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**CHARLES MANCUSO**

**v.**

**Docket No. 41-86-165 (A)-1**

**RALEIGH COUNTY BOARD OF EDUCATION**

**DECISION**

Grievant, Charles Mancuso, is employed by the Raleigh County Board of Education as a teacher/coach at Liberty High School. In 1984 he resigned as wrestling coach and joined with two other coaches at Liberty High School in filing a grievance alleging that the principal at Liberty High School, Racine Thompson, Jr., had "[h]arassed and shown favoritism toward the coaching staff at Liberty High School." The grievance was submitted to the hearing examiner on the basis of a level three transcript, the evidence adduced at level four hearings conducted on June 2 and September 10, 1986 and the findings of fact and conclusions of law submitted by the school officials on October 20, 1986.<sup>1</sup>

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<sup>1</sup> On the motion of the board of education the grievances of Victor Giammerino and this grievant were severed and heard separately; the grievance of Kenneth Ward was dismissed. For a more detailed discussion of these motions and historical background of these grievances, see Giammerino v. Raleigh County Board of Education, Docket No. 41-86-165-1.

Prior to the taking of evidence the representative of the board of education made a motion to dismiss this grievance on the basis that Mr. Mancuso did not seek to have an informal conference with the principal prior to the filing of this grievance; that, in fact, this grievant did not file a grievance but merely "signed on" to a grievance filed by grievants Giammerino and Ward. The motion was denied at that time in order to develop the evidence; it was renewed via the proposed findings of fact and conclusions of law submitted by the board of education.<sup>2</sup>

Factually, it is agreed that when principal Thompson first arrived at Liberty High School in 1981 he and grievant enjoyed a good relationship. Grievant asserts, however, that when Gary Copenhagen arrived at Liberty High School as football coach the relationship began to deteriorate into subtle forms of harassment which did not become apparent to grievant until some time later. For example, the first year of Mr. Thompson's tenure Liberty High School qualified seven wrestlers to the state tournament but the number declined over the next three years. Mr. Thompson had been a state wrestling champion and would offer critical comparisons of grievant's coaching style with that

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<sup>2</sup> The motion to dismiss is denied on the basis that the evidence is uncontroverted that grievant had several conferences with Mr. Thompson during the period in question in an attempt to resolve their differences, including one on March 26, 1984, when then assistant superintendent Cantley met with grievant and all of the other coaches. It was as a result of this meeting that the grievance was filed on April 9, 1984. It would have served no useful purpose for grievant to have pursued another conference with Mr. Thompson and the law does not require the doing of a useless act. State ex rel. Board of Education of Kanawha County v. Casey, 349 S.E.2d 436 (W.Va. 1986).

of a predecessor. This criticism, along with other incidents occurring over a period of time, persuaded grievant that the principal was attempting to make grievant appear inefficient and disorganized in order to discredit him and his wrestling program.<sup>3</sup> Grievant relied on several specific incidents occurring in 1983 and 1984 to support his charge of harassment and these incidents and Mr. Thompson's responses thereto ensue.

On February 10, 1983 principal Thompson became upset because grievant had permitted a wrestler, Dan Wright, to rejoin the wrestling team after he had quit. In an effort to harass grievant for this decision the principal disrupted grievant's plans to attend the state wrestling tournament in Wheeling on February 18 by advising grievant that he could not depart on the day he had planned or have the requested number of motel rooms for his group. Grievant contends that other coaches had discretion in the manner such tournament trips were arranged. Mr. Thompson responded that Dan Wright was the best wrestler at the school but would not maintain a weight class. A meeting was held and

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<sup>3</sup> Mr. Thompson directed that grievant stop the practice of running his wrestlers in the hallways for conditioning; directed that the wrestlers be weighed at Liberty High School prior to going on a wrestling trip and if they did not make the weight they would not make the trip; suggested that grievant begin transporting some of his wrestlers in his personal vehicle instead of transporting them in school owned vehicles. Mr. Thompson states he ceased the hall running practice because of the wear on the carpets and put the weigh-in practice in effect because it was unwise to transport wrestlers to a meet and have them sit on the bench as nonparticipants.

all agreed that Wright should be given an ultimatum - stay in one weight class or quit. He quit the team when his weight changed and grievant tried to "pass the buck" to Thompson by advising Wright "that it was up to Thompson" notwithstanding the agreement.

During baseball season in May, 1983 grievant had scheduled a baseball game on a day upon which principal Thompson subsequently scheduled a parent-teacher conference. Principal Thompson directed grievant to cancel the game and grievant was required to telephone the opposing team forty-five minutes prior to the game and cancel. Mr. Thompson states that after grievant turned in his schedule a game rained out and had to be rescheduled; that grievant rescheduled the game on the day of the conference without first checking with Thompson and that it was grievant's decision to cancel, not his.<sup>4</sup>

In September, 1983 grievant filled out a request for "no cause" days in March, 1984 to play in a golf match in Myrtle Beach. Principal Thompson informed grievant that this was during the state basketball tournament and stated "I don't give a shit

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<sup>4</sup> About this same time grievant stated that he requested to attend the baseball tournament in Charleston and Thompson refused, notwithstanding that it was the practice that coaches were permitted to attend tournaments of the sports they coached irrespective of school participation. Mr. Thompson did not recall grievant's request for professional time off but felt that this was a matter of "principal judgment".

anymore." Mr. Thompson stated that his refusal was based upon the limitation of fifteen percent of staff being off simultaneously and his belief that grievant had applied for the time off to prevent other coaches from attending the tournament. He denied telling grievant that he did not "give a shit anymore."

The incident grievant characterizes as the "real grievance" occurred during the spring break in 1984. As part of his contract grievant is required to conduct three baseball practice sessions during the Easter break for which he is compensated. Principal Thompson had the locks changed and grievant was refused a key but he had been advised by Mr. Thompson that a custodian would be available to allow grievant access to the building where the baseball equipment was kept. Grievant went to the school building and remained for an hour and a half on two days but was unable to get into the building. He was refused payment for the three days and contends it was wrongfully withheld.<sup>5</sup>

Mr. Thompson testified that he changed the locks at the urging of teachers because of pilferage and denied that he had refused to give grievant a key; he stated that grievant had not made arrangements with him prior to the spring break about access to the building.

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<sup>5</sup> Victor Giammerino testified that he had seen grievant and members of the baseball team and their parents outside the school on one of the three days over the spring break.

The remainder of grievant's allegations of harassment deal with alleged different treatment by Thompson concerning bus duty for coaches and for being written up on two occasions after the filing of the grievance.<sup>6</sup> He alleged that Mr. Copenhaver, the football coach, was never written up and did not attend teachers' meetings. Mr. Thompson responded that grievant never made arrangements for other teachers to cover his bus duty when he was unable to do so and because grievant was a "loner" other teachers would not volunteer to take grievant's bus duty. He denied that he had shown favoritism to Coach Copenhaver in this regard and stated that he had written up Coach Copenhaver three times for being late.

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

#### FINDINGS OF FACT

1. Grievant is employed by the Raleigh County Board of Education as a physical education and health teacher at Liberty High School. He also coached wrestling from 1977-84 and presently coaches baseball and girl's softball.

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<sup>6</sup> Other minor instances, e.g., grievant's request that Mr. Ward be appointed his assistant baseball coach was refused by Thompson when other coaches' recommendations as to assistants were usually granted, have been considered but not set out in detail in this decision.

2. In the 1980-81 school year Racine Thompson became principal of Liberty High School and he and grievant enjoyed a good personal and professional relationship. Mr. Thompson had been a championship wrestler and took an active interest in the wrestling program at Liberty High School.

3. In 1982 Gary Copenhaver became head football coach at Liberty High School and grievant contends that the relationship between he and Mr. Thompson began to deteriorate about that time. Mr. Thompson had roomed with Gary Copenhaver one summer in graduate school and they were friends. Grievant testified that because of their relationship Gary Copenhaver was afforded preferential treatment by not attending teachers' meetings and by being excused from performing bus duty as other teacher/coaches were required to do. Mr. Thompson denied that Gary Copenhaver was afforded preferential treatment and contends that Mr. Copenhaver had been written up for such infractions.

4. Grievant testified to several instances involving principal Thompson commencing in February, 1983 and continuing until his resignation as wrestling coach and the filing of the grievance on April 9, 1984, which he characterized as "harassment" by principal Thompson. One of the instances involved in this grievance is the loss of three days compensation he would have received for three days of baseball practice during the spring break

of 1984 but for his inability to gain access to the school building. Grievant attributes this loss to principal Thompson's refusal to either give grievant a key or to make arrangements for grievant to be admitted to the building over spring break. As concerns this incident it is found that grievant was advised by Mr. Thompson that a custodian would be present to permit grievant entrance and that his inability to practice was through no fault of grievant.

5. The evidence is conflicting as to the incidents of "harassment" and principal Thompson attributes the problems to one of communication and the inability of grievant to accept the decision of the principal as final. Mr. Thompson further asserts that grievant did not get along with the other coaches at Liberty High School and when Gary Copenhaver arrived three of the coaches became jealous of his success and decided to "go after" Mr. Copenhaver.

#### CONCLUSIONS OF LAW

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



2. W.Va. Code, 18-29-2(o) defines "favoritism" as unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of another or other employees.

3. In a grievance proceeding pursuant to W.Va. Code, 18-29-1, et seq., it is incumbent upon the party alleging "harrasment" and/or "favoritism" to prove such allegations as defined therein by a preponderance of the evidence. In the instant grievance, grievant failed to prove the allegations as a matter of law. The demeanor of both of the actors in this grievance lacked professionalism but fell short of "harassment".

4. Grievant did prove by a preponderance of the evidence that he attempted to fulfill the terms of his extracurricular contract to practice baseball for three days over the spring break of 1984 but was prevented from doing so through no fault of grievant.

Accordingly, for the foregoing reasons the grievance is denied as to the allegations of "harassment" and "favoritism" by Mr. Thompson. The grievance is awarded as to grievant's right to three days pay wrongfully withheld in 1984.

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 11, 1986