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LOLA STOUFFER

v.

DOCKET NO. 39-86-256-2

PRESTON COUNTY SCHOOLS

DECISION

By letter dated August 26, 1986, Elmer L. Pritt, Superintendent of Preston County Schools, notified Ms. Stouffer that the board of education had suspended her without pay from her position as Secretary III at East Preston Senior High School. The reasons listed for the suspension were immorality, incompetence and willful neglect of duty. The suspension was for an indefinite period of time.

Ms. Stouffer appealed the board's action directly to level four of the grievance procedure in accordance with W. Va. Code, 18A-2-8.

The incident which led to Ms. Stouffer's suspension is set forth in Superintendent Pritt's letter of August 26, 1986. During an audit of the East Preston High School lunch program records conducted in May, 1986,

irregularities caused by improper bookkeeping were discovered resulting in the school being required to repay \$10,680.90 to the state administered federal hot lunch program. Further investigation revealed that as far back as 1980 money could not be accounted for from the lunch program. Superintendent Pritt advised Ms. Stouffer that "[s]ince you both kept records and deposited the collected money, it appears that you are accountable for these disparities."

At the level four hearing testimony was offered in the board's behalf by Darwin Wolfe, Director of Personnel for Preston County Schools, regarding the hot lunch program and by Gary Livengood, Principal at East Preston High School, regarding school administration of the program.

From this testimony it appears that various teachers, or a designated teacher, would collect lunch money from the students and deliver it to Ms. Stouffer who was responsible for depositing the money and completing the monthly hot lunch reports.<sup>1</sup> The audit conducted in May,

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<sup>1</sup>Ms. Stouffer testified that the money was placed on her desk and that she would put it into her briefcase and take it home with her at night until she felt the amount was great enough to deposit or until she was able to get to the bank. Principal Livengood stated that he was aware of and approved this practice.

1986, revealed that these reports consistently misstated the number of free, reduced and paid lunches served at East Preston High School. In addition to the money, Ms. Stouffer was provided the teacher's lunch count from a gradebook and a tray count from which to complete the monthly report. Mr. Livengood signed the reports as the building principal, but stated that he had not inspected the forms for accuracy and had merely checked the bottom line to see if the program remained solvent.

Ms. Stouffer testified that her vision is impaired by cataracts making it virtually impossible for her to see the small marks in the gradebook. Therefore, she managed as best as she could and often calculated the reports based on her knowledge of the children.<sup>2</sup> Ms. Stouffer denies having converted any of the school's money for her own use.

W. Va. Code, 18A-2-8 provides that a board may suspend or dismiss any employee for immorality, incompetency, cruelty, insubordination, intemperance or willful neglect of duty.<sup>3</sup> However, this authority is to be exercised

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<sup>2</sup>Principal Livengood stated that he was aware that the grievant suffered some vision problems as he had previously drawn lines to assist her. When the grievant brought to his attention her inability to read the marks in the gradebooks he did nothing after she stated that she "would take care of it."

<sup>3</sup>The causes for suspension are the same as those for dismissal. Totten v. Board of Education, 301 S.E. 2d 846 (W. Va. 1983).

reasonably and in compliance with all applicable regulations.<sup>4</sup>

W. Va. Board of Education Policy 5300 (6) (a) provides that every employee is entitled to the opportunity of improving his job performance prior to a termination or transfer of his services and that improvement can only be achieved with the assistance of regular evaluation. Testimony offered by both parties was that Ms. Stouffer has never been made aware of any deficiencies in her performance regarding the completion of school reports through the evaluation process.<sup>5</sup>

The W. Va. Supreme Court of Appeals has held on numerous occasions that the procedures specified in W. Va. Board of Education Policy 5300 (6) (a) must be followed in every proceeding under W. Va. Code, 18A-2-8 before the dismissal of a school employee on the ground of misconduct or incompetence. See: Lipan v. the Board of Education County of Hancock, 295 S.E. 2d 44 (W. Va. 1982); Trimboli v. Board of Education of the County of Wayne, 254 S.E. 2d 561 (W. Va. 1979); Wilt v. Flanigan, 294 S.E. 2d 189 (W. Va. 1982);

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<sup>4</sup>Although termed a suspension, the board's action was for an indefinite period of time and without pay, therefore, it would be more accurately characterized as a dismissal.

<sup>5</sup>The board concedes that the problem was not brought to the grievant's attention through evaluation as it was of a nature that required immediate action.

Mason County Board of Education v. State Superintendent of Schools, 274 S.E. 2d 435 (W. Va. 1980); Holland v. Board of Education of Raleigh County, 327 S.E. 2d 155 (W. Va. 1985). As Ms. Stouffer's alleged incompetency and/or willful neglect of duty was not brought to her attention through evaluation thereby allowing her no opportunity to improve, the board of education is now prohibited from suspending her on those charges.

In the case of Golden v. Board of Education of the County of Harrison, 285 S.E. 2d 665 (W. Va. 1981) the W. Va. Supreme Court of Appeals noted that immorality is an imprecise word which means different things to different people, but that the term connotes conduct "not in conformity with accepted principles of right and wrong behavior; contrary to the moral code of the community; wicked; especially, not in conformity with the acceptable standards of proper sexual behavior." As the board of education has not shown that Ms. Stouffer has converted any school money to personal use, or that she intentionally, or knowingly, completed the hot lunch reports improperly, it has failed to meet its burden of proof for this charge.

#### Findings of Fact

1. Lola Stouffer has been employed by the Preston County Board of Education since 1965 and presently holds the position of Secretary III at East Preston High School.

2. As secretary, it was Ms. Stouffer's responsibility to receive lunch money collected by the teachers, deposit the money in the bank and to complete the monthly reports for the program.

3. An audit of the hot lunch program conducted in May, 1986, for the 1985-86 school year, revealed discrepancies requiring in the Preston County Board of Education to reimburse the State Board of Education the sum of \$10,680.90.

4. Subsequent to the audit conducted in May, 1986, a new method of record keeping was instituted.

5. Past evaluations of Ms. Stouffer did not indicate any deficiencies in her bookkeeping or reporting skills.

6. Ms. Stouffer denies having converted any school money to her personal use and the board of education has not submitted any evidence to support that allegation.

#### Conclusions of Law

1. W. Va. Board of Education Policy No. 5300 (6)(a) prohibits a board of education from discharging, demoting or transferring any employee for reasons having to do with prior misconduct or incompetency that has not been called to the attention of the employee through evaluation and which is correctable. Trimboli v Board of Education of the County of Wayne, 254 S.E. 2d 561 (W. Va. 1979).

2. Code, 18A-2-8 authorizes a board of education to

suspend or dismiss any person in its employment at any time for immorality so long as such charges are proven by a preponderance of the evidence.

3. The term "immorality" is an imprecise word connoting conduct not in conformity with accepted principles of right and wrong behavior and contrary to the moral code of the community.

4. The board of education has failed to show the grievant to have converted school funds to her personal use or that she intentionally or knowingly completed the lunch reports in an improper manner, therefore, the board has failed to meet its burden of proof relating to the charge of immorality.

Therefore, based on the foregoing and the record in its entirety, this grievance is GRANTED and the Preston County Board of Education is ORDERED to reinstate Ms. Stouffer as Secretary III at East Preston High School with full compensation for the time which she has been suspended. Attorney fees may not be awarded at this level.

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

DATED: November 12, 1986

Sue Keller

SUE KELLER

Hearing Examiner