WEST VIRGINIA EDUCATION EMPLOYEES GRIEVANCE BOARD
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CLAUDE R. COOK
vs.
LOGAN COUNTY BOARD OF EDUCATION

DOCKET NO. 23-86-112

DECISION

Grievant, Claude R. Cook, was employed by the Logan County Board of Education in August, 1977 as a physical education teacher and assistant basketball coach at Logan High School. In 1981 he resigned as assistant coach but remained as a Health teacher. During the 1983-84 school term he assumed the duties as head basketball coach and served in that capacity until December 21, 1984 when he and another coach, Jeff Massey, were suspended with pay by Superintendent Sam Sentelle.[1] The basis of the suspension was the issuance of a warrant charging the two coaches with battery of a student, Ronnie Vance. In the suspension notice Dr. Sentelle advised the grievant that during the period of suspension grievant was to refrain from any professional association with public school students and to remain away from public school property unless grievant had "...specific prior approval in writing from an appropriate school official; that "...violation of these directives will represent insubordination

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[1] On December 24, 1984 the board of education was enjoined by the Circuit Court of Logan County from enforcing the suspension until a hearing was conducted by the board. Dr. Sentelle wrote another suspension letter on January 5, 1985 substantially the same as the December 21, 1984 letter.

and as such grounds for disciplinary action."[2]

At a meeting of the board of education on January 4, 1985 Dr. Sentelle recommended the suspension of grievant pending the disposition of the Vance warrant and automatic reinstatement upon a finding of "not guilty." Upon the motion to uphold the recommendation of Dr. Sentelle to suspend grievant and reinstate him if he were found innocent the vote was three to suspend, two members abstaining. Dr. Sentelle notified grievant on January 5, 1985.

On March 1, 1985 Dr. Sentelle advised grievant that;

> "On Friday , February 22, 1985, during school hours you were on public property at Midelburg Island without specific prior approval in writing from an appropriate school official. This is a violation of the terms of your suspension as given in my letters to you dated December 21, 1984, and January 5, 1985.
>
> This and continuing violations of your suspension terms constitute grounds for disciplinary action for insubordination. This is a second warning, the first being that dated January 16, 1985."[3]

By letter dated March 6, 1985 counsel for grievant inquired of Dr. Sentelle whether grievant was permitted to drive his daughter to Logan Grade School on Midelburg Island and requested Dr. Sentelle to elaborate upon the other instances of suspension violations referred to in the March 1, 1986 letter. No response was made to this inquiry other than to send grievant's counsel a copy of a memorandum of a security guard stating that grievant had driven around Midelburg Island on February 22, 1985 until 8:30 a.m., when the guard put up the "STOP" sign.

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[2] These conditions do not appear to have been imposed by the board but rather by Dr. Sentelle.

[3] The January 16, 1985 letter advised grievant that he had been seen speaking with players at basketball games at the fieldhouse. This letter was identified and withdrawn presumably because there was no evidence presented concerning the contents thereof. Logan High School is located on Midelburg Island as is a grade school and other facilities of the Logan Parks and Recreation Authority and other public facilities.

On August 6, 1985 Dr. Sentelle advised grievant that he intended to recommend to the board of education at its August 15 meeting that grievant's compensation be suspended effective with the start of the 1985-86 school term pending future action by the board or a court. Grievant appeared at the meeting and his attorney presented a letter in which Dr. Sentelle had agreed that grievant's suspension would be with pay and the board took no action on the recommendation to suspend grievant's pay.

By letter dated August 19, 1985 grievant's attorney attempted to ascertain and establish some specific guidelines concerning the January 5, 1985 suspension letter and the conditions therein and specifically as to the meaning of the term "professional association" contained in the letter. On August 20, 1985 Dr. Sentelle responded that the terms of the suspension were "fairly clearly stated" but that the incidents addressed in his letters of January 16, 1985 and March 1, 1985 represented violations of those terms.

On October 31, 1985 Dr. Sentelle advised grievant that at the meeting on October 29, 1985 the board of education had voted to suspend grievant's compensation as "...per my earlier recommendation." Grievant was not given any notice that the board would consider a pay suspension at that meeting or otherwise given an opportunity to be heard.[4] Grievant's pay was suspended by the board.

Meanwhile, in April the Vance battery case has been transferred to Wyoming County on a change of venue and a mistrial had been declared in October, 1985. Thereafter, on December 19, 1985 grievant and Jeff Massey were acquitted of the charges by a jury verdict and on December 20, 1985 grievant's attorney requested that grievant be reinstated in accordance with the expression of the board of education on January 4, 1985.

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[4] Dr. Sentelle ostensibly took the position that grievant had already had a hearing on August 15, 1985 when the subject was discussed and then tabled.

Instead, by letter dated January 10, 1986 Dr. Sentelle advised grievant that the suspension would remain in effect pending a hearing by the board of education on charges of "immorality, incompetency, cruelty, and insubordination or any one or any combination of the above."[5] The charges may be summarized as follows:

1. Grievant had assulted two student basketball players during half-time of a Beckley-Logan game on Februray 14, 1984.

2. On February 21, 1984 grievant had made provocative gestures and threats to another teacher, Randy Robinette, and did so again on September 19, 1984.

3. On January 11 and 15, 1985 grievant had spoken to players as they entered and departed the dressings rooms and this was a violation of the January 5, 1985 suspension conditions.

4. On February 22, 1985 grievant was on public school property at Midelburg Island without specific prior approval in writing from an appropriate school official and this also violated the terms of suspension.

5. Grievant's standing and regard in the community was such that grievant could no longer function effectively as a teacher or a coach.[6]

On January 23, 1986 the board of education approved the recommendation of Dr. Sentelle and terminated grievant's employment. On January 29, 1986 grievant requested a level four hearing and evidence was taken on March 3, 4, 1986. Prior to the taking of evidence counsel for the grievant filed a

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[5] Jeff Massey appeared at the board of education meeting on January 9, 1986, was reinstated as teacher and head baseball coach at Logan High School and awarded back pay; he thereafter resigned. The board had refused to reinstate the grievant at that meeting and Dr. Sentelle recommended that grievant be dismissed.

[6] Upon motion of counsel for grievant, charges numbered three and five were dismissed at the close of the employer's evidence for failure to present any evidence thereon.

motion to dismiss on the grounds of laches, collateral estoppel, discrimination, etc. The motion was taken under advisement pending presentation of the evidence and renewed at various stages of the hearing.[7]

The February 14, 1984 Beckley Incident

The matter of the alleged physical abuse of Donald Frye and Kevin Staples had been the subject of inquiry by the board of education at a meeting on January 4, 1985 at which Kevin Staples testified concerning the incident. This was at the same meeting at which the Ronnie Vance matter was heard and at which the board upheld the recommendation of Dr. Sentelle to suspend grievant and Massey pending the outcome of that litigation. This Beckley incident had been common knowledge throughout the school system in Logan County and there was a policy in effect at the time requiring that when a complaint was made to the board that the employee involved was required to be advised of the nature of the complaint as soon as possible and given an opportunity to answer it. The next step required the board to hold a hearing, if necessary, and make some dispositon of the matter. The county board was bound by its own procedures, Powell v. Brown, 228 S.E.2d 220 (W.Va. 1977), and the board did not act in good faith in waiting for almost two years to charge grievant with this offense. Moreover, on the basis of the evidence presented, dismissal of grievant on this charge was not reasonable. Beverlin v. Bd. of Educ. of Lewis Co., 216 S.E. 2d 554 (W.Va. 1975); State ex rel. Hawkins v. Tyler Co. Bd. of Educ., 275 S.E. 2d 908 (W.Va. 1981).

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[7] Counsel for the parties thereafter filed a stipulation supported by court records to show that the board of education had taken no administrative action on five teachers against whom warrants had been issued for abuse of students notwithstanding that one of the teachers had been convicted of battery of a student. No adequate explanation is given for the inconsistency of treatment.

The February 21 and September 19, 1984 Incidents

Mr. Robinette had reported both these incidents to Mr. Glenn, the principal of Logan High School, at the time of their occurrence and reported the September 19 incident directly to Dr. Sentelle by telephone the day it occurred. The athletic director, Jack Stone, testified that there was no disruption of school activities and one incident occurred after school hours; Wilma Zigmond, then dean of students, had advised her husband of the September 19 incident.[8] Notwithstanding, these matters were never brought to the attention of the grievant by complaint or otherwise and his evaluations were unchanged during this period. Also, grievant signed an extra-curricular contract on November 2, 1984 which was counter-signed by Dr. Sentelle.

Again, the board policy referred to in the previous discussion was not utilized by Dr. Sentelle or Mr. Robinette in pursuing any complaint and the evidence is conflicting as to what did, in fact, occur between grievant and Mr. Robinette on these dates. The hearing examiner has serious problems with the credibility of some of the witnesses testifying as to this charge and for the same reasons set forth in the previous discussion should have dismissed this charge at the close of all the evidence.[9]

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[8] Her husband was a member of the board of education and had conducted the inquiry into the Beckley incident at the board meeting on January 4, 1985.

[9] The evidence given on this charge as well as the previous charge was so conflicting it compels one to speculate if the witnesses were describing the same incidents. This is no doubt explained partially by noting that this entire protracted episode has involved a "taking of sides" by the parties with necessary emotional implications. Grievant contends that it is also explained by the fact that after he was suspended the son of one of the members of the board was hired as head basketball coach.

The Februray 22, 1985 Violation of Suspension

The evidence was that grievant's mother-in-law generally took his daughter Melissa to school at Logan Grade School but on February 22, 1985 she was in the hospital in Charleston recovering from surgery and grievant's wife, Melinda, was with her mother. Consequently, grievant testified that he had to take his daughter to school on that day; that that was the only day he had been on the Island and that after the letter of March 1, 1985 he never again went on island without written permission.[9]

This charge was previously identified by Dr. Sentelle as "insubordination" and, as such, could not be the basis of disciplinary measures without prior notice, Holland v. Bd. of Educ. of Raleigh County, 327 S.E. 2d 155 (W.Va. 1985), and it did not justify dismissal. Beverlin v. Bd. of Educ. of Lewis County, supra; State ex rel Hawkins v. Tyler Co. Bd. of Educ., supra.[10]

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[9] These conditions were also placed upon Mr. Massey and he testified that he attended night classes at Logan High School, played softball on the island, etc., and that Dr. Sentelle was aware of his presence and his activities. Again, no explanation was given for the disparity of treatment.

[10] Dr. Sentelle could not articulate the basis of his authority to place these types of restrictions upon grievant's activities and it would appear that it is constitutionally impermissible to restrict a person from going upon public property without some objective, rational preliminary finding that grievant's presence would create a "clear and present danger." Moreover, grievant did, in fact, comply with the terms and after the March 1, 1985 letter obtained written permission from his daughter's principal, Mr. Gore, to attend a parent teacher conference at her school on October 7, 1985.

Code, 18A-2-8 authorizes a county board of education to suspend or dismiss any of its employees at any time for immorality, incompetency, cruelty, insubordination, intemperance or willful neglect of duty but it is important that these sanctions be imposed only upon a showing of just cause. DeVito v. Bd. of Educ., 317 S.E. 2d 159 (W.Va. 1984). Any doubt must be resolved in favor of the employee in that school personnel regulations and laws are to be strictly construed in favor of the employee. Hedrick v. Bd. of Educ., 332 S.E. 2d 109 (W.Va. 1985); Morgan v. Pizzino, 163 W.Va. 454, 256 S.E. 2d 592 (1979). Cf. Smith v. Logan Co. Bd. of Educ., No. 16761, decided by the West Virginia Supreme Court on December 17, 1985, Justices Neely and Brotherton dissenting.

In addition to the foregoing, the following specific findings and conclusions are made.

FINDINGS OF FACT

1. Grievant was suspended on December 21, 1984 for the alleged battery of a student, Ronnie Vance, with the understanding that if he was acquitted he would be reinstated to his position as head basketball coach at Logan High School.

2. As part of the suspension grievant was directed to refrain from "any professional association" with public school students and to remain away from public school property unless grievant had specific prior approval in writing from an appropriate school official.

3. On March 1, 1985 grievant was advised that he had violated the terms of his suspension on February 22, 1985 and attempted, without success, to clarify the terms of his suspension.

4. On October 29, 1985 grievant's pay was suspended by the board of education without any prior notice to grievant.

5. On December 19, 1985 grievant was acquitted of the battery charge and requested reinstatement to his former position.

6. By letter dated January 10, 1986 thereafter affirmed by the board of education, grievant's employment was terminated for alleged offenses occurring as early as February 14, 1985, the circumstances of which were known to the appropriate school officials from the dates of their occurrence and for which grievant had never been reprimanded or otherwise informed.

7. Grievant's evaluations remained good during this period and on November 2, 1984 executed an extra-curricular contract countersigned by Dr. Sentelle.

8. There was a board policy in effect from April 15, 1983 concerning complaints against an employee and the manner of pursuing and disposing of same requiring that the employee be advised of the nature of the complaint as soon as possible.

9. The evidence is persuasive, if not conclusive, that the grievant was the subject of selective disciplinary treatment.

CONCLUSIONS OF LAW

1. Code, 18A-2-8 authorizes a county board of education to suspend or dismiss an employee for stated causes but the grounds must be established by a preponderance of the evidence.

2. Code, 18A-2-7 and 8 and due process requires that charges against an employee must be made timely and in good faith.

3. When a county board of education adopts a policy for handling complaints against employees of the board it is bound by its procedures.

4. The evidence against grievant to substantiate the charges upon which grievant was dismissed was insufficient as a matter of law.

5. There is no statutory authority for a county superintendent of schools to impose restrictions upon the activities of a suspended employee which infringe upon that employee's constitutional rights.

6. The action of the superintendent and board of education culminating in the dismissal of grievant was arbitrary and capricious as a matter of law.

7. School personnel regulations and laws are to be strictly construed in favor of the employee.

It is accordingly ordered that the grievant be reinstated to his position as teacher and head basketball coach at Logan High School and awarded back pay and restored to any other benefits to which he is entitled.

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

DATED: April 7, 1986