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PATRICIA SHILLINGBURG

vs.

DOCKET NO. 28-86-135-2

MINERAL COUNTY BOARD OF EDUCATION

DECISION

Patricia Shillingburg, hereinafter sometimes referred to as the grievant, was employed by the Mineral County Board of Education in 1983 as a full time custodian III assigned to Keyser High School. Upon Superintendent Shirley Ball's recommendation, the grievant was dismissed from this position for willful neglect of duty by the board of education on March 4, 1986.

The evidence presented at the level four hearing indicates the grievant was satisfactorily evaluated for the period of December, 1983 through October, 1984 by Karl Pfiefer, principal of the high school. In December, 1984, V. J. Marsh, vice principal, was assigned responsibility for custodial services. Mr. Marsh testified he soon noted the grievant to be abusing sick leave and vacation time and that her arrival to and departure from work was often untimely. Walk through observations conducted by Mr. Marsh, Tom Kady, head custodian, and Raymond Summers, Co-Ordinator of Custodial Services, revealed the quality of the grievant's work to have deteriorated to the

point of becoming unsatisfactory.

Mr. Marsh notified the grievant, by letter dated February 27, 1985, of his concerns and advised her of the potential consequences if she continued to be late in reporting for work or would again leave early without prior approval.

Ms. Shillingburg raised the issue of her ability to complete all the duties assigned to her area during an eight hour shift. At Mr. Marsh's request, Mr. Summers agreed to observe the grievant in an effort to determine whether any changes should be made regarding her workload. The grievant was absent the day of the scheduled observation; however, having observed the substitute, Mr. Summers concluded there was more than adequate time for completion of the assigned duties. The situation remained unresolved and the grievant's evaluation dated June 20, 1985 indicated attention was needed in several areas.

At the beginning of the 1985-86 school year the grievant voiced her concerns relating to the inequitable workload to Asst. Superintendent Charles Kalbaugh. In September, 1985, Mr. Kalbaugh requested Mr. Summers to conduct a time study for custodial positions at Keyser High School. This study consisted of assigning a full time substitute to each custodial area on succeeding evenings. A schedule listing duties and the time required for completion was kept by the substitute. Mr. Summers concluded the workload to be equitably assigned and could be satisfactorily completed by all custodians.

At about the same time the grievant informed Superintendent Ball she believed herself to be a victim of harassment based on sexual discrimination. Ms. Shillingburg bases this charge on an alleged incident involving the hiring of another custodian, Grace Ross. Ms. Shillingburg's

testimony was that Tom Kady, the head custodian, commented that he did not want "another damned woman" on staff. Mr. Kady denies having made this statement and Mr. Summers does not recall the statement being made. Ms. Shillingburg further stated her belief that she and Ms. Ross were "picked on" because their work showed up the work that was done by the men. Superintendent Ball testified that she found no grounds for this charge, but rather that everyone had gone out of their way to help the grievant.

Superintendent Ball scheduled a meeting with the entire custodial staff early in October, 1985, in an effort to resolve these problems. At this meeting the grievant charged that another custodian, Gary Martin, had been assigned a lighter workload. Mr. Martin offered to trade duties with the grievant who accepted the offer.

Following a visitation to Keyser High School late in November, 1985, Superintendent Ball expressed her concerns regarding the grievant's continued unsatisfactory job performance to Mr. Marsh. Accompanying an evaluation dated November 26, 1985 the grievant was given a plan of assistance by Mr. Marsh. Follow-up observations dated December 3, 10 and 14, 1985 indicate the grievant's performance to be much improved. Mr. Marsh testified that following the two week period of improvement the grievant's performance once again began to deteriorate and she began to leave her work area without permission on a regular basis. Mr. Marsh, Mr. Kalbaugh and Mr. Martin all testified to having seen the grievant leave her work area and go to the nearby annex building on one or more occasions. Mr. Marsh and Mr. Martin had together documented ten such occurrences between January 20 and February 5, 1986. 1

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Ms. Shillingburg denies having gone to the annex building with one exception, to get a light globe. She states that she may have been seen going to the mobile units. The grievant's schedule indicates these units were to be cleaned between 3:40 and 6:00pm; however, she indicated she did not always follow this schedule. The testimony of Marsh, Kalbaugh and Martin was that she had gone to the annex building. In Mr. Kalbaugh's observation he did note the grievant first went to the mobile units and then to the annex.

Following an unsatisfactory evaluation in February the grievant was suspended from her duties and later dismissed

The grievant contends she was improperly dismissed as the board has failed to meet its burden of proof in establishing wilful neglect of duty.

W. Va. Code, Chapter 18A, Article 2, Section 8 states that a board may dismiss an employee for willful neglect of duty. A board may suspend an employee for the same cause. Totten v. Board of Mingo County, 301 S. E. 2d 846 (W. Va. 1983). However, this authority must be exercised reasonably and not arbitrarily or capriciously. Beverlin v. Board of Education of Lewis County, 216 S. E. 2d 554 (W. Va. 1975).

The board has produced an abundance of documentation and evidence to show the grievant was capable of satisfactory performance, but that she did not exercise that capability over an extended period of time and regularly left her work area, thereby neglecting her assigned duties.

Ms. Shillingburg further contends that she was improperly dismissed as she was deprived of an improvement period following her unsatisfactory evaluation in February, 1986.

It is without question that every employee is entitled to an evaluation of job performance as well as the opportunity to correct prior misconduct or incompetency. Wilt v. Flanigan, 294 S. E. 2d 155 (W. Va. 1982); Holland v. Board of Education of Raleigh County, 327 S.E. 2d 155 (W. Va. 1985).

Ms. Shillingburg was evaluated on a regular basis. Deficiencies in her performance were brought to her attention on several occasions and she was given a plan of improvement in November, 1985. Her performance during that period established the fact she is competent and fully capable of satisfactory performance. The board fully complied with the requirements of policy 5300 and Holland, supra, in November and it would be

an entirely unreasonable interpretation of this policy to require the employee to be given another opportunity to improve her performance within four months.

Therefore, the action of the Mineral County Board of Education in the dismissal of this grievant on the ground of willful neglect is affirmed.

FINDINGS OF FACT

1. The grievant was made aware of problems relating to her job performance on several occasions beginning in February, 1985 through conferences, written correspondence and formal evaluation.
2. Efforts were made to assist the grievant in improving her job performance, including trading duties with another custodian of her choice.
3. The grievant performed her duties satisfactorily during a period of improvement in November and December, 1985.
4. In January, 1986 the quality of the grievant's work deteriorated and she began to leave her assigned area without permission on a regular basis.

CONCLUSIONS OF LAW

1. A board of education may dismiss an employee for willful neglect of duty.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mineral County and such appeal must be filed with 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.

DATED

July 8, 1986

Sue Keller

SUE KELLER
Hearing Examiner