ On January 7 principal Hedge wrote grievant another letter that she would not approve any more docked days without a justifiable reason and advance notification. Grievant was further informed that the frequent absences interfered with effective classroom instruction and that the students deserved the "continuity of an instructor who is in regular attendance." (Grievant's Exhibit No. 9). Grievant contends this was done as retaliation for the grievance she filed on December 21, 1985.

in the sick leave forms as directed and that a continuance of this conduct could result in a recommendation of disciplinary action, which letter was inaccurate and retaliatory. (Grievant's Exhibit No. 11).¹⁰

Counsel for the school board contends that principal Hedge terminated the unwritten dock day practice in January, 1986 pursuant to Board Regulation IV-J-1 as a result of numerous absences (32) and that the principal's actions were legitimate and appropriate, as confirmed by the letter from Superintendent Acord to grievant.

In addition to the foregoing recitation the following specific findings of fact and conclusions of law are appropriate.

FINDINGS OF FACT

1. Grievant has been employed as a fourth grade teacher at Sharon Dawes Elementary School for eighteen years. She is known to be a dedicated teacher who devotes long hours to her duties as teacher.

2. At the commencement of the 1985-86 school year Julie Hedge assumed the position of principal at Sharon Dawes Elementary School; she had previously been a teacher at Malden Elementary School for five years.

¹⁰ Grievant states that when she received the letter from principal Hedge that the "dock" days were being changed to "sick" days she didn't feel she needed to do anything; that she did not intentionally violate the principal's direction.

3. In the early part of September, 1985 Julia Hedge informed grievant that a parent had made complaints about grievant and as a result of this incident a grievance was filed asserting that principal Hedge was harassing grievant for some unknown reason. Thereafter, the grievant filed six grievances during the school year 1985-86 involving allegations of harassment and retaliation.

4. At Sharon Dawes principal Hedge had thirteen new teachers to train and evaluate along with the other teachers during the 1985-86 school year and was also attempting to familiarize herself with the new evaluation policy being instituted in Kanawha County at the time. She had attended at least one in-service training session that year conducted by the school officials to familiarize principals with the new procedure.

5. Principal Hedge completed a Teacher Observation Form on November 5, 1985 and under Item IV did not check the notation that grievant made adequate and appropriate use of lesson plan books and under "Comments" noted that lesson plans needed to be turned in on time each Monday morning. A conference was held on November 8, 1985 and on November 12, 1985 grievant attached an addendum clarifying section IV, noting that she felt she should have received a check for lesson plans and that she had spoken with Mrs. Hedge about the comment and she had apparently been of the misconception that grievant had turned in her lesson plans late several times. The evidence at the level four hearing

establishes that grievant was, in fact, prompt with her lesson plans and the comment of Mrs. Hedge was precipitated by the numerous absences of grievant. It is therefore a finding that the Observation Form is erroneous and should be corrected.

6. In evaluating teachers at Sharon Dawes principal Hedge used her personal observation, the self-evaluation of the individual teacher and other informal items, such as special activities and projects. The self-evaluations were to be turned in in March and principal Hedge commenced the evaluations in April, 1986. Principal Hedge did not inform the teachers in advance of the areas she would be observing but relied upon the self-evaluations to demonstrate those items that she might not observe.

7. Principal Hedge completed an Evaluation Form on May 12, 1986 whereby grievant received an overall rating of "Exceeds Standards" and a summary evaluation of sixteen "exceeds" and two "meets standards." Principal Hedge did not intend the evaluation to be critical of grievant's professional competency and considered it an outstanding evaluation - one of the best in the building. Grievant has failed to demonstrate that State Board of Education Policy 5300 was violated by the evaluation of Mrs. Hedge in items 5.2 and 6.1 of the evaluation as failing to be open and honest or that principal Hedge acted arbitrarily and capriciously in the rating that she gave. Grievant acknowledged that there were areas in which improvements of her skills could be effectuated and the evaluation was not intended as an attack on grievant's professionalism or competency.

8. There is evidence that certain persons were aware that grievant had filed a grievance involving grievant and principal Hedge but it was specifically denied by principal Hedge that she was the source of the breach of confidentiality. Accordingly, grievant failed to establish that principal Hedge violated the confidentiality requirement as part of a harassment or retaliation effort or otherwise.

9. Grievant failed to prove by a preponderance of the evidence that the decision to revoke the exception to Board Regulation IV-J-1 granted to grievant by Superintendent Kittle as to her sick leave was motivated by an effort by principal Hedge, David Stewart and/or Superintendent Acord to harass or retaliate against grievant. Superintendent Acord advised grievant that to continue the exception in her case would perpetuate an undesirable precedent or expose the administration to charges of preferential treatment and there is no showing that the decision is arbitrary or capricious.

10. The other incidents of harassment, retaliation, etc., about which grievant testified, e.g., the substitute teacher evaluation form dated October 18, 1985, have been considered in the formulation of this decision but not specifically set out herein. The transfer of principal Hedge at the conclusion of the 1985-86 school year obviously resolved the bulk of grievant's complaints and the remainder have been resolved in this grievance.

CONCLUSIONS OF LAW

1. W.Va. Code, 18-29-2(n) defines "harassment" as repeated or continual disturbance, irritation or annoyance of an employee which would be contrary to the demeanor expected by law, policy and profession.

2. W.Va. Code, 18-29-2(p) defines "reprisal" 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.

3. A grievant has the burden of proving the essential elements of "harassment" and "reprisal" by a preponderance of the evidence. Grievant failed to prove the allegations of "harassment" and "reprisal" by that standard.

4. School officials are permitted some latitude in the evaluation of a teacher subject to the requirement that the evaluation be open and honest and not arbitrary. State ex rel. McLendon v. Morton, 249 S.E.2d 919 (W.Va. 1978).

5. Ordinarily, the Education Employees Grievance Board will not intrude itself into evaluations under Board Policy 5300 unless there is evidence of such an arbitrary abuse of discretion on the part of the school officials as to show that the primary purpose of Policy 5300 has been confounded. Higgins

v. Randolph County Board of Education, 286 S.E.2d 682 (W.Va. 1981).

6. W.Va. Code, 18-29-3(p) provides that grievance forms and reports shall be kept in a file separate from the personnel file of the employee and shall not become a part of such personnel file but shall remain confidential except by mutual written agreement of the parties.

Accordingly, it is Ordered that the grievance is granted in part and denied in part. The notation on the Teacher Observation Form dated November 5, 1985 concerning lesson plans is Ordered expunged therefrom. If not already done, it is Ordered that an unaltered copy of the addendum by grievant dated November 12, 1985 be substituted for any marked copy in grievant's personnel file.. In all other respects the grievance is denied.

Either party may appeal this decision to the Circuit Court of Kanawha County or Raleigh County and such appeal must be filed within thirty days of receipt of this decision. (W.Va. Code, 18-29-7). Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the Court.



LEO CATSONIS

Chief Hearing Examiner

Dated: December 17, 1986