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EMPLOYEES GRIEVANCE BOARD**

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SAMUEL V. ROVELLO

vs.

Docket No. 21-86-081

LEWIS COUNTY BOARD OF EDUCATION

DECISION

Samuel V. Rovello, hereinafter referred to as Mr. Rovello or the grievant, has been employed by the Lewis County Board of Education for more than twenty-five years and served as principal of Lewis County High School from 1978 until his dismissal in February, 1986. Mr. Rovello appealed this action directly to level four of the grievance procedure as permitted by W.Va. Code, Chapter 18A, Article 2, Section 8. The grievant waived his right to a hearing within ten days and by agreement of all parties, the hearing was conducted in Weston on April 8 and 9, 1986.

Mr. Rovello has been charged with an episode of immorality in that while attending a principal's conference at the Greenbrier Hotel in November, 1984 he deliberately misused

school funds to pay lodging costs of an unauthorized guest, the purchase of an ABCC club membership, the purchase of wine and the charging of personal phone calls.¹

It is the board's position that the county travel expense policy and the financial records manual clearly state that reasonable expenses of employees and board members only will be reimbursed. The costs incurred in behalf of an unauthorized guest will not be assumed by the board and the club membership, wine and telephone charges were not reasonable travel expenses to be reimbursed.

In support of this charge the board submitted copies of the county travel allowance policy; the grievant's reservation at the Greenbrier Hotel for November 4 and 5, 1984 indicating a single room for one person at a rate of \$93.00 per night was requested; Lewis County High School voucher #9438 in the amount of \$100.00 for the room deposit

¹ Although not specifically included in the charge, Mr. Rovello improperly paid the hotel bill on November 6, 1984 with Lewis County High School check number 9569, dated November 2, 1984. The testimony of Supt. Callahan supported by the county "Manual of Financial Records for Individual Schools" and travel policy 11.10 was that the employee is to initially assume the traveling expense and upon presentation of a receipt the employee would be reimbursed through the board of education office.

Mr. Rovello was aware of this procedure as he indicated on cross examination when stated that Lewis County High School was the only school in the county that paid such (footnote continued)

at the hotel; a copy of Lewis County High School check voucher #9438 in the amount of \$100.00 for the room deposit at the hotel; a copy of Lewis County High School check number 9438 dated September 10, 1984 paid to the order of the Greenbrier in the amount of \$100.00; a purchase order for the remaining amount of hotel expenses in the amount of \$446.67 paid by check number 9569; a voucher for check number 9569; copies of checks numbered 9569 and 9568, the latter for the sum of \$120.96 and bearing the notation "mileage", both checks dated November 2, 1984; the hotel receipt for Samuel Rovello indicating double occupancy and miscellaneous charges including food, the ABCC club membership and a long distance telephone call; and the Lewis County Board of Education "Manual of Financial Records for Individual Schools" which details the principal's responsibility to the board for the financial management of the school.

Mr. Rovello admits that he was accompanied to the conference by a guest whose attendance was not authorized by the board and the total bill was paid from the administrative

(footnote cont.)

bills directly. Employees at all other schools submitted vouchers and were reimbursed by the board. Mr. Rovello seems to differentiate between board policy and Lewis County High School policy on this issue.

account of Lewis County High School. However, he denies an intentional misuse of school funds and argues: (1) there is no written board policy relevant to this situation; (2) his action was based on widely accepted practice in effect prior to the time he became a principal and (3) any wrongdoing has never been brought to his attention through evaluation thereby denying him an opportunity to improve his performance as required by State Board of Education Policy 5300(6)(a).

The Lewis County Board of Education transportation travel allowance policy (Ch. XI, Sec. 11.10) states: "It shall be the policy of the Lewis County Board of Education to pay the reasonable travel expenses of any employee or board member, provided said expenses were incurred in the execution of duties authorized by the superintendent and/or board of education."

Mr. Rovello's testimony at the level four hearing was that, in his opinion, this policy contained no language which could be interpreted to prohibit his securing a double rather than a single room. As the policy refers to "reasonable" expenses the question therefore becomes "what accommodations are to be considered reasonable?"

Mr. Rovello answers this question himself by having initially made a reservation for a single room. On cross examination Mr. Rovello stated that at the time he made the reservation he felt a single room was needed, but at the time of registration a double room was required as he was accompanied by a guest.²

The board's travel expense policy is written in clear, unambiguous language, not lending itself to misinterpretation. Mr. Rovello's reservation for a single room indicates his understanding of the policy.³

Mr. Rovello's second argument is that his actions were based on widespread practice. In support of this argument Mr. Rovello testified that when he was required to travel on school business as assistant principal his predecessor had allowed him to reserve a double room and, upon his assumption of the principalship, he in turn had continued that practice.

² Supt. Callahan testified that the board has no objection to employees being accompanied by spouses or guests on business trips; however, the board does limit its reimbursement to those reasonable expenses of the employee which requires the individuals to assume the costs of the guest.

³ Mr. Rovello's difficulty in interpreting board policy 11.10 would appear to be inconsistent with testimony offered by himself and others which indicate his knowledge of financial matters to be one of his strongest assets as principal.

Two witnesses were called by the grievant to testify on this issue. Michael Lynch, assistant principal at Lewis County High School stated that as a practice he had never shared a room with another employee, but that on one occasion he had been joined by his wife for one evening as she was also in the area on school business. Mr. Lynch stated that the room rate had not changed due to his wife's presence.

Richard Hiserman, basketball coach at Lewis County High School, testified that his wife had accompanied him to the state basketball tournament the previous year and while she did not stay at the same hotel as he, the school had paid her expenses.

This argument then is based only on examples in which the grievant was directly involved and fails to establish that such practice was either longstanding or widespread throughout the school system.⁴

Finally, the grievant asserts the dismissal was contrary to both state and county board of education policy in that any deficiency had not been brought to his attention through evaluation offering him no opportunity for improvement.

⁴ The grievant's reliance on past practice is meritless when viewed even in the most favorable light. Citing the same misdeeds as committed by others never serves as justification for one's own actions.

In support of this argument the grievant offers the following authority:

(1) State Board of Education 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 evaluation, and not upon factors extraneous thereto. Every employee is entitled to the opportunity of improving his job performance, prior to the terminating or transferring of his services, and can only do so with assistance of regular evaluation."

(2) State Board of Education Policy 5301(D)(7) which addresses improvement plans and improvement teams.

(3) Lewis County Schools "Handbook for Administrator Evaluation" which requires that administrators be evaluated by March 1 and provides for a Plan of Assistance for Improvement of Administration.

(4) Several decisions rendered by the West Virginia Supreme Court of Appeals in which policy 5300 has been interpreted and applied: Trimboli v. Bd. of Educ. of Wayne County, 280 S.E. 2d 686 (W.Va. 1981) and 254 S.E. 2d 561 (W.Va. 1979); Wilt v. Flanigan, 294 S.E. 2d 189 (W.Va. 1982); Wren v. McDowell Co. Bd. of Educ., 327 S.E. 2d 464 (W.Va. 1985) and Holland v. Bd. of Educ. of Raleigh Co., 327 S.E. 2d 155 (W.Va. 1985).

Mr. Rovello points out that he was dismissed prior to having received an evaluation for the 1985-86 school year and no deficiency in this area had been noted on

any previous evaluation. Therefore, he had not been made aware that what he was doing was wrong.

The board questions the applicability of policy 5300 in this situation.

Policy 5300(6)(a) guarantees an employee two rights: he is entitled to know how well he is performing and the opportunity of improving his job performance prior to the termination of his services.

State Board Policy 5310 states the purpose of staff evaluation is to help employees improve skills by working towards, meeting and surpassing performance standards.

The Lewis County "Handbook for Administrator Evaluation" describes a plan of assistance as a significant part of the evaluation process predicated on the belief that the evaluation format establishes a set of minimum competencies.

Although the West Virginia Supreme Court required adherence to policy 5300 procedures in the Trimboli, Wilt, Wren and Holland, supra, cases, these involved charges of insubordination and incompetency. While the applicability of policy 5300 to a charge of immorality has never been specifically addressed, in Mason Co. Bd. of Educ. v. State Supt. of Schools, 274 S.E.2d 435 (W.Va. 1981) the Court

did determine the policy does not proscribe discharge for irremediable conduct and that the factor triggering the application of the evaluation procedure and correction period is whether the conduct is correctable. Correctable conduct is "understood to mean an offense or conduct which affects professional competency."

This charge does not relate to the grievant's skills or abilities and the evidence presented, including the grievant's own testimony, establishes his competency in this area.

Mr. Rovello argues a literal interpretation and application of policy 5300 to be required.

While the grievant denies that any unsatisfactory performance was brought to his attention, it was by his own testimony that this examiner was made aware of the existence of a memorandum to Mr. Rovello from Edwin Prince, CPA, dated October 16, 1985, which listed the expenditures at the Greenbrier as irregularities and requesting an explanation. (Rovello Exhibit No. 1). Mr. Rovello further testified that Superintendent Callahan called this matter to his attention in November, 1985 during a review of the financial audit of Lewis County High School. According to Mr. Rovello, Superintendent Callahan defined the action as a misuse of public funds and stated the possible consequences of such an action. Mr. Rovello

asked what the Superintendent wanted him to do. When Superintendent Callahan expressed his anticipation that Mr. Rovello would voluntarily pay back the improper charges Mr. Rovello responded with concern that to do so would be an admission of guilt. Mr. Rovello states that he had not since repaid the costs in question with the exception of the ABCC membership and wine purchases.⁵ According to the grievant, it had previously been brought to his attention that these were not reimbursable charges and he had repaid the school upon his return. He did, however, neglect to get a receipt for the repayment and cannot substantiate this claim.⁶

An audit may be defined as an examination and verification of financial accounts. The principal, as chief financial officer of a school, bears the responsibility of assuring the maintenance and accuracy of these records. The financial audit and the conference with Supt. Callahan in November undeniably constitute an evaluation of Mr. Rovello's performance as a principal. Furthermore, as Mr. Rovello told us, the Superintendent gave him an opportunity to correct the action in November. He chose not to do so.

⁵ The grievant states that he did not request the ABCC membership, but that it was automatically charged to the guest's bill as per hotel policy.

⁶ Throughout the hearing this examiner found the grievant's testimony to be inconsistent with other parts of his own testimony as well as that of other witnesses making his credibility a key factor to be considered.

A board of education may suspend or dismiss an employee at any time for reason of immorality, incompetency, cruelty, insubordination, intemperance or willful neglect of duty. W.Va. Code, 18A-2-8 This authority must be based on just cause and be exercised reasonably, not arbitrarily or capriciously. Beverlin v. Bd. of Educ., S.E. 2d 554 (W.Va. 1975); DeVito v. Bd. of Educ., 317 S.E. 2d 159 (W.Va. 1984).

Mr. Rovello made a conscious and intentional decision to pay the expenses of a guest from school funds. The evidence shows this action did not occur due to the lack of competency on the part of the grievant but rather was willful conduct not in conformity with accepted principles of right and wrong behavior and was contrary to the moral code of the community.⁷

It is the opinion of the examiner that the board of education was not required to follow policy 5300 in this instance; however, even if applied, the grievant was deprived of no rights guaranteed by that policy.

As the board of education has shown by a preponderance of the evidence the grievant to be guilty of immorality, the decision to dismiss is hereby affirmed.⁸

⁷ While recognizing the impreciseness of the term "immorality" this was the definition adopted in Golden vs. Bd. of Educ. of the County of Harrison, 285 S.E. 2d 665 (W.Va. 1981).

⁸ Because the board of education had approved the grievant's attendance at this meeting in his capacity as principal and (footnote cont.)

Although the remaining six charges provide additional evidence relating to the grievants unfitness as a principal their merits will not be discussed herein as the board has met its burden of proof justifying the dismissal in charge one.⁹

FINDINGS OF FACT

1. In November, 1984 the grievant attended the West Virginia Secondary School Principals Commission meeting at the Greenbrier Hotel.
2. The Lewis County Board of Education authorized the grievant to attend this meeting held while school was in session.
3. The grievant attended this meeting in his official capacity as principal and representative of Lewis County Schools.
4. The grievant paid the hotel bill with checks from the Lewis County High School account.

(footnote cont.)

and as the representative of Lewis County Schools while school was in session and paid his expenses in addition to his salary it is not necessary to demonstrate a rational nexus between the conduct and the duties of the employee as was required in the Golden case where the behavior occurred outside the job.

⁹ The remaining charges are: 2) That you have committed an episode of willful neglect of duty on your part, in that, you failed or refused to timely complete evaluations of professional personnel on your staff for the 1985-86 school year after being (footnote cont.)

5. The hotel bill included costs incurred as a result of the grievant being accompanied by an unauthorized guest, purchase of an ABCC club membership, wine and telephone call.

6. This misuse of school funds was brought to the grievant's attention by Superintendent Callahan who provided

(footnote cont.)

specifically directed to do so.

3) That you have committed an episode of willful neglect of duty on your part, in that, you failed or refused to evaluate more than thirty (30) professional personnel on your staff for the 1984-85 school year.

4) That you have committed an episode on or about the 26th and 27th of November 1985, of insubordinate action in taking one and one-half (1½) days personal leave time without authorization after being specifically told by your immediate supervisor that such personal leave was not to be taken without authorization from the superintendent or the assistant superintendent.

5) That you have committed an episode of insubordinate action, in that, during September, 1985, and thereafter, you failed or refused to ascertain and report all children in your school entitled to participate in the free or reduced lunch program after being specifically directed to do so by the Superintendent.

6) That you committed an episode of immorality and/or willful neglect of duty, in that during the 1984-85 school year, you either misappropriated or failed to properly account for monies received by vending machines in Lewis County High School in the approximate amount of \$3,352.00.

7) That you committed an episode of immorality, in that, on or about June 19, 1985, you submitted "Individual School's Annual Financial Report" WVDE 11-10-24, showing no unpaid bills or unpaid obligations for Lewis County High School and certified to the truth of said report, which report was false and known by you to be false in that there were, in fact, several obligations outstanding in June, 1985.

the grievant an opportunity to repay the school for these costs.

7. The grievant declined to repay the school.

8. The grievant was charged with immorality in the misuse of school funds and dismissed from his position by the Lewis County Board of Education on February 19, 1986.

9. The grievant states that no county travel policy exists relevant to this situation; that he was following past practice and that he was denied his rights granted by State Board of Education policy 5300.

CONCLUSIONS OF LAW

1. The grievant failed to substantiate the claims of a lack of county policy or the existence of past practice which allows the payment of a guest's expenses.

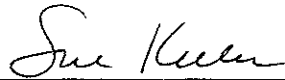
2. A county board of education is not required to follow State Board of Education policy 5300 procedures in every instance before dismissal. The factor triggering its application is whether the circumstances forming the basis for dismissal affects professional competency. Mason Co. Bd. of Educ. v. State Supt. of Schools, 274 S.E. 2d 435 (W.Va. 1980).

3. Although the board was not required to follow policy 5300 in this situation, the grievant was denied neither

of the rights afforded by that policy.

4. A board may dismiss any person in its employment at any time for immorality; i.e. conduct not in the conformity with accepted principles of right and wrong behavior which is contrary to the moral code of the community.

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



SUE KELLER
Hearing Examiner

Dated: 6/16/86