WEST VIRGINIA EDUCATION EMPLOYEES GRIEVANCE BOARD
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GARY COPENHAVER

v. Docket No. 41-86-175-1

RALEIGH COUNTY BOARD OF EDUCATION

DECISION

Grievant, Gary Copenhaver, was employed by the Raleigh County Board of Education as a driver education and health instructor and also as head coach of football and track at Liberty High School, Glen Daniel, West Virginia.[1] On June 29, 1985, while off duty, he was arrested for driving under the influence of alcohol and on February 25, 1986 was convicted of that offense by a jury in a magistrate court in Raleigh County. On March 3, 1986 the Raleigh County Board of Education suspended grievant with pay effective February 27, 1986 and

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[1] He previously taught a driver ed course at Independence High School for four years, a physical education course at Shady Springs Junior High School for one year, a physical education course at Hollywood Elementary School for one year and physical education for three years at Nicholas County High School. He had been at Liberty High for four years at the time of his suspension.

on April 16, 1986 notified grievant that:

> "...pursuant to the provisions of West Virginia Code 18A-2-8, and as a result of your recent conviction by a jury of driving while under the influence of alcohol, you are suspended without pay effective April 28, 1986 from your employment with the Raleigh County Board of Education on the grounds of immorality, incompetency, and/or intemperance."[2] (Emphasis in original)

To support these charges the board of education presented evidence that the arrest and conviction had adversely affected grievant's ability to teach in Raleigh County, had seriously impaired his credibility as a driver ed instructor and had a negative impact upon the students and the operation of the school system in Raleigh County. For example, Ms. Flicka Graves, a social services and school attendance director employed by the Raleigh County Board of Education, testified that as a result of discussions with parents and students in the community she had concluded that the conduct of grievant was contrary

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[2] On April 22, 1986 counsel for grievant requested a level four hearing and an evidentiary hearing was conducted on July 1, 1986, The hearing was originally scheduled for May 7, 1986 and continued from time to time by the parties; findings of fact and conclusions of law were submitted by the parties on July 21 and August 11, 1986. In the conclusions of law submitted by grievant it is contended for the first time that grievant was denied due process in the failure of the board to grant grievant a hearing on the suspension. Assuming, arguendo, the initial suspension was incorrectly done there was no objection and it was thereafter corrected. Golden v. Bd. of Ed. of Harrison Co., 285 S.E.2d 665, 667 at footnote 1. (W.Va. 1981).

to community standards in general and was not in conformity with community standards of right and wrong.[3] Similarly, Mr. Loren M. Boyce, Jr., a resident of the community for over fifteen years who had two sons enrolled in Liberty Hi, both of whom had taken courses from grievant, including driver ed, had discussed the arrest and conviction of grievant with numerous families in the community. He considered grievant to be a "bad example" for fifteen to seventeen year old students and concluded that grievant's conduct leading to the conviction was not in conformity with accepted principles of right and wrong conduct in the community; that the conviction reflected adversely on grievant's competency to teach in Raleigh County. Mr. Boyce had enrolled one of his sons in the summer session of driver ed in order to avoid taking the course from grievant and if grievant was reinstated he would not permit his son

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[3] Ms. Graves was active in Mothers Against Drunk Drivers (MADD) in the area, having formed the Raleigh County Chapter after the death of her daughter in an accident involving a drunk driver. Although she resided ten miles from Glen Daniel she testified that she had ten or eleven schools in her territory and talked with parents, teachers, students and administrators throughout the county. She stated that her concern as well as that of the people with whom she had discussed the matter was that the conviction had rendered grievant ineffective as a role model for the students.

to take the course from grievant.[4]

Kimberly Lee McGraw lives in Glen Daniel and recently completed her sophmore year at Liberty Hi.[5] She had discussed the arrest and conviction with students quite frequently and the discussions continued after grievant was suspended. She concluded that grievant's arrest and conviction was a main topic of discussion at Liberty Hi and that the incidents had a substantial negative effect on grievant's credibility as a driver ed teacher and as a role model.[6]

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[4] This witness testified that he had no animosity toward grievant but admitted to a previous confrontation with grievant concerning grievant's alleged treatment of Boyce's son in a coaching situation. Mr. Boyce also admitted to creating "heat" to have grievant dismissed by contacting various public officials and conceded that the "aura of dissatisfaction" that existed in the community was partly due to the dissatisfaction with grievant as a coach; that the conviction for DUI was the "final blow".

[5] She had been a varsity cheerleader at Liberty Hi and has been selected for the foreign exchange program, which will take her to Belgium this fall. She had grievant as a teacher for American History and driver ed the second semester until his suspension; she felt "awkward" being in his class in driver ed with a conviction for DUI "hanging over his head". She confirmed that some students were taking the driver ed summer course to avoid grievant.

[6] Ms. McGraw conceded that she was and is highly critical of grievant's abilities as a coach and had participated in a sit-in in the school cafeteria resulting from public statements made by grievant about the football team.

Mr. Milton Bennett is the coordinator of driver education and safety with the department of education and is in charge of the driver education program for the State. In his opinion the responsibilities of a driver ed teacher and the effects of a conviction of DUI upon such a teacher could be characterized as follows:

> 1. A special responsibility to observe traffic laws and to set a good example because the driving behavior of the driver ed teacher is directly related to his/her job; and,
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> 2. DUI is the most serious/flagrant traffic law offense and a driver ed teacher cannot effectively teach youth if they do not "practice what they teach" because youth learn by and are influenced by example as well as instruction; and,
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> 3. The driver ed teacher cannot effectively teach alcohol education - a significant and vital component of driver ed - when the students know that the teacher drinks and drives, has been convicted of drunk driving and is appealing the conviction. This would result in a loss of respect and perhaps ridicule, scorn and contempt for the teacher; and,
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> 4. Some students may be affected in a negative manner by such a case, i.e. they may be influenced to believe that DUI is not such a serious matter and that the consequences thereof are not so bad; that all they have to do is go through the appeal process to "beat the rap".[7]

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[7] Grievant has appealed the DUI conviction and the revocation of his operator's license by the Department of Motor Vehicles, the order of revocation having been stayed by the Circuit Court of Raleigh County in December, 1985. (Board of Education Ex. No. 2). Mr. Bennett testified that, administratively, a teacher who has had a suspension within three years is not authorized to teach driver ed and if a school continued to retain that teacher the driver ed program would not be approved. It is his position, however, that a conviction or suspension is not final until the appeals have been exhausted.

Ronald Cantley, superintendent of schools of Raleigh County, recommended the suspension of grievant to the board of education after monitoring the situation from the initial arrest to the conviction on February 25, 1986. He testified that his office had been inundated with telephone calls because of the notoriety attending grievant's arrest and conviction and the orderly administration of his office had been disrupted. He had a further concern about the general atmosphere at Liberty Hi -- the image and the general rapport with the students at the school. The community feeling concerned him equally as did the future of the driver ed program at Liberty Hi. Superintendent Cantley testified that grievant was a dedicated educator and a hard working employee but was a "controversial" figure in Raleigh County and he had worked through many problems with grievant over the years; that most of grievant's problems had been in coaching, not teaching.[8] He concluded that a

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[8] Superintendent Cantley received telephone calls on weekends requesting conferences as well as letters from political figures but did not permit these things to influence his decision. Prior to the conviction he had been ignoring the telephone calls, etc., indulging the "presumption of innocence" concept but could not do so after the conviction. He admitted that at least half of the telephone calls concerned grievant's coaching abilities. He stated that a DUI conviction would not be a per se disqualification from teaching in Raleigh County and did not know if he would have taken the same action had grievant not been a driver ed teacher.

teacher had a public trust and responsibility to the youth and to the community to uphold an image and that suspension was the only realistic alternative he had in view of the circumstances.

Grievant's evidence as to the effect of the arrest and conviction of DUI on the school and community was in sharp conflict with the evidence of the board of education. There was no conflict, however, in the evidence that grievant was a highly effective teacher, if not a highly effective coach.[9] Grievant testified that after his arrest he continued to teach driver ed until his suspension and he could detect no reaction from the students; that when he reached the chapter on Alcohol and Drugs in the text book he explained to the students the details of his arrest. Grievant testified that he, in effect, used himself as an example and told the students that on the night of his arrest he drank three or four beers in three and one half fours and blew a .15 into the Intoxilyzer. He

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[9] Counsel for the board of education attempted to question the competency of grievant as a driver ed teacher prior to his conviction, to which evidence counsel for grievant objected. The board is bound by the charges set out in the letter of April 16, 1986, Guine v. Civil Service Comm., 149 W.Va. 461, 141 S.E.2d 364 (1965) and will not be permitted to change theories at the hearing. Yates v. Civil Service Comm., 154 W.Va. 696, 178 S.E.2d 798 (1971). Accordingly, none of this evidence was considered by the hearing examiner and the board is bound by the grounds given to grievant, i.e., conviction of DUI.

then instructed his students that the films and charts they had used in class were in error to the extent they taught that a person could drink two or three or four beers and not register over .04 to .06 on the breatholyzer.[10] Grievant concluded that he was still a certified driver ed teacher and the only opposition he has at the school and in the community are those who have opposed him as a coach.[11]

Code, 18A-2-8 authorizes a board of education to suspend or dismiss any person in its employment at any time for immorality, incompetency and/or intemperance and under this provision the causes for suspension are the same as those for dismissal.

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[10] At the hearing there was some confusion as to whether grievant had instructed his students on the number of beers which could be consumed within the legal limit and Mr. Bennett testified that he was not aware of any training film containing such material. On cross-examination grievant was questioned about his testimony in the magistrate court on this point and he replied that if he testified in magistrate court that he taught the students to "cut off after two or three, four beers" that he was mistaken. This transcript was admitted into evidence over objection and used primarily for credibility purposes. Cf. State v. Goff, 289 S.E.2d 467 (W.Va. 1982). See also, Board of Education Ex. No. 1, pp. 220-222.

[11] Grievant's prinicpal, Racine Thompson, and other witnesses confirmed the wide spread criticism of grievant as a coach and Mr. Thompson stated that the conviction did not have any noticeable effect on the driver ed program at Liberty Hi. Roby Mansfield had left Liberty Hi as a teacher and coach partly because of lack of community support. James Hughes, who taught the driver ed course with grievant after grievant's arrest, stated that the students never discussed it until grievant was suspended but he did not feel that the arrest and conviction had adversely affected grievant's effectiveness. Mr. Snuffer and his son, Jeff, were also of the opinion that the hostile sentiment against grievant in the community was because of his coaching.

Totten v. Board of Education of Mingo County, 301 S.E.2d 846 (W.Va. 1983). It is important that these sanctions be imposed only upon a showing of just cause, DeVito v. Board of Education 317 S.E.2d 159 (W.Va. 1984), and any doubt must be resolved in favor of the employee. Hedrick v. Board of Education, 332 S.E.2d 109 (W.Va. 1985). The term "immorality" is an imprecise word which means different things to different people but in essence it connotes conduct "not in conformity with accepted principles of right and wrong behavior and contrary to the moral code of the community..." Golden v. Board of Education of Harrison County, 285 S.E.2d 665, 668 (W.Va. 1981). Cf. Rogliano v. Fayette County Board of Education, __S.E.2d__ (W.Va. 1986), decided June 24, 1986, Justices Neely and Brotherton dissenting. Conduct of a teacher outside the job may be examined but disciplinary action based upon that conduct is proper only where there is a proven "rational nexus" between the conduct and the duties to be performed. Thurmond v. Steele, 225 S.E.2d 210 (W.Va. 1976).

The Courts first look to the question of immoral behavior and then to see if that behavior has in some way made the teacher unfit to carry out his or her responsibilities or if it has impaired or threatened the welfare of the school

community. Golden v. Board of Education of Harrison County, supra, at 669.[12] A guilty verdict relative to charges of criminal conduct will support a finding of immorality, which is a valid cause for termination of a professional employee. Baker v. School District, City of Allentown, 371 A.2d 1028 (Pa. Comm. Ct. 1977). If the conviction renders the teacher unable to effectively impart moral values to the students and causes the teacher to lose the respect and goodwill of the community, that is conclusive evidence of incompetency. Dominy v. Mays, 150 Ga. App. 187, 257 S.E.2d 317 (1979)[13]

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[12] The Court stated that another reason for requiring a showing that the alleged immoral conduct has an impact upon the teacher's fitness to teach or upon the school community is that to allow a dismissal merely upon a showing of some immoral conduct would constitute an unwarranted intrusion upon the teacher's right of privacy. This right has to be balanced against the legitimate interest of the school board and the conduct of a teacher ceases to be private (1) if the conduct directly affects the performance of the occupational responsibilities of the teacher, or, (2) if, without contribution on the part of the school officials, the conduct has become the subject of such notoriety as to significantly and reasonably impair the capability of the particular teacher to discharge the responsibilities of the teaching position.

[13] In Mays the teacher had been dismissed for a conviction of possession of marijuana and cocaine. As in the instant case, she had been a highly qualified teacher and had taken a firm position in the classroom against drugs. Cf. Burrow v. Randolph County Bd. of Educ., 61 N.C.App. 619, 301 S.E.2d 704 (1983). As noted by the United States Supreme Court in Bethel School Dist. No. 403 v. Fraser, 54 L.W. at 5056, decided July 7, 1986, the process of educating our youth for citizenship in public schools is not confined to books, the cirriculum and the civics class; schools must teach by example the shared values of a civilized social order. Consciously or otherwise, teachers, like parents, are role models.

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

FINDINGS OF FACT

1. Grievant was employed by the Raleigh County Board of Education as a driver ed instructor and coach and assigned to Liberty High School, where he had served for four years.

2. In June, 1985, during summer vacation and while off duty, grievant was arrested for driving under the influence of alcohol after he had been stopped for traveling 48 m.p.h. in a 30 m.p.h. zone in Beckley.

3. Grievant continued to teach at Liberty Hi and on February 25, 1986 he was convicted of the offense of driving under the influence of alcohol by a jury in a magistrate court in Raleigh County.

4. The incident was the subject of much publicity in the news media and was widely discussed in Raleigh County and on March 3, 1986 the Raleigh County Board of Education suspended grievant with pay effective February 27, 1986. Numerous complaints were received by the school officials concerning grievant and one half dealt with criticism of grievant's coaching abilities.

5. On April 16, 1986, as a result of the conviction, grievant was suspended without pay effective April 28, 1986 on the grounds of immorality, incompetence and/or intemperance. Grievant requested a level four hearing on the suspension and an evidentiary hearing was conducted on July 1, 1986.

6. The conviction of grievant of the offense of driving under the influence of alcohol involved conduct not in conformity with accepted principles of right and wrong behavior and was contrary to the moral code of the community of Glen Daniel and surrounding communities. This conduct was offensive to the moral standards of the community.

7. The use of alcohol by school students is a major cause for concern of parents, educators and others and grievant had a significant role in shaping the attitude of students toward the society in which they live. Grievant, as a teacher and especially a driver ed teacher, had a special responsibility to observe traffic laws and set a good example; the driving behavior of grievant, a driver ed teacher, was directly related to his job.

8. DUI is the most serious traffic law offense and a driver ed teacher cannot effectively teach students if the teacher cannot conform his/her conduct to the requirements of society regarding drunk driving. The grievant could not

effectively teach alcohol education when his students were aware that he drinks and drives, has been convicted of DUI and is appealing the conviction. Students will not be impressed with the seriousness of driving under the influence of alcohol unless the consequences thereof are made known to them. The conviction has accordingly rendered grievant unfit to perform the duties at Liberty High School and has impaired the effectiveness of the driver ed course at Liberty high School. It has further disrupted the orderly administration of the school system in Raleigh County by those in charge thereof.

9. The conviction for DUI has directly affected the performance of grievant's teaching responsibilities and the arrest and conviction has become the subject of such notoriety that grievant cannot effectively discharge his responsibilities as a teacher and coach. Grievant does not command either the respect or the goodwill of the community and has therefore been rendered incompetent as a teacher and coach at Liberty high School. The widely disseminated knowledge in the community of grievant's conduct has been harmful to the school system in Raleigh County and to the ability of grievant to effectively impart moral values to his students.

10. The preponderance of the probative evidence is that the conduct of grievant culminating in his conviction of DUI was an immoral, intemperate act resulting in his becoming

incompetent to perform the duties assigned to him at Liberty High School.

CONCLUSIONS OF LAW

1. Code, 18A-2-8 authorizes a county board of education to dismiss or suspend an employee on the grounds of immorality, incompetency and/or intemperance. Where the conduct involved occurred off duty and off premises it is incumbent upon the employer to prove by a preponderance of the evidence a rational nexus between the conduct and the duties to be performed.

2. The employer has proved by a preponderance of the evidence in this case that the conviction of DUI has rendered grievant unfit to carry out his present responsibilities at Liberty High School and has impaired or threatened the welfare of the school community. It is not possible to separate the occupational responsibilities of grievant with the conviction and the details of the conduct havebecome so widely disseminated that grievant cannot effectively function in the capacity for which he was employed.

3. The board of education has satisfied the burden of proof set out in Golden v. Board of Education of Harrison County and acted in good faith in attempting to preserve the integrity of the school system in Raleigh County.

4. Under the evidence in this case the conviction for DUI constituted immorality, incompetence and intemperance as a matter of law.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Raleigh 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

LEO CATSONIS
Chief Hearing Examiner

Dated: August 15, 1986