



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

ELAINE KOONTZ

v.

Docket No. 25-86-028

MARSHALL COUNTY BOARD OF EDUCATION

DECISION

Grievant, Elaine Koontz, has been employed by the Marshall County Board of Education as a custodian for over ten years. The grievance originated in June, 1985, and was filed under State Board Policy 5301. A level four evidentiary hearing in the county culminated with an August, 1985 decision adverse to grievant. As of July, 1985 the State Superintendent of Schools no longer acted upon grievance appeals, therefore the grievance was held in abeyance until this Board became operational.¹

On April 18, 1986 the respondent board moved for dismissal of the grievance on jurisdictional grounds. By Order dated

¹ The case was filed with this Board in October, 1985 and was acknowledged in December, 1985 by the Charleston hearing examiner. Subsequently, it was transferred to the Elkins hearing examiner when that office was established in late January, 1986.

April 30, 1986, the motion to dismiss was denied. The parties agreed to waive a hearing before this Board and to submit the matter for decision based upon the record and supplementary brief of the grievant.²

Grievant is permanently assigned to McNinch Elementary School and had worked all three shifts, daylight, afternoon and most recently, a night shift from 10:00 p.m. until 6:00 a.m. Alice McLaughlin, school principal, supervises and evaluates grievant's work. Grievant objects to an unfavorable May, 1985 evaluation because the principal did not personally observe her job performance during her work hours. For relief grievant asks that the May, 1985 evaluation be expunged from her file and all school records, and a new evaluation be conducted based on the "open and honest" provisions of State Board Policy 5300.

Grievant testified on her own behalf at the August 13, 1985 evidentiary hearing before the county board of education. She stated that evaluations rendered before she assumed the night shift had been based on the evaluator personally observing her performance during work hours. (T. 6). The evaluation rendered in May, 1985, contained, among other things, the categories of Work Attitude, Knowledge of Equipment, Care of Equipment and Conservation of Supplies. These areas were marked, "Needs

² The case was again transferred to the undersigned hearing examiner in July, 1986.

Improvement." Grievant complains that without personal observation the principal had no basis upon which to determine those characteristics and skills.

The grievant testified that she had asked the principal to explain each of the criticisms. She could not recall any response from the principal regarding "Work Attitude". As for "Knowledge of Equipment" she stated that the principal indicated that she had used too many sweeper brushes and belts. When asked by her representative if she did use too many, grievant stated she did use those items, but had never been advised as to limits or amounts. Grievant averred that she knew how to operate her sweeper; to properly change brushes and belts when they wore down; and to only request those replacement items when needed. (T. 9, 10).

According to the grievant, the number of sweeper brushes she used was again cited as the reason the principal marked "Care of Equipment" adversely. Grievant said the principal told her if she kept the brushes on high instead of low settings, they would not wear out as fast. Grievant stated that she would not set the sweeper brush higher because it would not touch the floor and clean properly. (T. 11).

Finally, grievant stated that the principal told her she needed improvement in "Conservation of Supplies" because she used too much toilet bowl cleaner and too many sweeper brushes. Grievant then testified that she had not been told how the principal

determined it was she (grievant) who used too much cleaner. She said cleaner and other supplies were housed in a common cabinet for all of the custodians' use. (T. 12). When cross-examined, grievant agreed that the results of her work and the condition of her equipment were discernable without someone personally observing her during her work hours. (T. 14).

Alice McLaughlin, principal of McNinch School testified on behalf of the board. She stated that she observed the results of grievant's work daily, "Usually what I check particularly are rest rooms, sinks and floors, shelving, just a general overlook." (T. 15). The principal confirmed that from those observations she determined the marks on grievant's evaluation.³

Ms. McLaughlin testified that she based her determination that grievant used too many sweeper brushes on comparisons of what others had done in the past. She said her directive to grievant that she "use the brushes full life" by using both high and low settings was ignored. She determined, in part, that grievant's knowledge and care of equipment was deficient after a sweeper sent out for repairs was found to have large objects in it. She stated that she believed she had sent grievant a memorandum at one time suggesting that she (grievant) pick up large objects by hand. (T. 17).

³ It is noted that grievant received a "Very Good" mark for Punctuality; "Good" evaluation for Completes Assigned Job; and "Average" for Initiative, Cooperativeness, Relations with Fellow Employees, and Job Ability. The negative, "Needs Improvement" elements comprised 40% of the total evaluation.

Grievant's WVEA representative asked Ms. McLaughlin how she determined grievant's work attitude needed improvement via observation of grievant's work product, which admittedly met standards. The principal responded, "I thought that her attitude reflected that she disregarded me as her direct supervisor." She cited instances when grievant would not request brushes and supplies directly through her, but would instead contact other persons. On the other hand, she admitted that she did not advise grievant to discontinue the practice: "Eleven years, I thought she knew who her supervisor was." (T. 18).

The principal admitted that the other custodians' machines were also sent for repair at times, but grievant's, "More than any of the rest. Two or three times." Further questioning revealed that any of the day and afternoon custodial staff had access to grievant's machines and could have used them, at will or if the need arose. (T. 20). Notwithstanding a memo to the custodians to conserve supplies, Mrs. McLaughlin's testimony clearly established that she had not implemented methods to control the use of supplies and cleaners, nor had she objectively determined which custodian was depleting those supplies. (T. 23).

During summation at the evidentiary hearing, grievant's WVEA representative stated that the case involved a simple matter. He argued, though, that the significance of the grievance arises from the implications of a bad evaluation upon an employee in the matters of promotion or job assignment whereby the employee's seniority, qualifications and past evaluations are considered.

Therefore, he argued, "It is incumbent upon Mrs. Koontz to maintain the integrity of her evaluation instrument."

The Written Policies of Marshall County Schools Evaluation of Employee Performance, Policy 4.1.23 through 4.1.23.4, provides that an employee be regularly offered open and honest performance evaluation which purpose, in part, is "... to provide information to be used as a basis for personnel decisions."⁴

In the case of a night custodian whose duties are performed in work hours other than her supervisor's, actual observation of job performance may be problematic. Moreover, effective communication between the supervisor and employee regarding job performance would demand more effort than is normally required. While actual observation of grievant's work performance may not be required to ascertain the results of her work, her "work product" was not in question and had received acceptable evaluations. However, it appears that the principal of McNinch School did not utilize adequate written communication to inform grievant of her concerns regarding grievant's attitude and use of equipment and supplies. Certainly, the testimony established that the principal's conclusions that grievant used too many supplies

⁴ It is noted that these policies comport with State Board Policy 5300:

6(a) Every employee is entitled to know how well he is performing his job, and should be offered the opportunity of open and honest evaluation of his performance on a regular basis. Any decision concerning promotion, demotion, transfer or termination of employment should be based upon such evaluations and not upon factors extraneous thereto.

were subjective and based in part on hearsay.⁵

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

FINDINGS OF FACT

1. Grievant, Elaine Koontz, has been employed as a custodian by Marshall County Schools for ten years and is assigned to McNinch School where her present work hours are from 10:00 p.m. until 6:00 a.m.

2. In May, 1985 grievant received an evaluation from her immediate supervisor, the principal of McNinch, which indicated deficiencies in certain areas of performance, namely, knowledge of equipment, care of equipment, conservation of supplies and work attitude.

3. The principal did not conduct any personal observations during grievant's work hours, however, she observed the product of grievant's work on a daily basis. Indicators on grievant's evaluation relating to her "work product" were not cited for deficiencies.

⁵ It would appear that when school officials find compliance with county policy to conduct personal observations of an employee's work performance difficult, alternative procedures should be implemented to insure the integrity of the evaluation instrument.

4. A disagreement ensued between grievant and the principal over the use of sweeper brushes but the grievant was in a better position to determine how she needed to set the brush in order to properly clean the floor. Other staff had access to grievant's sweeper, therefore it was impossible to determine if grievant used the sweeper improperly resulting in brush wear or need for repair.

5. Depletion of the custodians' supplies and materials stored in a cabinet was a year-round problem at McNinch School, but the principal did not institute a method to allocate and control the use of these things among the custodial staff.

6. With the exception of a "general" memo to the custodial staff to conserve supplies, grievant was not informed of the principal's concern regarding her work attitude and the depletion of supplies.

7. Adequate communication was not established between supervisor, the principal, and employee, the grievant.

8. Deficiencies indicated on grievant's May, 1985 evaluation were either not adequately pointed out to grievant prior to the formal written evaluation or were not supported by objective sound evidence.

CONCLUSIONS OF LAW

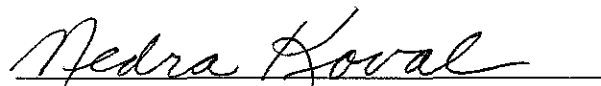
1. The West Virginia Education Employees Grievance Board has jurisdiction to consider grievances filed prior to the enactment of W. Va. Code, 18-29-1 et seq. when a grievant's available administrative remedies had not been exhausted by July 1, 1985.

2. County boards of education are bound by procedures they properly establish to conduct their affairs.

3. State board of education Policy 5300 and county evaluation policy requires open and honest evaluation of an employee's job performance.

The grievant has established that the written evaluation of May 20, 1985 could not have been based on conclusive information; therefore, her request that said evaluation be removed from all school and county files and records is GRANTED. The record in this case indicates that grievant was subsequently evaluated on April 6, 1986, by Richard Redd, a person other than the principal at McNinch School. Grievant indicated her satisfaction with the evaluation via a written and signed addendum to the evaluation; therefore, grievant's request for reevaluation is DENIED since the issue is moot.

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

A handwritten signature in cursive script, reading "Nedra Koval", is written over a horizontal line.

NEDRA KOVAL
Hearing Examiner

Dated: December 17, 1986