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DOUGLAS SMOOT

v.

DOCKET NO. 20-86-177-1
20-86-209-1

KANAWHA COUNTY BOARD OF EDUCATION

DECISION

These grievances came before the West Virginia Education Employees Grievance Board on appeal from a waiver by the Kanawha County Board of Education.

In grievance Docket No. 20-86-177-1, a level two hearing was held and a decision rendered by the designee of the Superintendent of Kanawha County Schools, Carolyn Meadows. Thereafter, the parties waived, in writing, a level four evidentiary hearing and submitted the grievance on the record.

A level four hearing was held on grievance Docket No. 20-86-209-1. At the level four hearing, the respondent board, by its attorney, Gregory W. Bailey, moved that the level four hearing be limited to the hearing of new evidence and that the level two transcript be admitted into evidence, to which motion the grievant by his representative, Kathleen W. Smith, objected. That portion of the motion limiting the taking of evidence was overruled and the

ruling on that portion of the motion relating to the admission of the level two transcript was held in abeyance. Thereafter, the motion to admit the level two transcript into evidence was granted and the level two transcript was admitted for all relevant and material purposes.¹

For the purpose of this decision and the discussion which hereinafter follows, grievance Docket No. 20-86-177-1 will be considered first, followed by grievance Docket No. 20-86-209-1, which is in effect a continuation of the events about which the grievant complains.

Discussion - Docket No. 20-86-177-1²

In this grievance the grievant, Douglas Smoot, a Social Studies teacher at Roosevelt Junior High School, complains that he is being harassed, subjected to discriminatory treatment and reprisal by his Principal, Patricia Petty. He alleges this is exemplified by numerous incidents which include not being assigned a permanent room;³ being subjected to harassment regarding the application of

¹The grievant's objection to the admission of that record is preserved and noted for the record.

²Grievance Docket No. 20-86-177-1 is comprised of two grievances (86-020 and 86-023) which were consolidated at level two. See also footnote #3 and #4.

³The failure to assign the grievant a permanent room or conversely assigning him as a roving teacher was resolved by the Kanawha County Board of Education at level three. As a result of the board's action, the grievant was assigned a permanent room. That grievance was assigned a Kanawha County Board of Education Control No. 86-008. The level two record of No. 86-008 was subsequently made a part of this record by the parties and the Superintendent's designee at level two.

various rules;⁴ and abuse of the evaluation process.⁵

The origin of the events began in January, 1985, when the grievant first informed Principal Petty that he might be leaving to accept a position in Governor Moore's Administration. This caused some concern on the part of Principal Petty as it presented some potential scheduling problems.⁶

In April the grievant contacted Dr. Lakey, the Superintendent of Kanawha County Schools, to seek direction and assistance in obtaining a leave of absence. When Principal Petty learned of grievant's efforts to secure a leave of absence, she sent a "speed letter" to the grievant dated May 1, 1985, requesting that he follow the steps to apply and to come see her that day.⁷ When grievant went

⁴The bulk of the record deals with alleged discriminatory incidents, some of which were duplicated in the record of Grievance Control No. 86-008, the record of which was entered into evidence at level two in this matter.

⁵Abuse of the evaluation process is also the subject of Docket No. 20-86-209-1. However, in the discussion of grievance Docket No. 20-86-177-1, it is treated as part of the allegation of ongoing harassment.

⁶The grievant testified that Principal Petty called him at home on several occasions expressing concern on his status. While the grievant promised to inform her as soon as he knew what his status would be, this apparently did not relieve the Principal of her concern. Principal Petty denies she called the grievant at home but admits she did from time to time inquire about his status and was concerned about scheduling problems.

⁷A "speed letter" was a "form" on which Principal Petty wrote some of her internal memoranda. On this occasion, the information that grievant was seeking a leave of absence rather than resigning, apparently was a surprise to Principal Petty.

to see Principal Petty, she gave him a leave of absence form and told him to contact Mrs. Holt at the Central Office.⁸ Shortly thereafter, the grievant was off work during which time Dr. Lakey requested that the grievant, Principal Petty, Mr. Beavers and Mr. Woodrow Berry meet on May 20, 1985.⁹

During the meeting on May 20, 1985, Principal Petty expressed her opposition to granting the grievant a leave of absence and expressed her concern that the students needed to have some continuity of experienced teachers. In spite of Principal Petty's opposition, Dr. Lakey indicated that he would recommend that the board approve the grievant's request for a leave of absence.

Upon grievant's return to school that same day (May 20), he received a "speed letter" indicating that he had not followed the rules concerning the coverage plans when he left the building to meet with Dr. Lakey.¹⁰

⁸The grievant did not contact Mrs. Holt as he had already been in contact with Dr. Lakey and had received directions (Principal Petty was aware of Dr. Lakey's involvement at that time). The following morning (May 2), Principal Petty came to grievant's classroom and observed his class.

⁹Mr. Beavers was the Assistant Superintendent in charge of secondary education. Woodrow Berry was an attorney and friend of the grievant. NOTE: There was some confusion whether the meeting took place on May 13 or May 20. Late in the record it appears that the parties agreed that May 20 was the correct date.

¹⁰The grievant had been off work the previous week. When he arrived at school on Monday morning (May 20), he took his coverage materials to the Principal's office. Principal Petty was not available, so the grievant left them with the secretary and proceeded to the meeting with Dr. Lakey. Grievant testified that Principal Petty stopped him after he picked up the speed letter and requested he come into her office. At that time, Principal Petty informed grievant that she considered his request for a leave of absence a personal attack on her in that she had spent a lot of time preparing the upcoming
(footnote cont.)

On May 21, 1985, the grievant called and informed Dr. Lakey that after serious consideration, he no longer desired to seek a leave of absence. Thereafter, the matter of grievant's leave of absence was terminated.

On June 3, 1985, the grievant was notified by Principal Petty he was being assigned as a "travelling teacher".¹¹

On June 4, 1985, the grievant received another "speed letter" indicating that his permanent record cards were incomplete. Upon being notified of this deficiency, the grievant promptly completed the record cards.¹²

Shortly before the 1985-86 school term commenced and in the latter part of August, 1985 (August 29), Principal Petty notified the grievant that he would be assigned to teach a Careers class which he had not previously taught.

On September 10, 1985, the grievant filed a grievance (No. 86-008) complaining of the assignment as a travelling teacher

(footnote cont.)
school year's schedules. She also told him she had started "documentations" on him. Principal Petty denied that this meeting or conversation took place.

¹¹ As a travelling teacher, the grievant was assigned to six different classrooms on three different levels of the building. Initially, the grievant was not given keys to the rooms.

¹² Instructions concerning the deadline for completion of the permanent record cards was given to the teachers at a faculty meeting in early May when the grievant was off work. Principal Petty testified that the instructions were also issued at an earlier (April) faculty meeting. Grievant denied ever getting the instructions.

and the additional work load. On the afternoon of October 17, 1985, a level two hearing was held following which the designee of the Superintendent of Kanawha County Schools, Carolyn Meadows, denied that grievance. This decision was appealed to level three and on December 17, 1985, the Kanawha County Board of Education granted the grievance and found that the grievant should be assigned a permanent classroom by the beginning of the second semester.¹³

On October 18, 1985, the morning after the above mentioned level two hearing, Principal Petty went to the grievant's classroom and thereafter rendered a generally negative observation report.¹⁴ Subsequently, Vice-Principal Shahan observed the grievant's class on October 23, 1985, and likewise issued a generally negative report.

On November 18, 1985, Principal Petty observed the grievant's class on two occasions. Each occasion resulted in a generally negative report. On November 20, 1985, Principal Petty issued a "Does Not Meet Standards" evaluation based upon the previous negative observations.

The aforementioned events/incidents require an examination of WV Code §18-29-2(a), (m), (n) and (p). In pertinent part, WV Code

¹³ See footnote #3.

¹⁴ Principal Petty testified that the date of the observations of grievant's class was previously set and before she knew of the level two hearing date. The record of that hearing (Grievance No. 86-008) reveals that Principal Petty became upset with some of the questioning by grievant's representative and threatened to file suit. (T.p. 54, 55). See footnote #3.

§18-29-2(a), (m), (n) and (p) provides:

For the purpose of this article:

(a) "Grievance" means any claim by one or more affected employees of the board of regents, state board of education, county boards of education, regional educational service agencies and multi-county vocational centers alleging . . any specifically identified incident of harassment or favoritism; or any action, policy or practice constituting a substantial detriment to or interference with effective classroom instruction, job performance or the health and safety of students or employees . . .

(m) "Discrimination" means any differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing by the employees.

(n) "Harassment" means repeated or continual disturbance, irritation or annoyance of an employee which would be contrary to the demeanor expected by law, policy and profession.

(p) "Reprisal" means the retaliation of an employer or agent towards a grievant or any other participant in the grievance procedure either for an alleged injury itself or any lawful attempt to redress it.

In light of the above recited portions of the applicable statutes, the grievant has testified to an ongoing set of circumstances and incidents arising out of differences which arose because he sought a leave of absence. The record indicates that prior to the grievant's request for a leave of absence, the grievant and Principal Petty had an uneventful and professional relationship. While there remains some question as to "why" Principal Petty felt and acted the way she did, it nevertheless seems clear that she did demean herself in such a manner as to give the overall appearance of harassing the grievant which served to substantially interfere with the grievant's effective job performance and classroom instruction.

Further, the emotional response by Principal Petty to questioning at the level two grievance hearing, followed the next morning by a negative observation report of grievant's classroom instruction, leaves little doubt about her negative personal feelings toward the grievant. There is no doubt that she was aware of the impression she would give the grievant by following up her anger the next day with a negative observation.

These conflicting personal feelings are not unlike those which existed in the grievance of Burdette v. Summers County Board of Education, Docket no. 45-86-280-4, wherein that Principal's personal feelings and attitudes towards the grievant became a factor in the evaluation process. In that case the Principal's personal feelings became so involved in the evaluation process that the "open and honest" foundation of the evaluations was impaired.

This brings to the forefront the grievant's next complaint.

Discussion - Docket No. 20-86-209-1

In this grievance, the grievant complains that he was denied an open and honest evaluation pursuant to West Virginia State Board of Education policy 5300(6)(a); that the evaluation procedure was flawed; the results of the evaluation were inaccurate and that the evaluation reflects ongoing harassment which had been the subject of previous grievances.

By way of relief in this grievance, the grievant seeks to have the evaluations and the improvement plan expunged from his personnel file.

The record reveals that Principal Petty's evaluation of November 20, 1985 set in motion a process whereby the Vice-Principal, Dave Shahan, and Social Studies Department head, Betsy Howard, also evaluated the grievant. This in turn led to the preparation and implementation of an improvement plan by Principal Petty. Additionally, an improvement team was brought in who observed the grievant and made recommendations which were followed up by more evaluations.

While the grievant contests the accuracy of these evaluations, it is not necessary to delve into that aspect. It is sufficient to note that Principal Petty's actions initiated the process and her actions were unfair in light of the total circumstances. This unfairness arises out of Principal Petty's personal ill-will directed toward the grievant.

As previously mentioned, this board held in the grievance of Burdette v. Summers County Board of Education, supra, that every employee is entitled to an open and honest evaluation pursuant to West Virginia State Board of Education policy 5300(6), which in pertinent part, provides:

(6)(a) Every employee is entitled to know how well he is performing his job, and should be offered the opportunity of open and honest evaluation of his performance on a regular basis. Any decision concerning promotion, demotion, transfer or termination of employment should be based upon such evaluation, and not upon factors extraneous thereto. Every employee is entitled to the opportunity of improving his job performance, prior to the terminating or transferring of his services, and can only do so with assistance of regular evaluation.

It is unquestioned that "open and honest" as used in this

policy denotes the concept of fairness which is revealed by the very definition of honesty. It was uncontested that the grievant had never before in his thirteen years of teaching experience received any negative observations from Principal Petty or from other Principals under whom the grievant had taught. Not until the grievant sought a leave of absence against the will/desire of Principal Petty did he begin to be the recipient of negative evaluations and constant oversight.

The personal feelings of Principal Petty clearly entered into the evaluation process which, in this situation, resulted in a deprivation to the grievant of an open and honest evaluation.

In addition to the foregoing, the following findings of fact and conclusions of law are incorporated herein.

FINDINGS OF FACT

1. The grievant, Douglas Smoot, is a Social Studies teacher assigned to Roosevelt Junior High School and has been employed by the Kanawha County Board of Education for thirteen years.

2. Patricia Petty is the Principal of Roosevelt Junior High School and has been assigned to that school for the past two years.

3. In January 1985, the grievant informed Principal Petty that he was seeking a position in Governor Moore's Administration.

4. During the period from January 1985 to May 1985, Principal Petty regularly inquired of the grievant the status of his plans.

5. In May 1985, Principal Petty first learned that grievant was seeking a leave of absence rather than resigning. Principal Petty was surprised and upset by this news and she opposed grievant's leave of absence.

6. Principal Petty resented grievant's being favorably considered for a leave of absence which caused her scheduling problems.

7. Principal Petty informed the grievant she was documenting his actions.

8. Principal Petty became even more upset with grievant when she was cross-examined by grievant's representative at the level two hearing of Grievance No. 86-008 on October 17, 1985.

9. On October 18, 1985, Principal Petty observed one of grievant's classes and rendered a negative observation.

10. On October 23, Vice-Principal Shahan observed a class taught by the grievant and issued a negative report.

11. On November 18, Principal Petty, on two occasions, observed grievant's class and issued a negative report.

12. On November 20, 1985, based on the negative observations, Principal Petty issued the grievant an overall "Does Not Meet Standards" evaluation. This evaluation required that grievant undergo a "plan of improvement" prepared by Principal Petty.

13. Principal Petty's personal feelings regarding the grievant were a substantial factor in her issuing negative observations and evaluations.

14. Vice-Principal Shahan was a witness in the various hearings held in these grievances and was fully aware of Principal Petty's feelings regarding the grievant.

15. Betsy Howard was the Social Studies Department head at Roosevelt Junior High School. She was a witness at the level two hearing on October 17, 1985 and her opinion of the grievant was openly hostile.

16. The close scrutiny of the grievant by Principal Petty and her expressed disapproval of grievant's seeking a leave of absence combined with the failure to assign the grievant a permanent classroom, were a result of Principal Petty's personal dislike of the grievant.

CONCLUSIONS OF LAW

1. West Virginia State Board of Education policy 5300(6) provides that "every employee. . should be offered the opportunity of open and honest evaluation of his performance. . "

2. Ordinarily, the West Virginia Education Employees Grievance Board will not intrude itself into evaluations under West Virginia State Board of Education policy 5300(6) unless there is evidence of such an arbitrary abuse of discretion on the part of school officials as to show that the primary purpose of the policy has been confounded. Higgins v. Randolph County Board of Education, 286 S.E.2d 682 (W.Va. 1981); see also, Petry v. Kanawha County Board of Education, Docket No. 20-86-085.

3. Based upon all of the facts, Principal Petty did not provide the grievant with an open and honest evaluation pursuant to West Virginia Board of Education policy 5300(6). Burdette v. Summers County Board of Education, Docket No. 45-86-280-4.

4. Pursuant to WV Code §18-29-2(n), supra, the grievant has proven by a preponderance of the evidence that he was subjected to harassment.

For the foregoing reasons, it is accordingly ORDERED that the grievance is GRANTED. It is further ORDERED that all of the evaluations, observations, improvement plans and recommendations entered into the grievant's personnel file beginning in January, 1985 through June, 1986, be expunged.

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



JOHN M. RICHARDSON
Hearing Examiner

DATED: March 2, 1987