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**GARRY TENNEY**

**v.**

**DOCKET NOS. 01-87-172-2  
01-87-173-2**

**BARBOUR COUNTY BOARD OF EDUCATION**

**DECISION**

Grievant, Garry Tenney, is employed by the Barbour County Board of Education and is presently assigned as principal at Philip Barbour High School. Mr. Tenney filed grievances on May 8 and 20, 1987 in which he alleged harassment and interference with job performance and health by Superintendent William Phillips and the board of education. An appeal was filed to level four on June 17, evidentiary hearings were conducted on August 18 and September 8 and briefs were submitted on October 2 and September 29, respectively.<sup>1</sup> The grievant lists eighteen specific incidents of harassment by Superintendent Phillips:

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<sup>1</sup>Although filed separately the grievances were consolidated for hearing at level four.

(1) Employment as principal - when he applied for the position at Philip Barbour High School it was difficult to get an interview; when one was arranged it was brief, he was told that he was inexperienced in policy matters and was made to feel that he was not wanted for the job.

(2) Hiring of Dean of Girls position - the grievant's candidate was found unsuitable by Superintendent Phillips resulting in a compromise candidate being selected. This caused the grievant problems in working with his staff.

(3) Elimination of wife's position - the positions of Dean of Boys and Dean of Girls (held by his spouse) were eliminated as the Superintendent objected to the grievant working with his spouse. The reduction of assistants from three to one affected his job performance.

(4) Grievance filed on overturning of suspensions - when he suspended a football player for chewing tobacco the suspension was overturned by the superintendent. When the grievant upheld the student's retention from the game he was told that he would pay for that decision. This incident was detrimental to his ability to perform his duties.

(5) Band confrontation, board members attendance at school - because the band had only one set of uniforms the grievant supported the band director's policy that uniforms were not always worn at activities held on consecutive days. The board members met at the school to discuss the situation and state their desire that the band always appear in uniform. This controversy became public knowledge and undermined the grievant's authority.

(6) Extracurricular activities on school time confrontation - due to a concern for athletic funding the superintendent attempted to force the grievant into allowing events to be held during the school day to the detriment of the educational process. A fund raiser ultimately resolved the situation.

(7) Student walkout, board members at school - when approximately ninety students left the school board members negotiated with them at a local bowling alley. They and the superintendent questioned the students and teachers regarding the grievant.

(8) 1986 PPBES presentation - the board members were disruptive and did not allow his presentation. At no time did the superintendent offer support to the grievant.

(9) Board of education questioning of athletic concession money - when board members began questioning this account the superintendent did not come to his defense although he had told the grievant that he was doing a good job and that there was no problem.

(10) On requesting supplemental pay positions on time - while the grievant had advocated supplemental pay the superintendent had dragged his feet on this issue. When a board member stated the pay had not been approved because the superintendent had stated the grievant had not been cooperative, the grievant called him at which time he indicated the board member was lying. Again this placed the grievant in a tenuous situation with his staff.

(11) Confrontation over high school enrollment - grievant's staff study indicated no loss of enrollment at Philip Barbour High School contrary to central office figures, therefore, personnel cuts being considered should not be made.

(12) Confrontation on smoking issue in front of other principals - when the grievant announced at a principal's meeting the implementation of a no smoking policy at Philip Barbour, the superintendent was visibly upset and discussed the matter for thirty minutes demeaning the grievant in front of his peers.

(13) Inconsistent use of memos - the grievant received a memo from the superintendent regarding documents which he had allegedly not turned in. The grievant believes that the superintendent was creating a paper trail on which to terminate him; otherwise he would call as is usually done.

(14) Lack of support on grievances - the grievant contends that the superintendent has failed to support him on grievances filed by his staff members causing him to argue with the board and to hire an attorney.

(15) (16) (17) Transfer situation; threat/coercion to accept finance position; superintendent issued letter proposing transfer - when notified that he would be transferred to a central office position as part of a reorganization the grievant felt threatened when the superintendent advised that if he did not accept the position that he would "get him" and "make it so hard he could not remain as principal".

(18) Teachers' pamphlets, police to home - withdrawn at the level four hearing.

The grievant lists eight incidents of harassment by the board of education:

(1) 1986 PPBES presentation - members interrupted his recommendations with questions regarding canteen money. This was inappropriate and embarrassing for the grievant.

(2) Board of education questioning athletic concession money - the board had requested that the grievant submit reports on these funds on three occasions.

(3) Continuous comments by board members - this appears to concern the following three incidents.

(4) Bob Weaver's comments - this individual allegedly made various comments regarding the grievant's lack of flexibility, difficulties in dealing with coaches and that academics were at a standstill, among others.

(5) Jerry Phillips' comments while a candidate for the board; Mr. Phillips allegedly stated that a new principal was needed at Philip Barbour High School for various reasons.

(6) Jim Keen's comments - repetitive inquiries relating to school finances. (See Number 2)

(7) Mr. Anglin's comments on PPBES report - the grievant alleges that this individual interrupted his presentation with questions on another subject in a manner which was unprofessional and discourteous. He also informed the grievant that he was out of line.

(8) Board of education action/April 30, 1987 - the most recent example of harassment as the grievant did not request, nor does he wish to be transferred.

In support of his position the grievant offered the testimony of twelve individuals including his spouse, staff members and parents who had witnessed some of the above stated incidents or were otherwise involved with the grievant in his role as principal.

The respondents dispute the grievant's perception/interpretation of the cited events, deny any harassment of the grievant, assert that their actions were in fulfillment of their duties relating to the administration of the school system and conclude that the twenty-three incidents which occurred over a nine year period were not actions contrary to the demeanor expected by law, policy and profession and did not constitute repeated or continual disturbance, irritation or annoyance.

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

### Findings of Fact

1. The grievant is employed by the Barbour County Board of Education and is presently assigned as principal at Philip Barbour High School.

2. The grievant has charged Superintendent William Phillips with 17 and the board with 8 incidents of harassment.

3. Of the seventeen alleged charges of harassment it appears that the actions taken by the superintendent were reasonable and within his authority. Several of the incidents were provoked by the grievant or were based on his personal expectations of behavior by the superintendent.

4. The alleged incidents of harassment by the board of education involved individual comments made outside of board meetings regarding the grievant's performance as principal, questions raised at board meetings, interruptions of other presentations and approving the superintendent's recommendation that the grievant be placed on the transfer list as part of a plan for reorganization. While those actions occurring during board meetings displeased the grievant they do not appear grossly unreasonable or contrary to demeanor expected by law or profession.

5. While some differences of opinion have occurred between the grievant and the respondents over the nine year period and while the respondents have occasionally exercised their authority contrary to the grievant's wishes, the actions do not appear to have been in the nature of harassment.

6. The grievant has failed to show how the incidents have specifically interfered with his job performance or to present any evidence to substantiate the claim that his health has suffered.

#### Conclusions of Law

1. W.Va. Code, 18-29-3(n) defines harassment as repeated or continual disturbance, irritation or annoyance of an employee contrary to the demeanor expected by law, policy and profession.

2. The incidents listed by the grievant which occurred over a nine year period cannot be considered repeated, continual or contrary to the demeanor expected of the cited individuals.

3. It is incumbent upon the grievant to prove the elements of the grievance by a preponderance of the evidence. Zban v. Cabell County Board of Education, Docket No. 06-87-010.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Barbour 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 November 13, 1987

Sue Keller

SUE KELLER  
Hearing Examiner