



**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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PAUL RAINES

v.

JACKSON COUNTY BOARD OF EDUCATION

DOCKET NO. 20-86-080

DECISION

Grievant, Paul Raines, has been employed by the Jackson County Board of Education for over seven years. On July 1, 1983, he was appointed Director of Support Services and part of his duties were to monitor county school food programs, to interview applicants and make recommendations for all food service positions to be filled, etc.¹

On December 14, 1984, a Cook II position at Ripley Middle School was posted as being available for internal transfer and on December 21st Mrs. Linda Cottrell, a Cook II at Ripley High School, applied; the position was to be available as of January 3, 1985. Mr. Jim Lannan, Superintendent of Jackson County Schools, and others expressed some concern about the physical capacity of Mrs. Cottrell and her ability

¹ Other duties are to perform other tasks as assigned by the superintendent and deputy superintendent, personnel selection and management, perform such other duties as assigned by the superintendent, etc.
(Job Description, Exhibit 9 in transcript)

to handle the job and on February 5, 1985 a conference was held at Lannan's request with the lawyer for the Board of Education, Robert D. Fisher. Also present were Carroll Staats, Deputy Superintendent of Schools, John Pack, Assistant Superintendent of Schools and Paul Raines, the grievant herein.

The subject of this conference was put in letter form by Mr. Fisher on February 7, 1985, directed to Superintendent Lannan, wherein it was concluded that the transfer should not be approved unless the attending physician issued a medical release stating that Mrs. Cottrell was physically able to do the work.² (Exhibit No. 3) The Board of Education met on February 7th and the contents of the letter was discussed; grievant was not present at that executive session of the board. Superintendent Lannan then prepared a statement reflecting the views of the Board concerning the transfer and delivered it to Mrs. Cottrell on February 8th.

On February 12th, Assistant Superintendent Pack drafted a letter to Mrs. Cottrell advising her, inter alia, that if she would obtain the release from her doctor which would permit her to perform the duties of a regular cook, he (Raines) would recommend that Mrs. Cottrell be transferred to Ripley Middle School. Mr. Pack requested that grievant either sign the letter or draft one that would contain substantially the same kind of information and send it to Mrs. Cottrell over his (Raines') signature.

² Although it is not in the record, counsel for the grievant, in the petition for appeal, asserts that it was well known by all parties to this proceeding that Mrs. Cottrell had sustained severe, life threatening injuries at the hands of an assailant when shot four times at her place of employment in the Ripley High School Cafeteria on April 1, 1982. She returned to work in January, 1983, prior to grievant's being appointed Director of Support Service; she had not been released by her physician at that time.

Grievant refused and on the same day sent a memorandum to Mr. Pack as follows:

"As per our discussion, I refuse to sign the draft letter addressed to Linda Cottrell for the following reasons:

1. Since this is a personnel matter, the letter should be written by the personnel director.

2. Since I have been responsible for the food service programs, I have never been asked to make a recommendation for individuals employed or transferred. (I receive a copy of memorandums (sic) that are sent to principals from Mr. Staats.) See copy attached." (Exhibit No. 5).

Superintendent Lannan thereupon scheduled a conference on February 12th in his office, attended by Messrs. Lannan, Staats, Raines and Pack to discuss the Cottrell situation.³ The following is pertinent:

"Lannan - All right! Now, let me ask you, Mr. Raines, and feel free to comment or interrupt anytime you feel so inclined. Would you be willing to draft a letter that had the essence of these kinds of things in it?

Raines - No Sir.

Lannan - You would not.

Raines - No sir." (Transcript, Exhibit 6, p.2).⁴

³ Superintendent Lannan taped the conference without objection and the transcript thereof was admitted into evidence at the hearing before the Board of Education. (Exhibit No.6)

⁴ Elsewhere in the record it was made clear that Mr. Raines was not being asked just to sign the letter drafted by Mr. Pack but was being asked to communicate with an employee in his department concerning the directives of the Board of Education relative to the transfer of that employee.

The grievant continued to refuse to develop a letter to Mrs. Cottrell which would convey the directive of the school officials and on February 14, 1985 Superintendent Lannan charged grievant with insubordination and willful neglect of duty for grievant's refusal to compose and/or sign and send a letter to Mrs. Cottrell regarding her work status. Mr. Pack ultimately signed the letter to Mrs. Cottrell.

A hearing was held before the Jackson County Board of Education on March 7, 1985, upon the charges and Superintendent Lannan recommended a thirty working days suspension without pay for grievant.⁵ By a vote of 3-2, the Board approved a twenty day working suspension without pay and grievant was notified by certified mail on March 8, 1985. (Transcript, p.81). Grievant petitioned the State Superintendent of Schools for an appeal on July 6, 1985 and Superintendent Truby returned the appeal on July 15, 1985 pending action by the Education Employees Grievance Board.

West Virginia Code, Ch. 18A, Art. 2, Section 8 is, in pertinent part, as follows:

"... a board may suspend or dismiss any person in its employment at any time for: ...insubordination...or willful neglect of duty..."

⁵ At the hearing before the Board, grievant stated that the reason he would not sign the letter was because he did not have the power to make recommendations to the Board of Education (Transcript, p.63). Grievant also suggested that a service position must be filled within twenty days from posting and that the letter to Mrs. Cottrell would not have been timely (Transcript, p.69). However, these were not the reasons given by grievant on February 12th and provide no additional defense to grievant on this appeal.

Under this provision, the causes for suspension are the same as those for dismissal, Totten v. Board of Education of Mingo County, 301 S.E.2d 846 (W.Va. 1983) and 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). The evidence in the instant case presents a classic case of insubordination or willful neglect of duty and the findings of the Jackson County Board of Education are not clearly wrong and are controlling in this appeal. West Virginia Department of Health v. Mathison, 301 S.E.2d 783 (W.Va. 1983).⁶

FINDINGS OF FACT

1. Grievant has been Director of Support Services since July 1, 1983 and part of his duties are to make recommendations for all food service positions to be filled and to perform other tasks and duties as assigned by the superintendent.

2. On February 12, 1985, grievant was requested to either sign a letter to one of his employees or to prepare a letter carrying into effect the directives of the Board of Education and/or the Superintendent.

3. Grievant refused to either sign a letter prepared by the Assistant Superintendent or to prepare one conveying the information agreed upon by the school attorney and/or school board.

4. The reasons given by grievant for the refusal were that it was a personnel matter and should be written

⁶ The Board did not make comprehensive findings of fact and conclusions of law as required by Code, 18-29-6. Although this case was heard prior to Code, 18-29-6, boards were required to make such findings and conclusions prior thereto, Burks v. McNeel, 264 S.E.2d 651 (1980), and henceforth the grievance will be remanded for compliance with Code, 18-29-6.

by the personnel director and that he had never been asked before to make a recommendation for transfer of an employee.

5. Grievant was given every opportunity to purge himself of the charge(s) of insubordination and/or willful neglect of duty and steadfastly refused to avail himself thereof.

CONCLUSIONS OF LAW

1. Code, 18A-2-8 authorizes a board of education to suspend employees on charges of insubordination and willful neglect of duty and the charges must be proved by a preponderance of the evidence.

2. County boards of education are required to make findings of fact and conclusions of law when conducting hearings contemplated by Code, 18-29, et seq.

3. The steadfast refusal by the grievant, Paul Raines, to either sign the letter prepared by the Assistant Superintendent or to prepare a letter carrying into effect the directive of the school board was insubordination and/or willful neglect of duty as a matter of law under the evidence in this case.

Wherefore, the action of the Jackson County Board of Education in finding grievant guilty of insubordination and willful neglect of duty and suspending grievant for a twenty working day period without pay is affirmed.

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

A handwritten signature in cursive script, appearing to read "Leo Catsonis", is written over a horizontal line.

LEO CATSONIS
HEARING EXAMINER