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LARRY BROWN

v.

Docket No. 54-86-262-1

WOOD COUNTY BOARD OF EDUCATION

DECISION

The grievant, Larry Brown, is employed as a junior high school science teacher by the Wood County Board of Education. On June 27, 1986 he filed a grievance alleging violation of state and county evaluation policy when his principal cited grade distribution as an unfavorable indicator on an evaluation instrument and subsequently presented him a plan of improvement. The grievance was denied at level one and again denied in substance at level two; however, the hearing officer found that the plan of assistance had been fashioned without grievant's input and remanded the grievance to level one for development of the plan. Grievant appealed that decision to level three and the board of education waived consideration of the matter. A level four hearing was conducted in Parkersburg, West Virginia on January 16, 1987.¹

¹The level four appeal was filed in September 1986 and assigned to the Charleston hearing examiner. On October 21, 1986 the case was transferred to the undersigned examiner.

A two-volume transcript of evidence and exhibits was received February 13, 1986 and the parties declined to submit proposed findings and briefs.

Grievant teaches eighth-grade earth science to five Level 2 (average) classes and one Level 3 (lower level but not remedial) class at Blennerhassett Junior High School. For the past three years grievant's grade distribution had been under scrutiny and of some concern to his principal, Steven Summers. On May 24, 1984, the principal wrote on grievant's evaluation, "I recommend that he evaluate his distribution of grades or difficulty of tests that govern his grade distribution, whichever is applicable". On May 23, 1985 grievant's evaluation again contained the comment, "Once again I would recommend that Mr. Brown examine his grade distribution". In November 1985, the principal communicated via a memorandum noting that half (50%) of grievant's students received D's or F's in science while the same students had a 17% incidence of D's and F's in other academic classes. The principal stated that the grade distribution was an indicator relating to three evaluation performance standards and could warrant a DOES NOT MEET PERFORMANCE STANDARDS or DNMPs on grievant's evaluation. The principal offered assistance to grievant on the matter.

On February 6, 1986 the principal once again notified grievant of his concern regarding grade distributions in which 60% of the students received D's and F's. On a final evaluation rendered May 28, 1986 grievant received a DNMPs for the standard "Monitors Student Progress Toward Learning Outcomes". At that time the principal attached a Wood County Schools Improvement Plan to the evaluation document. The plan cited grievant's distribution

of grades as being "out of skew" compared with grades given by other teachers.²

Grievant attributes the abundance of D's and F's to the failure of students to complete homework assignments.³ According to his calculations a large portion of his students could have attained a higher letter grade had they promptly and correctly completed their assignments. While that may be true, counsel for respondent established that numerous students who did complete assignments still attained only D's and F's in quizzes and unit tests (T, 45-49). Although grievant's two-fold purpose for outside assignments might be to give students an opportunity to boost their grades and to reinforce their learning, there seems to be little correlation between the successful completion of assignments and actual learning as measured by quiz and test score.

Grievant's representative argues that the evaluation of May 28, 1986 violated the open and honest provisions of State Board of Education Policy 5300 since grade distribution did not appear as an indicator for "Monitors Student Progress Toward Learning Outcomes" on the countywide evaluation instrument/policy. He

²Additionally the plan stated: "Specific action(s) to be taken by employee: Mr. Brown must improve his grade distribution. It should be more in line with grade distributions of other teachers of same level courses. The number of D's and F's should be no more than 25% of total grade assigned.

Sources of assistance: Principal will continue to encourage Mr. Brown to either change his expectations of students, or lower grade scale in order for Mr. Brown's grade to be more in line with other teachers at BJHS".

³At the end of the first semester, 1985-86, none of grievant's 126 students received an A, 5 received a B, 44 received a C, 55 received a D, and 22 received an F.

further urges that the evaluation was wrongful because State Board Policy 5310 and County Policy 4117 require a standardized countywide evaluation system and other teachers' grade distributions were not subject to evaluative review.

Grievant's representative identifies the problem of the grade distribution as merely a reflection of differing educative philosophies between grievant and his principal. He maintains that grievant has high expectations for his students and his grade distribution accurately reflects his students' performance. Any attempt to intrude into that domain, it is argued, represents an administrative dictate to lower expectations, inflate grades and/or water-down courses. The grievant requests that the evaluation and plan of improvement be removed from his files and destroyed and that his future evaluation instrument be consistent with those of other county teachers. Grievant further asks if his evaluation and a properly conceived improvement plan are deemed appropriate, that the county be directed to establish a definitive statement of appropriate and inappropriate grade distributions.⁴

⁴The propriety of this request is questioned in light of Wood County Policy 5124 which offers basic guidelines on the subject of grading. The policy forbids a predetermined number of A's, B's, C's, D's, and F's to be given as final grades. It would seem that if half or more of a teacher's students are failing or nearly failing and the problem extends over a period of time involving multiple groups of new students each year, both the teacher and school officials should take a hard look at the situation via all means at their disposal. To conclude that the students will not do their work or that the teacher should assign less D's and F's comes nowhere near solving the problem of such a situation.

Counsel for the board maintains that grievant's aberrant grade distribution is a matter of great concern and as such warrants review via evaluation by his principal. He urges that the inclusion of grade distribution is permissible in this particular case and is facilitated by the "such as" language in the county evaluation policy as it pertains to standards. Moreover, counsel argues, the grievant has had ample notice of the concern regarding his grade distribution, thus its inclusion as an indicator on his evaluation should come as no surprise to him.⁵

Counsel for the board urges that the level two decision be affirmed and the improvement plan be redeveloped between grievant (input) and his principal.⁶

In addition to the foregoing discussion the following specific findings of fact are appropriate.

⁵This position appears consistent with case law which "permit(s) some latitude in the evaluation of a teacher subject to the requirement that the evaluation be open and honest and not arbitrary". State ex rel. McLendon v. Morton, 249 S.E.2d 919 (W.Va. 1978).

⁶It is again noted that grievant and Principal Summers had various meetings and discussions on the grade distribution problem for three years and could not remedy the situation and Principal Summers' remediation via the May 28 evaluation was contrary to existing policy on the matter of a predetermined distribution of letter grades. In fact, Summers stated that he did not have the time to devote to a thorough study of grievant's curriculum and tests.

It would seem that under these circumstances the board could look to other remediation means available. State Board Policy 5310, section D, (7)(d)(1) provides for implementation of a team of assistance when a supervisor cannot provide improvement and County Policy 4117, (IV)(B)(6) and (C)(2) permit the formulation of an improvement team with expertise in the curriculum area to assist an employee in meeting job standards.

FINDINGS OF FACT

1. Grievant is currently teaching eighth-grade science to five classes of Level 2 students (average) and one class of Level 3 students (lower level but not remedial) at Blennerhassett Junior High School.

2. Steven Summers, grievant's principal, had imparted his concern regarding grade distribution to grievant in written and oral form many times over the past three years; grievant's final grade distribution reflects a 50-60% incidence of D's and F's; the same students have a 17% incidence in other academic classes.

3. Mr. Summers had offered to assist grievant with the problem grade distribution but appeared to be focusing on the numerical data, per se, and did not attempt to analyze the situation in depth in order to ascertain the cause for what appears to be either alarmingly low learning performance ~~of~~ on the part of grievant's students and/or inordinately high teaching expectations on the part of the grievant. Grievant stated that he asked Principal Summers to examine his test materials but the principal felt he could not determine the propriety of the tests in relation to grievant's teaching presentations unless he could "become a student" in the classroom and he had no time available for that purpose.

4. Grievant attributes the high rate of D's and F's to the student's failure to complete daily homework assignments and

several assigned magazine reviews; he stated that every student could pass his course even if the student received all F's in test scores, assuming that all outside assignments were successfully and promptly completed.

5. Grievant suggested that other science teachers he knew of were having problems with students completing assignments, poor performance, grade distribution, and the like but offered no evidence or corroboration of his statements.

6. Grievant stated that the basic premise of his outside work assignment was to produce enhanced learning reinforcement for his students (as well as enabling all students to earn a passing grade). In one sampling of 6-week grades for the twenty-three students of Class 3, no pupil received an A or B; five received a C; twelve received a D and six received an F. That same class received all D's and F's as the average for their weekly quizzes and pop-quizzes with the exception of two C's; composites of three unit exams show eight B's, 15 C's, 29 D's, and 17 F's. Of the six students who received the highest grades for daily homework assignments (four times weekly) all received only D's or F's as averages for quiz scores. Presumably quiz and exam scores reflect student learning and grievant's entire gradebook reveals overall extremely low test scores. Furthermore, it appears that there is little correlation between student learning and the completion of outside assignments. See level four transcript (T, 44-51) and Grievant Exhibit No. 1 (six 6-week grading entries for all six classes).

7. Principal Summers met with his staff at the beginning of the 1985-86 school term to discuss the new evaluation policy including indicators to be used and emphasizing "such as" language for each standard. To meet open and honest requirements he informed the staff they would be notified of particular deficiencies prior to evaluation if he felt a performance standard was not being met. (T, 113-115).

8. On November 13, 1985, Principal Summers specifically notified grievant that his grading policy and distribution would be reviewed on forthcoming evaluations and lack of improvement could warrant a DNMPs. On February 2, 1986, grievant was notified of the alarmingly high incidence of 60% D's and F's.

9. An evaluation rendered by Principal Summers and given to grievant on May 28, 1986, accorded a DNMPs to the standard "Monitors Student Progress Toward Learning Outcomes". Grievant's principal also rendered a Wood County Schools Plan of Assistance with the May 28 evaluation citing grade distribution as the specific deficiency for the standard not met.

10. Principal Summers' Improvement Plan ordered that grievant henceforth should assign no greater than 25% D's and F's, such dictate violative of Wood County Schools Policy 5124, "Marking and Reporting". The Plan was also violative of County and State Board Policies 4117 and 5310 in that Mr. Summers did not receive

input from grievant before the plan was drafted. For that reason only, it was ordered at level two that the Plan be redeveloped by the principal with grievant's input.

11. Grievant and his principal had been unable to resolve the problem of grievant's grade distribution despite the many conferences and discussions regarding the matter over a three-year period.

12. The Wood County Board of Education complied with standardizing of evaluation systems mandated by State Board Policy 5310 via adoption of a countywide evaluation policy and instrument subject to individualism as may be warranted by certain circumstances and facilitated by "such as" language and upon ample notice to grievant/evaluatee of a specific area of concern.

CONCLUSIONS OF LAW

1. West Virginia Board of Education Policy 5310, section D, 7(c)(6) requires that an improvement plan be written by the evaluator using input from the employee and the failure to follow the requirements thereof invalidates the improvement plan. Dr. Raymond Dunleavy v. Kanawha County Board of Education, Docket No. 29-86-240-1.

2. Pursuant to State Board Policy 5310, Section D, (7)(d)(1) and (2) a referral to an improvement team may occur when an

immediate supervisor cannot provide improvement and or an employee may request an evaluation by an improvement team to verify deficiencies. Dr. Raymond Dunleavy v. Kanawha County Board of Education, supra.

3. Pursuant to Wood County Policy 4117 (IV) (B) (6) and (C) (2) an improvement team with appropriate expertise in the curriculum area may be appointed to assist an employee in meeting job performance standards.

4. Wood County Schools Policy 5124 prohibits a teacher from assigning a predetermined number of A's, B's, C's, D's or F's as final grades.

5. West Virginia Board of Education Policy 5311, section B, 4(a) permits the inclusion of indicators "such as" teacher grading for review by an evaluator.

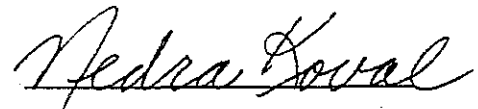
6. School officials are permitted some latitude in the evaluation of a teacher subject to the requirement that the evaluation be open and honest and not arbitrary. State ex rel.

7. School officials comply with the open and honest provisions of West Virginia Board of Education Policy 5300 when a teacher has had ample notice of a particular deficiency problem relating to his teaching which may be used as an indicator for a performance standard.

8. The Education Employees Grievance Board will not intrude itself into evaluations under State Board Policy 5300 unless there is evidence of such an arbitrary abuse of discretion on the part of the school officials as to show that the primary purpose of Policy 5300 has been confounded. Higgins v. Randolph County Board of Education, 286 S.E.2d 682 (W.Va. 1981).

Accordingly, this grievance is DENIED and the evaluation of May 28, 1986 shall stand. As determined in the level two decision, the May 28 Plan of Improvement was faulty and void since it lacked grievant's input. Therefore, either a Plan of Improvement not inconsistent with Wood County Policy 5124 or other remediation measures as determined by school officials shall be developed.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Wood County and such appeal must be filed within thirty (30) 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.



NEDRA KOVAL
Hearing Examiner

DATED:

May 5, 1987