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MELVIN GOBELI

v.

DOCKET NO. 47-87-257-2

TUCKER COUNTY BOARD OF EDUCATION

DECISION

Grievant, Melvin Gobeli, is employed as a special education teacher by the Tucker County Board of Education and is assigned to Tucker County High School. A grievance was filed at level four on October 14, 1987 in which Mr. Gobeli alleged that he had been improperly suspended from his duties. A level four hearing was conducted on January 29, 1988 and final written statements were received on February 22.¹

¹This matter had been previously scheduled on November 13 and November 30, 1987 and January 8, 1988 but had been continued upon motions of the parties.

On Tuesday, September 15, 1987 the grievant became involved in a confrontation with a student in his classroom which ultimately led to his suspension. The student, J. P., had procured a snack cake through another student in direct contravention of the grievant's directive not to go to the snack machine. When the grievant saw the cake he confiscated it, crumpled it and dropped it in the waste basket. J. P. demanded payment for the cake and an argument ensued.² The grievant moved to the area of the room where J. P. was seated and during the course of the disagreement J. P. arose, poked the grievant in the chest and took hold of his shirt. The grievant either challenged or warned J. P. about touching him again which led to what J. P. and other students reported as the grievant slapping J. P. on the face.

²After J. P. demanded payment for the cake and the grievant declined to reimburse him the grievant states that J. P. continued grumbling and made what sounded like a threat. The grievant states that he asked J. P. to repeat the comment so that others would be aware of any threat which he feared might be carried out based upon his knowledge of the family's reputation.

Both the grievant and J. P. were sent home immediately pending an investigation by Superintendent Mary Alice Klein. On September 18 Superintendent Klein notified the grievant that he would be suspended, without pay, for twelve days.³ The Tucker County Board of Education upheld the suspension based upon a charge that the grievant had committed an act of cruelty against a student.

The grievant states that while he had acted calmly J. P. had grown increasingly more aggressive and that he believed J. P. was about to strike him. In an effort to block the anticipated blow and protect his person grievant raised his arm but at the last moment J. P. had jerked away. The grievant did not have time to counter his defensive posture and "...his open hand made contact..." with J. P.'s face.

The grievant argues the suspension was invalid because: (1) the charge of cruelty has not been substantiated; (2) W.Va. Code, 18A-2-8 provides that only a board may suspend an employee while Superintendent Klein asked the board to support her action

³The grievant had been suspended from September 15 through September 18 with pay.

after the disciplinary action had been taken; (3) W.Va. Code, 18A-5-1 establishes that a teacher has the right to enforce rules and maintain discipline while acting in the place of the parent and (4) he had the right to defend himself and did not act out of malice. The grievant requests back pay for the period of the suspension and that all documents regarding this incident be purged from his personnel records.

The board of education asserts that Superintendent Klein properly suspended the grievant for actions which did not comply with the Tucker County Discipline Policy or W.Va. Code, 18A-5-1 guidelines for corporal punishment and which amounted to cruelty and intemperance.

Testimony offered at the level four hearing was contradictory regarding the facts of the incident. J. P. and two other members of the class indicated the grievant to have been in close physical proximity and to have slapped J. P. The grievant testified that a chair was between himself and J. P. at all times and that when he raised his arm as a defensive move, his hand inadvertently made contact with J. P.'s face.

In addition to the foregoing it is appropriate to make the following specific findings of fact and conclusions of law.

Findings of Fact

1. The grievant is employed by the Tucker County Board of Education and is assigned as a teacher of the educable mentally impaired at Tucker County High School.

2. On September 15, 1987 an incident occurred in the grievant's classroom when a student procured a cake from another student who had gone to the snack machine during classtime, an action in violation of the grievant's directive not to go to the machine. When the grievant destroyed the cake a verbal exchange ensued which escalated to physical contact by both parties and resulted in the grievant slapping the student.

3. While the grievant argues that he had raised his arm as a defensive action, even by his own account his posture was such that the palm of his open hand came into contact with the student's face. This plus the testimony of other students in the classroom indicates that the grievant intentionally slapped the student on the face and did not accidentally contact him while blocking a blow.

4. Evidence does not establish the grievant's action to have been malicious in nature but does support the superintendent's conclusion that the grievant lost control of the situation and acted with a lack of temperance or self-restraint.

5. Following a thorough investigation, Superintendent Klein suspended the grievant, without pay, for a period of twelve working days, effective September 21 through October 6, 1987.

6. At a meeting held on October 6 the board of education voted to uphold the suspension as temporarily enacted by the superintendent, based upon a charge of cruelty.

Conclusions of Law

1. The superintendent, subject only to approval of the board, shall have the authority to suspend school personnel pursuant to the provisions of Chapter 18A of the W.Va. Code. The superintendent's authority to suspend shall be temporary and not to exceed thirty days unless extended by order of the board pending a hearing upon charges. W.Va. Code, 18A-2-7.

2. The causes for suspension are the same as those for dismissal, i.e., immorality, incompetency, cruelty, insubordination, intemperance and willful neglect of duty. W.Va. Code, 18A-2-8, Totten v. Board of Education, 301 S.E. 2d 846 (W.Va. 1983).

3. W.Va. Code, 18A-5-1 provides only that a principal shall have the authority to administer moderate corporal punishment by means of an open hand or paddle, subject to numerous restrictions including that such punishment shall not be administered to a pupil identified as handicapped, learning, hearing, mentally or behaviorally disabled.

4. The sanction of suspension was not so disproportionate to the offense as to be improper or shocking to one's sense of fairness.

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Tucker 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 March 14, 1988

Sue Keller

SUE KELLER

HEARING EXAMINER