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EMPLOYEES GRIEVANCE BOARD**
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HOWARD CHADDOCK

v.

Docket No. 11-88-016-3

GILMER COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Howard Chaddock, was regularly employed by the Gilmer County Board of Education as a teacher prior to his suspension on January 26, 1988. On February 3, 1988 he filed a level four grievance protesting his suspension but requesting matters be held in abeyance pending further action by the board. The board conducted a hearing on February 17, 1988 charging grievant with willful neglect of duty and dismissed him from its employ at the conclusion of the hearing. Grievant refiled to level four on both actions and a hearing was conducted on March 15, 1988. The transcript of the dismissal proceeding (T-B.__) was submitted into the evidence at level four and the case was submitted for decision based on the previously adduced evidence and the additional testimony at level four of one witness on behalf of the board and brief testimony from the grievant (T4.__). Grievant's brief was filed March 28, 1988 and the board's brief was received March 30, 1988.

The incidence giving rise to the disciplinary action against grievant occurred on January 25, 1988 when a sixth grade student (Robert) at Normantown Elementary School brought a loaded revolver into grievant's third period language arts class. Grievant decided to bring the class to order and get the students seated as Robert, who sat in the front row, would then be facing grievant with his (Robert's) back turned to the bulk of the remaining students. Grievant proceeded then to conduct the class and keep things as "normal" as possible. At various times the boy openly brandished the gun, loaded and unloaded it, and pointed it to his head and grievant's and, when unloaded, he would pull the trigger. Initially and on several occasions grievant asked the student to give him the gun or put it away but the student refused to relinquish the gun or to put it into his own desk. On one occasion Robert was distracted and a female student picked up the gun to look at it but would not bring it forward to her teacher (grievant) when he motioned for her to do so. Another time Robert was distracted and a student was bringing work to grievant's desk, but he too would not bring the gun in response to grievant's mute communication that he do so.

It is not clear how much time transpired into the period, but apparently after at least twenty minutes or so the classroom situation ended when a secretary came to grievant's class to take the student to the principal's office as the principal had heard that Robert had a gun. Robert would not relinquish the gun to the secretary who had come for him and the principal

was unsuccessful in her effort to disarm Robert; instead he pointed the gun at her and then fled the school. Later, a school official was out driving and saw Robert along the road. When he stopped his car and offered Robert a ride, Robert, still holding the gun, accepted. The official asked for the gun and Robert surrendered it.

The board identifies a duty on grievant's part to control his students and care for them as a parent would do under the circumstances. It charges that grievant failed to adequately deal with the situation in question as he had several options at his disposal during the classroom crisis. The board contends that grievant could have 1) made an effort to separate Robert from the class or the class from Robert; 2) made a reasonable attempt to get the gun when Robert was distracted or had left the gun unattended; 3) somehow alerted the school principal that Robert had the gun in class. Finally, the respondent board argues that grievant's failure to perform a known duty -- to either inform school authorities of a dangerous situation with which he was unable to cope or make a reasonable effort to nullify the situation amounted to willful neglect of duty to his students and justifies his dismissal on the statutory grounds of willful neglect of duty. W.Va. Code, 18A-2-8.

Grievant contends that his efforts to disarm Robert were unsuccessful but he did his best to defuse the situation by keeping all of the students calm and more affirmative actions on his part may have endangered everyone concerned. He argues

that during the termination proceedings and at the level four hearing it was not charged or implied that his conduct endangered the students' lives, rather, that the superintendent had characterized his efforts at disarming Robert as "insufficient" and his reaction to the circumstances as "inadequate" and grievant's action did not rise to the level of willful neglect of duty or warrant his suspension and dismissal on that basis.

W.Va. Code, 18A-2-8 authorizes a board of education to dismiss any person in its employ for willful neglect of duty and the authority to dismiss must be exercised reasonably and for good cause shown by a preponderance of the evidence, DeVito v. Board of Education, 317 S.E.2d 159 (W.Va. 1984); Grob v. Taylor County Board of Education, Docket No. 48-86-349-2, and any doubt must be resolved in favor of the employee. Hedrick v. Board of Education, 332 S.E.2d 109 (W.Va. 1985), Wigal v. Pocahontas County Board of Education, Docket No. 38-86-069-2.

There can be no doubt but that grievant had a duty to protect all of his students, including Robert, from harm and to act in a reasonable manner under the circumstances when Robert openly brandished a loaded gun in his classroom. The situation was potentially dangerous but as the school had no policy on such matters, and such a policy would not be entirely unthinkable in these times, grievant had no directives to follow and had to rely entirely on his own instincts. In essence, grievant

faced a no-win situation. Had grievant acted in any other than the normal way in which he did, it is just as possible that Robert would have fired the gun as it is that he would not have fired the gun. Grievant may have been able to alert the principal by leaving the room himself, but that action could have prompted Robert to fire the gun and it would have clearly been neglect of grievant's duty to leave the students unattended. As to grievant alerting the principal's office, it can only be surmised that no parent of grievant's students would have wanted their child to have been chosen as messenger to inform the principal that Robert had a gun.

In this case, the board has not clearly or sufficiently articulated exactly what grievant should have done or demonstrated, in hindsight, that grievant's failure to act in certain unspecified ways was willful neglect of his duties as a teacher under the circumstances.

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

FINDINGS OF FACT

1. Grievant was employed by the Gilmer County Board of Education as a sixth and seventh grade language arts teacher at Normantown Elementary School until his January 26, 1988 suspension and subsequent dismissal following an evidentiary hearing before the board on February 17, 1988.

2. On January 25, 1988, a sixth grade student, Robert, brought a loaded revolver into grievant's third period class and openly displayed it to grievant and the class. Some of the children knew Robert had the gun in school but had not told their teachers (T-B.21,25).

3. Grievant knew the student had been troubled and abused as Robert had "shared" some of his "secrets" with grievant and his classmates (T-B.34). Grievant tried to talk to Robert and reason with him that it was wrong to have the gun in school and to give it to him until classes were over but Robert refused to relinquish the gun and appeared excited. At some point Robert asked for permission to pass out candy he had brought to share with the class. The four students who testified at the termination hearing offered conflicting testimony or seemed uncertain as to whether the gun was left unattended while Robert passed the candy (T-B.15,19,22,25) but Master J.P. said Robert never left the gun while he was away from his seat and the gun was in Robert's shirt when he (J.P.) was given his candy (T-B.26,27).

4. Grievant called the class to order to get Robert seated in his front row seat so his back would be turned to the remaining students. Grievant testified that he proceeded to conduct the class in a normal fashion to keep Robert calm and to "defuse" the situation as a power struggle between he and Robert could have been harmful and he felt the least danger to the students would result if Robert relinquished the gun voluntarily (T4.11,12) and this procedure may have produced the result grievant intended as Robert did not overtly threaten anyone with the weapon or fire it. Nevertheless, during the class Robert loaded and unloaded the revolver, pointed it at grievant and several members of the class, and placed it against his own head pulling the trigger at times when it was not loaded; he ignored grievant's requests to put the gun away in his desk and a fellow student's counsel that he could lose his life with the gun.

5. At least twice during class Robert's attention was diverted while the weapon and the shells were on top of his desk. A student sitting next to Robert picked the gun up once when Robert was getting something out of his bookbag on the floor, but she refused to bring it to grievant when he signaled her to do so. Likewise, Master J.P., who passed Robert's desk to go to grievant's desk for classwork assistance also refused grievant's mute request to get the gun while Robert was distracted. While grievant's requests to the students may not have reflected good judgment on his part, there appeared to be no viable opportunity for grievant to position himself next to Robert and grab for the gun without threatening Robert and inflaming the situation.

6. Before the end of the class, the school secretary came to grievant's classroom to take Robert to the principal's office as a rumor had reached the principal that Robert had a weapon in the school; grievant gave no signal or indication to the secretary that trouble existed. Robert complied with the secretary's request to go the office but denied, when she asked, that he had a gun.

7. When the principal asked Robert about the gun he pointed it at her, refused to relinquish it and fled the school. The incident frightened (T-B.6) the principal and the record does not reflect that given the urgency and immediacy of the situation she handled her personal crisis with Robert any differently than grievant had in the classroom situation. Robert later willingly gave the gun to a school official in his automobile who chanced upon Robert on the highway.

8. Upon recommendation of the superintendent, on January 26, 1988 grievant was suspended from his teaching duties for willful neglect of duty. On February 17, 1988, an evidentiary hearing was held before the board and the grievant and the administration were both represented. At that hearing witnesses were sworn, evidence was taken, and the representatives of both parties argued to the respondent board in support of their respective positions. At the conclusion of the hearing the board dismissed grievant from its employ for willful neglect of duty.

9. The board alleges that grievant failed to perform his known duty to protect his students, i.e., remove Robert from the students or the students from Robert, disarm Robert or let the principal know of the classroom situation and these acts of omission endangered grievant's students, yet the board does not specify how grievant was to accomplish these feats and ignores the fact that any unusual behavior on the part of grievant may have served as a catalyst to provoke Robert to shoot the weapon.

10. The evidence in this grievance does not preponderate that grievant's actions on January 25, 1988 amounted to willful neglect of his duties under the circumstances.

CONCLUSIONS OF LAW

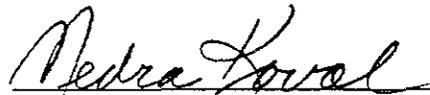
1. Pursuant to W.Va. Code, 18A-2-8 a board of education may dismiss any person in its employ for willful neglect of duty and the authority to dismiss must be exercised reasonably and for good cause shown by a preponderance of the evidence, DeVito v. Board of Education, supra; Grob v. Taylor County Board of Education, supra and any doubt must be resolved in favor of the employee. Wigal v. Pocahontas County Board of Education, supra.

2. In this instance, the respondent board has failed to show that grievant's conduct in a highly volatile unpredictable classroom situation amounted to willful neglect of his duties as a teacher and grievant's suspension without pay and dismissal from its employ was unreasonable and unwarranted.

Accordingly, the grievance is GRANTED and the board is ordered to reinstate grievant to his teaching position with back wages less any appropriate set off.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Gilmer 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: April 20, 1988



NEDRA KOVAL
Hearing Examiner