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HARRY L. CROUSE

v.

DOCKET NO. 32-87-150-2

MORGAN COUNTY BOARD OF EDUCATION

DECISION

Grievant, Harry L. Crouse, is employed by the Morgan County Board of Education as a classroom teacher and band instructor assigned to the Paw Paw schools. Mr. Crouse filed a grievance with the Education Employees Grievance Board on May 29, 1987 following a decision of May 27 by the board of education to suspend him from employment, without pay, for the remainder of the school year. The level four appeal form indicated that a decision was to be made on evidence presented at levels two or three; however, the only preliminary action appears to have been the hearing conducted by the board on May 21 prior to voting on the recommended suspension. The hearing examiner notified both parties by letter of September 15 that a record had not been received as of that date. A copy of the transcript

and exhibits of the May 21 hearing was provided by the board on September 22; a brief was filed on behalf of the grievant on October 1 and the board chose not to submit any final statement.

The grievant has been employed by the Morgan County Board of Education since 1984 and presently assigned as music teacher, grades K-12, at the Paw Paw schools. He is also currently employed under an extracurricular contract as band director.

The incident leading to the suspension occurred on Saturday, May 2, 1987 while the band was in Winchester, Virginia participating in the Apple Blossom Festival parade. The band members, three chaperones and the grievant traveled to Winchester and participated in the parade without incident. At approximately 4:00 P.M. the group had returned and boarded the two school buses for the trip home when one of the buses was hit by a car. County practice requires that buses travel together during extracurricular trips, so while an accident report was being filed the grievant dismissed the children with directions to remain in groups and to return to the buses by 5:00 P.M.

At the designated hour all but three of the children had returned to the buses. Two arrived within ten minutes however the third, Robbie Gilpin, had not yet returned by 5:15 or 5:20. At that time and at the grievant's direction, the buses left the area and proceeded to a McDonald's restaurant two to four miles away.

Also at McDonald's was Glenda Ridgeway, whose child informed her Robbie had not been on the buses when they left the loading zone. Ms. Ridgeway spoke with the grievant about her returning to Winchester to look for the child and then called Robbie's parents to apprise them of the situation. Prior to her leaving and unbeknownst to her, Robbie arrived at McDonald's and returned home with the band. Ms. Ridgeway proceeded to look for Robbie in the downtown area and approximately 20 minutes later again called Mr. Gilpin to report that she had been unable to locate Robbie. Mr. Gilpin called the Winchester police department to report his son missing and proceeded to the school to get his wife and go look for Robbie themselves. While he was at the school the buses arrived with Robbie.

The Gilpins filed a complaint against the grievant resulting in Superintendent Dwight Dials imposing a suspension, with pay, effective May 4, 1987. The superintendent determined that the grievant's conduct in leaving the student constituted incompetency, insubordination and willful neglect of duty. Following a hearing held on May 21 the board of education voted to suspend the grievant for the remainder of the 1986-87 school year, without pay.

The grievant testified that parade marshals directed the buses be moved and he determined that the safety of the remaining children was his first priority. He did not call anyone at that time as there were no telephones at the loading area. Upon arrival at McDonald's he had made sure the students were taken care of properly and had reboarded the buses. He had not yet called anyone regarding Robbie as the phones were across the parking lot. It had been his intent to call after the students were back on the buses but Robbie arrived before he had an opportunity to do so.¹

¹Principal Dennis Beyer defined the action as a mistake and suggested that the grievant apologize to the Gilpins. The grievant has declined to do so as he contends that he made the correct decision under the circumstances.

Superintendent Dials testified that an investigation of applicable statutory law, State Board of Education and county policies indicated the action to constitute incompetency by leaving the child unattended and without some provision being made for the ultimate welfare and safety of the child, insubordination as the teacher is directed to provide for the maximum safety and welfare of the child and willful neglect of duty as he knowingly ordered the buses to proceed without the child.

The grievant argues that the board has failed to show any rational connection between the incident of May 2 and his teaching performance or that the action was willfully committed. Further, a teacher may not be disciplined in connection with his teaching contract for incidents that occurred solely in the performance of an extracurricular contract.

In addition to the foregoing the following shall serve as specific findings of fact and conclusions of law.

Findings of Fact

1. The grievant is employed by the Morgan County Board of Education as a music teacher and band director, the latter position being an extracurricular assignment under separate contract.

2. On Saturday, May 2, 1987 the grievant traveled with the band to Winchester, Virginia to participate in a parade.

3. The band attempted to leave Winchester at 4:00 p.m.; however, the departure was delayed when one of the buses was hit by a car. While waiting for the completion of an accident report the students were permitted to return to the festival with directions to remain in groups and to return to the buses by 5:00 P.M.

4. By 5:15 or 5:20 p.m. all but one of the students had returned to the buses. The grievant had been advised by parade marshals that the buses would have to be moved. At the grievant's direction the buses departed from the loading area and proceeded to a McDonald's restaurant some two to four miles away but apparently within the city limits.

5. As the others were reboarding the buses the missing student arrived at McDonald's and returned home with the band.

6. At McDonald's another parent became aware of the missing student, notified the student's father and proceeded back to the loading area in search of the student, unaware that he had arrived and was returning home with the band.

7. The grievant did not call anyone, leave a chaperone behind or make any other efforts to locate the child prior to moving the buses from the loading zone.

8. Upon arriving at McDonald's the grievant supervised the children in the restaurant and their reboarding the buses without taking any action regarding the missing student. According to the grievant he learned that there were no telephones in the restaurant and felt that the care of the students was his first priority but that he had intended to call someone after the students were back on the buses. He was not required to call anyone as the child arrived while the other students were reboarding the buses.

Conclusions of Law

1. A board may suspend any person in its employment at any time for reasons of immorality, incompetency, cruelty, insubordination, intemperance or willful neglect of duty. W.Va. Code, 18A-2-8.

2. School board actions relating to contracts entered into pursuant to Code, 18A-4-16 are not exempt from the procedural requirements of Code, 18A-2-7. Smith v. Board of Education, 341 S.E. 2d 685 (W. Va. 1986).

3. The board's determination that the action committed by the grievant was so egregious as to warrant suspension from his teaching position was not arbitrary or beyond its authority.

4. The board of education has satisfied the burden of proof and acted in good faith in attempting to maintain the integrity of the school system in Morgan County. Allison v. Kanawha County Board of Education, Docket No. 20-86-273-1; Ida Grob v. Taylor County Board of Education, Docket No. 48-86-349-2.

Accordingly, the grievance is DENIED.

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

DATED

December 7, 1987

Sue Keller

SUE KELLER
Hearing Examiner