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JACKIE ROMEO

v.

Docket No. 17-86-208-2

HARRISON COUNTY BOARD OF EDUCATION

DECISION

Grievant, Jackie Romeo, is employed by the Harrison County Board of Education as a third grade teacher. On or about February 24, 1986 grievant wrote to her principal notifying him of her wish to file a grievance pursuant to W.Va. Code, 18-29-1, et seq. She alleged violation, misinterpretation and misapplication of state and county evaluation policies whereby she was denied an open and honest evaluation and deprived of an equal opportunity with her peers to obtain an "exceptional" rating. The grievance was denied at level one and two and waived for determination at level three. An appeal request to level four was filed by letter dated June 25, 1986.

Initially assigned to the Elkins office, the grievance was transferred to Wheeling in July, 1986. Processing was delayed at the parties' request pending negotiation of the issues and bona fide attempts to resolve the grievance. After a protracted period of time and no settlement, a level four hearing was conducted at a WVEA regional office in Anmoore, West Virginia on January 12, 1987.

Time requirements for rendering a level four decision were waived upon the request of grievant's WVEA representative who wished to review and utilize the transcript of the level four hearing in order to compose his proposed findings of fact and conclusions of law. Transcripts of the level four hearing were issued in late February and proposals submitted by grievant's representative were received on April 17, 1987.¹

Negotiations conducted by the parties produced an undated stipulation signed by Steve Benson, grievant's WVEA representative and James Riley, counsel for the respondent

¹Reference to the transcript of the June 5, 1986 level two hearing shall be cited as (T-1 ____) and to the January 12, 1987 level four hearing as (T-2 ____).

Other factors initially delayed the prosecution of this grievance. Although denied at level one on March 3, 1986, matters "were put on hold" while grievant ran for a state WVEA presidency (T-1. 82) although the record contains no written agreement by the parties to waive time limits for processing the grievance.

board of education. The stipulation is as follows:

1. The evaluation form which is the subject of this particular grievance was administered by principals in Harrison County in two different ways. Some principals with Harrison County rated the indicators on the back of said form as either acceptable or unacceptable and in order to get an exceed on the performance standards the employee had to be acceptable in 90% to 100% of the indicators. Other principals rated the indicators on the back of the form as exceeds, meets and does not meet and in order to get an exceeds on the general performance standard the teacher had to exceed in 90% to 100% of the indicators.

2. As a result of the different methodologies used in applying the evaluation form, those teachers who were evaluated by the latter method cited above may have received a lower evaluation than teachers who were evaluated by the former method simply because of the different methodology used.

3. Mrs. Romeo was evaluated by the latter method and was rated lower by this method than she would have under the former method.

Also of record is a motion to dismiss filed by the respondent board of education December 23, 1986 which cited as grounds that the grievance issues were moot. Item 5 stated that on December 9, 1986 the board approved a policy statement to the effect that due to the inconsistent manner in which final ratings were determined for evaluations, the board would not consider the 1985-86 evaluations for promotion purposes.

Attached to the motion is an affidavit dated December 23, 1986 and signed by the Superintendent of Harrison County Schools. He avows, among other things, that grievant's 1985-86 evaluation would not be used adversely against her for re-employment decisions. Thus, the board argues, the 1985-86 evaluations cannot be used against the grievant in any detrimental manner.²

Grievant claims that notwithstanding the respondent's agreement not to use the evaluation for employment or promotional purposes, the 1985-86 evaluations should be removed from her files. She maintains that the evaluation could still be used for disciplinary actions, comparisons for future improvement plans if necessary, and determinations for future incentive pay purposes (the county presently has no incentive pay plan or program).³ Grievant also asks that she be evaluated by an independent evaluator from outside the school.

²The motion was argued prior to the January 12, 1987 hearing and the undersigned hearing examiner determined that there may still be grievable matters at issue, therefore a ruling on the motion was withheld pending the full evidentiary hearing.

³Grievant also rejects the board's contentions that the evaluation could not be used for promotion purposes and cites as an example that an individual could be influenced by the evaluation in a promotion determination even though nothing in writing would appear. She is concerned with the impression a reviewer would have inspecting her files and the evaluation. All these conjectural allegations would only assume importance if it is found that the evaluation was procedurally or substantively flawed.

The record reflects that the county school administration attempted to implement an evaluation policy and instrument for the 1985-86 school year by which a principal could rate the teachers' performance and denote whether indicators, standards and overall performance rated an "exceeds," "meets," or "does not meet" standards. In the past, the evaluation instrument required that the principal only ascertain whether the teacher met or did not meet indicators and standards. However, principals could add written examples of strengths and weaknesses and/or further commentary regarding overall performance.⁴

Prior to the beginning of the 1985-86 school term, an in-service session of school officials and principals met to discuss the new forms and procedures for teacher evaluation. An inaccuracy was found in the directions for computing the ratings but corrected forms were eventually released. On January 16, 1986, Phillip Brown, grievant's

⁴The new instrument contained six standards having from five to ten indicators for each. Instructions stated that each indicator be marked exceeds, meets or does not meet. The overall standard is then marked "exceeds" when 90% of the indicators exceed, "meets" when 70% or more indicators meet or exceed, and "does not meet" when 0% to 69% of the indicators meet or exceed. The overall performance is rated the same way using the ratings accorded the six standards.

This evaluation policy/instrument was abandoned at the end of the 1985-86 school year and apparently the school board has been striving for a few years to arrive upon a satisfactory instrument.

principal at Norwood Elementary School, called a teacher's meeting to discuss the evaluation instrument and how he wished to proceed with the evaluation process.

Among other things, the principal expressed dissatisfaction with the evaluation instrument generally and stated that on at least four indicators there appeared to be little means for a qualitative assessment because the teacher could either meet or not meet the performance required. He also reviewed other indicators in an attempt to inform the teachers what the indicator meant to him and to ask what it meant to them (T-1. 39,59,60). Lastly, he indicated that since this was his first year at Norwood School, he would be assessing them with a "middle-of-the-road" approach on an initial evaluation and all teachers would at least receive a "meets standards." He promised a second evaluation sometime in May and expressed a hope that the teachers would not "let down" on the generally excellent job he perceived them to be doing thus far.

Principal Brown observed grievant's class on October 3, 1985, for 43 minutes on October 29, 1985 and for 41 minutes January 23, 1986. He took copious notes observing all aspects of the teaching environment, teacher performance and student response. An evaluation was rendered January 28, 1986 in which grievant was rated as having exceeded one standard and meeting five others with an overall rating of meets standards. On a handwritten "working paper" utilized

by the principal, grievant attained exceeds for one or more indicators in every standard. The working paper contained written commentary noting actions and observations which supported the rating given to each indicator.

According to her testimony, grievant believes she is an exceptional teacher and should be ranked accordingly (T-1. 42).

Grievant, however, maintains that her protest of the evaluation flows from the manner in which she was evaluated.⁵

Grievant charges that regardless of which rating method was used by her principal, Phillip Brown, it would have been impossible for any teacher at Norwood to receive an "exceeds standards" because of Mr. Brown's stated beliefs and evaluation application practices. She also suggested that Mr. Brown lacked objectivity in evaluating her in particular and questioned whether he was adequately trained to conduct evaluations.

⁵It is likely that this grievance would not have been pursued had Principal Brown changed the evaluation as grievant desired (T-1. 36,42,50,67) or as the school superintendent suggested during early negotiations. Brown declined to alter his findings because of the many hours he had spent evaluating his staff in the manner he felt was correct (T-1. 84,85).

As for the conclusions in the evaluation, Brown's position was stated on his February 19, 1986 letter to grievant that, "I believe that a teacher who exceeds standards goes far beyond the normally accepted or outlined duties of the classroom teacher...."

In support of a contention that her principal was not properly trained, grievant noted how evaluations were conducted in the past and how, according to her, they were supposed to have been done for the evaluation at issue. She had discussed evaluation procedures with other county teachers and discovered that some principals gave their teachers an exceeds standards if they merely met 90% of the indicators for the standard (T-1. 35,36). It was her understanding that the "intention" of the current evaluation policy was that indicators be marked as only meets or does not meet, but the directions for computation state otherwise.⁶

To demonstrate her point that it was mathematically, and in practice, impossible for a Norwood teacher to receive an overall exceeds by Brown's method of evaluation, grievant focused on the principal's early statements that there were four indicators distributed throughout several standards in which no one could exceed and that all teachers would only receive a "meets" or satisfactory overall performance rating for the first evaluation.

⁶The method that grievant purports to be correct apparently resulted in the entire staff of some county schools receiving an "exceeds" rating. The respondent board admits there was a communication problem regarding the matter of rating the evaluations and this was attested to by two administrators who testified at the level four hearing (T-2. 66,83). However, grievant's contention that Principal Brown's method was incorrect is not borne out by the directions on the policy and the evaluation instrument and grievant ultimately admitted that Brown had followed the written policy and evaluation instructions (T-2. 34,35).

However, Brown testified that he had changed his mind about the problem indicators and had ranked an exceeds on several teachers' evaluations for all but one indicator which related to teachers' attire (T-2. 131,132,133).

His testimony was corroborated by Shirley Brown (no relation to Principal Brown), a Norwood teacher who testified that she was informed of the principal's change of heart on a post-evaluation conference on February 4, 1986 (T-2. 87).⁷ While conceding that some teachers may have gotten an exceeds in several of the challenged indicators, grievant nonetheless maintained that she in particular was not fairly evaluated (T-2. 27).

Grievant testified that she could not have an open and honest or fair evaluation from her principal because he had admitted to being prejudiced against her at a September, 1985 meeting they had both attended. The merit of grievant's contention on the basis of the cited conversation is subject to question. It appears that Principal Brown was concerned about grievant's teaching performance because of her frequent absences for WVEA activities the previous year and had even attempted to transfer her out of Norwood prior to the beginning of the school year.

⁷ Thus, it appears that even though it may have been extremely difficult, it would not have been impossible to attain an exceeds ranking in 90% of the standards and, accordingly, qualify for an overall rating of exceeds. Given those circumstances, whether or not any teacher did in fact receive an overall exceeds rating is not particularly significant.

However, at the September, 1985 meeting (long before the evaluation process even began) Brown openly discussed the matter and recanted his earlier view; he said that he was wrong in believing grievant might be a poor teacher and that he now knew her to be a "terrific" teacher (T-2. 20,31).⁸

Lastly, grievant contends that Principal Brown's admission of subjectivity in conducting evaluations establishes his inability to follow county policy or to objectively evaluate her. The evidence indicates otherwise. For the most part, the indicators on the county policy are written in vague, generalized, nonbehavioral-specific language prefaced with words such as Establishes, Demonstrates, Creates, Assists and Attempts. Of necessity, an indicator such as, "Assists students in learning subject matter" must be qualified with the behaviors the evaluator observes before it can be validly rated. As grievant readily acknowledged, "It's not really defined. There's no definition as to what is exceeding the indicator and what is meeting...." (T-1. 42). In effect, when Principal Brown actually listed on the working paper the behaviors he observed as meeting or exceeding

⁸It is noted that grievant and Principal Brown apparently did have some interpersonal conflicts in their initial months together at Norwood. However, a scrutiny of nearly 350 pages of transcript covering two hearings reveals no real evidence of ongoing "bad blood," rather, it appears that each party is somewhat unyielding in their respective views. Grievant at one point characterized both she and Brown as "hard headed" according to Brown's unrefuted testimony (T-1. 68).

an indicator, his evaluation lost subjectivity and became objective instead.⁹

In addition to the foregoing recitation it is appropriate to make the following findings of fact and conclusions of law. Proposed findings of fact and conclusions of law from the parties to this grievance in addition to the findings from the level two examiner have been reviewed and considered. To the extent that the facts presented are in agreement and not inconsistent with those of the undersigned hearing examiner, they are incorporated herein.

FINDINGS OF FACT

1. Grievant, Jackie Romeo, is a teacher employed by the Harrison County Board of Education; she had seven years county experience and was serving her second year at Norwood Elementary School at the time she filed her grievance.

2. Her immediate supervisor and principal, Phillip Brown, had thirteen years experience as an elementary principal in the county and was serving his first year at Norwood.

⁹It is important to note that Principal Brown was not satisfied to make a five or ten minute "duty" call upon his teachers' classroom in the evaluation process and to perfunctorily check off each indicator. According to Shirley Brown's testimony, the principal conducted the most thorough evaluation she had ever had and she found him to be a very open and honest evaluator (T-2. 96,97). Also, Brown stated that even he did not deserve a check mark for minimally meeting performance standards (T-1. 16,17).

3. Prior to the start of the 1985-86 school year, Principal Brown determined that grievant's absences and activities associated with WVEA may interfere with her teaching performance and his attempt to transfer her out of Norwood was unsuccessful.

4. At a meeting that both the principal and grievant attended in September, 1985, Brown admitted that he had been initially prejudiced against grievant but his apprehensions had been proven wrong and he instead commended her teaching performance.

5. Principal Brown had a duty and responsibility to evaluate grievant during the 1985-86 school year. In preparation for evaluating their teachers, the principals of Harrison County Schools received training in administering a newly adopted county evaluation policy.

6. The face of the evaluation instrument/policy contains instructions for rating the teacher's performance: There are six standards with several indicators for each and the evaluator must determine if the teacher's performance of each indicator "exceeds," "meets" or "does not meet." In order to attain an "exceeds" for the entire standard, 90% - 100% of the indicators must be rated an exceeds; 70% or more indicators for each standard met or exceeded will rate a "meets" standard; if only 0 - 69% of the indicators meet or exceed, the performance standard "does not meet" standards. From that initial determination, an overall

"total performance" rating of the teacher can be gleaned. The policy states that 90% or more of the performance standards must exceed standards for an "exceeds" total performance rating and so on, in the manner that the individual standards were rated. The evaluation policy complies with a State Board of Education policy requirement that teaching performances be ranked as exceeds, meets, or does not meet educational standards via an evaluation process.

7. Despite the unambiguous language of the evaluation instructions, opinion was divided among county teachers, principals and administrators as to whether indicators should be rated as exceeds, meets, or does not meet, or merely checked off as meets/does not meet. Accordingly, some teachers' evaluations were advantaged in that the evaluatee only had to meet performance of 90% of the indicators to receive an exceeds for the entire standard. The teaching staff of entire schools received an overall exceeds by implementation of this liberal method of evaluation.

8. The indicators on the evaluation instrument were written in generalized, nonbehavioral-specific language and Principal Brown met with his faculty at Norwood in January, 1986 to discuss the particulars of the evaluation policy and procedures and to receive input from the staff regarding the indicators. He noted his dissatisfaction with the instrument and cited four indicators

as problematic in that a teacher could only meet or not meet the performance. He promised that all teachers would receive a "meets" for his initial evaluation and he would complete a second evaluation before May.

9. Some dialogue ensued between Brown and various school administrators regarding the debated methodology for rating the indicators on the evaluation but there was no consensus of opinion and he therefore followed the written instructions which appeared to be more consistent with a conscientious attempt to identify teaching excellence.

10. Several teachers received an exceeds for one or the other of three problematic indicators that Principal Brown originally believed could only be ranked meets or does not meet. While no one received an exceeds for the indicator related to teachers' attire, it was not mathematically impossible for a Norwood teacher to receive an overall exceeds due to the inclusion of the other three standards as being capable of a higher ranking than meets.

11. Grievant's class was observed on several occasions and her final evaluation ranked her as having exceeds one standard and meeting five others with an overall "meets" performance standards rating. Overall, the content of the evaluation working

paper is positive and grievant received an exceeds for one or more indicator in each standard.

12. The working paper utilized by Principal Brown for evaluating grievant contains written commentary supporting the assessment given each indicator on the evaluation instrument. The assessments were essentially derived from behaviors documented by Brown during classroom observations (and discussed with the evaluatee at that time) as well as considerations of other ongoing factors such as completing lesson plans promptly and properly and the like.

13. The Harrison County Board of Education acknowledged that teachers were rated by two different methods and therefore determined that evaluations for 1985-86 would not be used for promotional or employment purposes.

CONCLUSIONS OF LAW

1. School officials are permitted some discretion and 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); Larry Brown v. Wood County Board of Education, Docket No. 54-86-262-1.

2. In the grievance procedure it is incumbent upon the grievant to establish and prove the essential elements of the grievance by a preponderance of the evidence. Edith Harrison v. Kanawha County Board of Education, Docket No. 20-86-219.

3. Grievant has not shown by a preponderance of the evidence that state and county evaluation policy was violated, misapplied, or misinterpreted by the board of education or her principal, Phillip Brown, in regard to her evaluation at issue in the grievance herein.

4. Principal Brown has denied that he feels any animosity toward grievant which has or will influence his evaluation of her and grievant has not proven otherwise by a preponderance of the evidence.

5. Ordinarily, 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); Pettry v. Kanawha County Board of Education, Docket Nos. 20-86-085, 20-86-136-1, 20-86-190-1 and 20-86-246-1.

6. The Harrison County Board of Education has stipulated that teacher evaluations were not consistently rated and avowed the grievant's evaluation would not be used to her detriment; grievant has not shown a procedural or substantive flaw in her January 23, 1986 evaluation justifying its removal from her files or the need for an outside evaluator as a matter of law.

Accordingly, this grievance is **DENIED** in its entirety.

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

June 5, 1987

Nedra Koval

NEDRA KOVAL
Hearing Examiner