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CLARA THOMPSON

V.

DOCKET NO. 33-87-088

MCDOWELL COUNTY BOARD OF EDUCATION

D E C I S I O N

The grievant, Clara Thompson, is an elementary teacher at Welch Elementary School. Her principal, Mr. Tony Larkin, began receiving complaints from parents about her classroom procedures sometime prior to November 13, 1986. The grievant was informed of each complaint as they were received and on the evening of November 13, 1986, a parent-teacher conference was held in an attempt to resolve the problems. Seventeen out of twenty-two students were represented by parents. It appears the chief complaint of the parents was the grievant's policy of not giving advance notice of her tests. Little was resolved at this meeting and Larry Lane, Elementary Supervisor, met with the grievant on November 18, 1986 to make another attempt to resolve the problems and sent her written suggestions following the meeting. Ms. Thompson responded in writing informing Mr. Lane that she would not follow his suggestions and

asked if they were mandatory. She got no answer but on November 24, 1986 her principal, Mr. Larkin, came into her room for the purpose of observing her performance for a teacher evaluation and the completed evaluation was critical of some of her teaching methods.

The grievant filed a Level I grievance alleging favoritism and reprisal on the part of Mr. Larkin and Mr. Lane. After the grievance was denied at Level I, she appealed to Level II where the Level I decision was upheld. Both parties waived their right to a Level III and submitted the case for decision on the record and briefs.

The grievant's basic arguments are as follows:

1. The suggestions made by Mr. Lane that she inform her students of a test several days before she gave it amounted to favoritism on the part of the administration in violation of W.Va. Code, 18-29-2(o).
2. The observations and evaluations made by her principal, Mr. Larkin, on November 24, 1986 amount to reprisal within the definition of that term in W.Va. Code, 18-29-29(p).

The administration contends Mr. Lane's suggestions were in keeping with sound classroom procedures and they were made in an effort to resolve the problem of numerous parent complaints about her classroom practices. It further defends its actions in the evaluation process by citing McDowell County Policy 8-040, which requires on-site classroom observations (Administration's Exhibit 2).

The pertinent parts of W.Va. Code, 18-29-2 are as follows:

(o) "Favoritism" means unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of another or other employees.

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

And the pertinent part of W.Va. Code, 18-29-3(h) reads:

No reprisals of any kind shall be taken by any employer or agent of the employer against any interested party, or any other participant in the grievance procedure by reason of such participation. A reprisal constitutes a grievance, and any person held to be responsible for reprisal action shall be subject to disciplinary action for insubordination.

There is nothing in the submitted record to indicate other teachers at Welch Elementary were not asked to give notice of their tests except the grievant's assertion that she was the only one receiving these instructions and by definition favoritism is preferential treatment given other employees. Grievant's evidence of particular instructions or suggestions given her by her principal, unsupported by evidence, that the same or similar instructions were not given other teachers amounts to a failure to prove the charge on the part of the grievant. The grievant must prove the allegations on which the grievance is based by a preponderance of the evidence. Wade v. Marion County Board of Education, Docket No. 24-86-248-3; Butta v. Ritchie County Board of Education, Docket No. 43-86-315-3.

Grievant also failed to show evidence of reprisal on the part of the school administration. There is no indication that the grievant took any action for which her principal might seek retaliation. The observation of classroom teachers is part of the evaluation of the total educational program of the school for which the principal is responsible, Schafstall v. Brooke County Board of Education, Docket No. 05-86-347-3, and is not an act of reprisal unless the grievant can show it was done for other purposes.

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

FINDINGS OF FACT

1. The grievant is a teacher at Welch Elementary School and has been employed by the McDowell County Board of Education for sixteen years.
2. Prior to November 13, 1986 the principal at Welch Elementary School, Mr. Tony Larkin, received numerous complaints from parents concerning certain classroom procedures of the grievant.
3. The grievant met with concerned parents on November 13, 1986 in an attempt to resolve some of their differences. Seventeen out of twenty-two students were represented by parents at this meeting.

4. On November 18, 1986 Larry Lane, Elementary Supervisor for the McDowell County Board of Education, met with the grievant in a further attempt to resolve the complaints and subsequently sent grievant a letter suggesting several changes in her teaching procedures.

5. On November 24, 1986 the grievant's principal made an observation of the grievant's classes and later incorporated his findings in a written evaluation of the grievant's performance.

CONCLUSIONS OF LAW

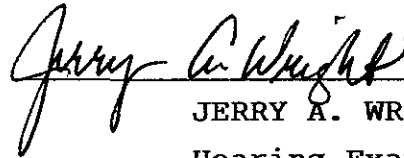
1. Under W.Va. Code, 18A-2-9 a school principal is responsible for planning, management, operation and evaluation of the total educational program of the school to which he or she is assigned, Schafstall v. Brooke County Board of Education, supra., and personal observation of classes is part of the evaluation process.

2. When charges of favoritism and reprisal form the basis of a grievance, the grievant must prove those allegations by a preponderance of the evidence. Wade v. Marion County Board of Education, supra; Butta v. Ritchie County Board of Education, supra.

3. The grievant, Clara Thompson, failed to prove the allegations contained in the grievance by a preponderance of the evidence.

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of McDowell County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. (W.Va. Code, 18-29-7). Please inform this office of your intent to do so in order that the record can be prepared and transmitted to the Court.



JERRY A. WRIGHT
Hearing Examiner

DATED: 12/11/87