



Final

**Members**  
James Paul Geary  
Orton A. Jones  
David L. White

**WEST VIRGINIA EDUCATION  
EMPLOYEES GRIEVANCE BOARD**

**ARCH A. MOORE, JR.**  
Governor

**Offices**  
240 Capitol Street  
Suite 508  
Charleston, WV 25301  
Telephone 348-3361

LINDA BURDETTE

v:

DOCKET NO: 45-86-280-4

SUMMERS COUNTY BOARD OF EDUCATION

DECISION

This grievance comes before the West Virginia Education Employees Grievance Board on appeal from a level three decision by the Summers County Board of Education affirming the decision of the Summers County Superintendent of Schools. A level four evidentiary hearing was requested and was held before John M. Richardson, Hearing Examiner, on November 6, 1986, in Beckley, West Virginia. The parties filed proposed findings of fact and conclusions of law on November 13, 1986.

The grievant, Linda Burdette, complains that she was unfairly evaluated according to County and State Board of Education policy. As a result, she received a "Needs Improvement" rating in three categories. The grievant requests that her evaluation be removed from her personnel records.

The respondent, the Summers County Board of Education, contends that the grievant was given an open and honest evaluation

and therefore the grievant's request should be denied.

The testimony adduced at the level four hearing and the demeanor of the witnesses, especially that of Principal Withrow, leave no doubt that the relationship between the grievant and the Principal is undesirable. Throughout the record, the grievant has expressed no personal animosity towards the Principal; however, the Principal, in his response at level one, was unequivocal as to his feelings when he wrote:

I do not wish to change my evaluation  
but I do recommend that Miss Burdette  
consider transferring from this school.  
Because she hates me and I hate her and  
our working relation is unacceptable.

/s/ James Withrow  
Principal

While the Principal denied that his dislike of the grievant influenced his evaluation, he admitted that because she had inquired of the finance officer at the County Board's office about her leave/pay status before asking him, he felt she did not follow the "chain of command." Hence, he marked her evaluation as "NI" (Needs Improvement) in category 7.5 which provides:

Adheres to school rules and procedures,  
county policies, regulations and procedures  
and observes the appropriate chain of command.

It is significant to note that the respondent made no showing of any policy, regulation or procedure which the grievant was alleged to have failed to follow, or offered into evidence any written policy designating the "chain of command."

A second category in which the grievant received a mark of "NI" was 5.3 on the evaluation form which provides:

Sets example for others and encourages professional growth and development.

Following the level two hearing, the County Superintendent of Schools recommended this be changed to "S" (Satisfactory) upon hearing testimony revealing the grievant's activities with her Education Association, and her efforts to further her own education (Masters plus 30 hours). She also acted as a consultant for the State Department of Education in the field of Nutrition.

The respondent, by its Superintendent of Schools at the level four hearing, conceded that the matter of changing this part of grievants' evaluation was no longer contested by the respondent because the evaluation had already been changed in accordance with his decision.<sup>1</sup>

Again, but nevertheless significant, the respondent at the level four hearing offered only the explanation that at the time Principal Withrow gave her the "NI" rating, he was unaware of her continuing endeavor to improve her professional credentials and her activities with the State Department of Education. He had not asked and grievant had not volunteered the information.

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<sup>1</sup>Superintendent Tassos', September 10, 1986 decision relates in the conclusion that: "With regard to section 5.3 of the evaluation, it is concluded that Ms. Burdette's grievance is correct and the evidence is ample that Ms. Burdette, through her educational endeavors, is seeking to improve her teaching skills and to grow professionally. Accordingly, it is directed that section 5.3 of Ms. Burdette's evaluation form be corrected to indicate that Ms. Burdette has satisfactorily complied with the evaluation standard."

The third category, 6.5, in which the grievant was marked "NI" provided:

Cooperates with colleagues

By way of explanation, Principal Withrow stated that on two occasions other teachers had complained about grievant and on one occasion, he had been subjected to some embarrassment. In explaining the two occasions with other teachers, he admitted that he did not investigate any of the circumstances or bring the matters to the grievant's attention prior to marking her evaluation "NI."

On the occasion that the Principal himself was embarrassed, it appears that he went to the grievant's classroom for the purpose of getting her to sign a form which purported to be a receipt for a handbook. The Principal entered the classroom and when he asked her to sign the form, she inquired as to the origin of the requirement to sign the form. The Principal explained that this embarrassed him because there were students in the classroom.

Further underlying the problems between the grievant and the Principal was the fact that the observations upon which the evaluation was to be based were required by written county policy to be conducted prior to January 1 and April 2.<sup>2</sup> Each of these

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<sup>2</sup>Grievant's Exhibit #1, paragraph VIII provides:

TIMELINESS

All other personnel must be evaluated twice yearly according to this schedule:

First Formal Observation-	Prior to January 1
Second Formal Observation-	Prior to April 1

observations were to be for a period of 30 minutes.<sup>3</sup> Contrary to county policy, the observations actually were conducted on January 7, 1986, and April 30, 1986. The first observation lasted for 30 minutes while the second lasted only 15 minutes. This fact would even be more significant if the "NI" ratings were in the categories affecting classroom teaching rather than general conduct outside the classroom. In any case, the violation of county policy by the Principal under the circumstances does reflect on his attitude towards the grievants' evaluation, and his providing an example for others in adhering to county policies.

Consistent with the discussion above, the record reveals via the level two transcript, that the rift between Principal Withrow and the grievant has been ongoing for several years.<sup>4</sup> That transcript reveals that approximately five years ago the Principal and the grievant dated for a short time. The grievant terminated the relationship and since that time communication between the two has been infrequent. More importantly, the grievant's evaluations have gradually fallen even though the overall rating has remained in the area of satisfactory (Level two T.71-90).

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<sup>3</sup>Grievant's Exhibit #1, paragraph VII(2) provides:

Observation. . .However, the evaluator must make a minimum of 2 formal observations of not less than 30 minutes each.

<sup>4</sup>The level two transcript was entered as Joint Exhibit #1.

In addition to the foregoing, the following findings of fact and conclusions of law are incorporated herein.

#### FINDINGS OF FACT

1. The grievant, Linda Burdette, is a teacher employed by the Summers County Board of Education and is assigned to Sandstone Elementary School.

2. Pursuant to State and County policy, James Withrow, Principal of Sandstone Elementary School, evaluated the grievant each year since 1982 and, more particularly, evaluated the grievant during the 1985-86 school year.

3. James Withrow has expressed and exhibited a personal dislike of the grievant.

4. Neither the grievant nor the Principal has maintained proper communication as would be expected of their positions.

5. The personal dislike of the grievant by the Principal has affected the grievant's past evaluations and more particularly, her evaluation for the 1985-86 school year.

6. Summers County Board of Education policy regarding evaluations is patterned after West Virginia State Board of Education Policy 5300.

#### CONCLUSIONS OF LAW

1. West Virginia State Board of Education Policy 5300 provides, inter alia, that every employee is entitled to an open and honest evaluation.

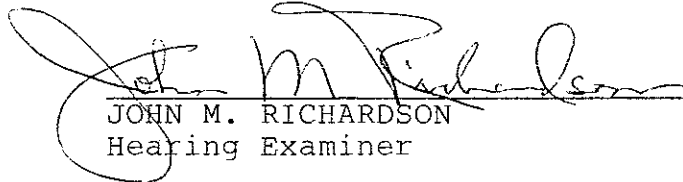
2. Based upon all of the facts, Principal Withrow did not provide the opportunity of an open and honest evaluation of the grievant pursuant to State Board of Education Policy 5300 and the policy of the Summers County Board of Education.

3. Pursuant to WV Code §18A-2-9, the County Superintendent of Schools is, inter alia, responsible for the supervision of Principals assigned to schools within their respective counties.

4. Pursuant to WV Code §18-29-5, hearing examiners may fashion relief to resolve grievances which is not inconsistent with WV Code §18-29-1, et seq., or the rules or regulations of the West Virginia Education Employees Grievance Board.

For all of the foregoing reasons, the grievance is granted. Accordingly, the Summers County Board of Education is **ORDERED** to remove the grievants entire evaluation for the school year of 1985-86 from her personnel file. Further, the Summers County Board of Education is **ORDERED** to direct its' County Superintendent of Schools to provide the grievant with an independent evaluation by an appropriate employee of the Board.

Either party may appeal this decision to the Circuit Court of Summers County or Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. (WV 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.

  
JOHN M. RICHARDSON  
Hearing Examiner

DATED: Dec. 16, 1986