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EMPLOYEES GRIEVANCE BOARD**
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JEFFERY HASTINGS

v.

Docket No. 35-87-304-3

OHIO COUNTY BOARD OF EDUCATION

D E C I S I O N

Jeffery Hastings, grievant, was employed as a custodian by the Ohio County Board of Education for seven years until his dismissal on November 10, 1987 on the statutory grounds of incompetence and insubordination following a hearing before the board on that date. A level four appeal was filed November 19, 1987 and hearings scheduled for December 9, 1987 and January 6, 1988 were continued for cause by the parties. Upon rescheduling, the board presented its case January 21, 1988 and the hearing was continued until February 24, 1988 at which time the grievant presented his position; briefs were filed by grievant on March 21, 1988 and by the respondent board on April 5, 1988.

The grievant's initial employment in July 1981 was at Wheeling Park High School (WPHS) and apparently his work as a custodian at that facility was satisfactory. On September 1, 1986 he bid on and received a position as custodian at Warwood Grade School. Grievant was evaluated by the principal at Warwood, John Rohal, on February 12, 1987 and although the evaluation instrument does not reflect the grievant's overall rating as having exceeded, meets or does not meet standards, a calculation of his points reveals that grievant had attained only twenty points of the twenty-four required to meet standards. Written commentary on the document reflected that he had not properly kept his areas of responsibility, recorded tardiness or absences, reported long distance usage on the school telephone, and consistently secured the areas upon departure from the school. The recommendations stated that he should get help from the head custodian for proper cleaning procedures if necessary. Grievant was put on a Plan of Assistance on March 26, 1987 which was to terminate on May 15, 1987; the reevaluation again indicated that grievant did not meet performance standards and the Plan was continued until October 1987. In October the principal reevaluated the grievant and recommended that he be dismissed from his employment as he had not conformed to the Plan and had not adequately improved his job performance.

The board contends that grievant had ample notice of his deficiencies from the time he began his employment at Warwood Grade School as reflected by the abundant written documentation submitted into the evidence. It urges that grievant had been

given every reasonable opportunity from September 1986 through October 30, 1987 to demonstrate that he could independently and consistently perform his custodian duties in an adequate manner and that his failure to improve his performance amounted to incompetency. Further, grievant's conduct by which he continuously failed to report and pay for long distance telephone calls, the board contends, demonstrates insubordination to comply with policy. It relies on W.Va. Code, 18A-2-8 that any employee who acts in an incompetent and insubordinate manner is subject to dismissal.

The grievant agrees that he forgot to do certain things at times because of severe financial personal problems but some of the cited inadequacies were "nit-picking." Grievant contends that the principal did not apply the same evaluative standards to the May 15, 1987 evaluation as the February 1987 evaluation and if he had, the May score would have met performance standards; that when the Plan of Assistance was continued from May until October the principal did not abide by his own written policy to confer on a weekly basis with the grievant to evaluate his progress; that other county individuals performing like duties who are put on a Plan of Assistance have consistently been apprised of their progress on a weekly basis; and that his dismissal in October was a complete shock to him because he had had no weekly conferences with his principal and the feedback he received from the head custodian was positive. Grievant argues that there has been disparity of treatment between him and custodial employees at WPHS and urges that the respondent board did not follow the

directives of State Policy 5300 and its own policy for Plans of Assistance in evaluating him and that he was not provided uniform treatment as required by W.Va. Code, 18A-4-5b. Grievant seeks reinstatement and back wages.

According to the three custodian witnesses who were currently on a Plan of Assistance at WPHS, it appears that the monitoring of those employees is more structured than that performed at Warwood elementary, but it must be noted that the operations at the high school involve a large staff and large facility with sufficient supervisory personnel to perform such functions and the needs and resources of the two schools are vastly different since Warwood has only a three-man custodial staff. In addition, none of the witnesses from WPHS who testified made any mention that they were cited for work deficiencies after placement on their extended Plans as grievant was and it appears the extended weekly monitoring was directed toward quality control rather than remediation.

A board of education may suspend or dismiss any person in its employment for incompetency upon a showing by a preponderance of the evidence that the employee was sufficiently apprised of his or her deficiencies and failed to improve the work performance upon an opportunity and period of time in which to improve. W.Va. Code, 18A-2-8; Garcia v. Marshall County Board of Education, Docket No. 25-87-274-3; Shillingburg v. Mineral County Board of Education, Docket No. 28-86-135-2; Wilt v. Flanigan, 294 S.E.2d

155 (W.Va. 1982); Holland v. Board of Education of Raleigh County,
327 S.E.2d 155 (W.Va. 1985); Carrell v. Kanawha County Board
of Education, Docket No. 20-87-073-1 (dismissal of custodian for
excessive absences overturned because the board failed to evaluate
or provide improvement period). Grievant herein had been apprised
of work deficiencies orally and in written form on an ongoing
basis since September 1986, received two evaluations indicating
he did not meet work performance standards in February and May
1987, failed to meet his first Plan of Assistance between March
and May 1987 and did not improve sufficiently upon the extended
Plan until October 1987.

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

FINDINGS OF FACT

1. Grievant had been employed as a custodian since 1981 and began an assignment at Warwood Elementary in September 1986 until his dismissal from the board's employ on November 10, 1987 on the grounds of insubordination and incompetence.

2. When grievant began his duties at Warwood, the school was in a state of cleanliness from summer vacation but upon the students' return the principal and head custodian had to make frequent oral and written communication to grievant that certain areas for which he was responsible were not clean enough, duties were not performed adequately or the building was not secured properly.

3. Between September 1, 1986 and October 1987 approximately 60-70 written communications were given to grievant regarding work not properly performed or infractions of rules with respect to securing the building, reporting tardiness or absence and recording long distance phone calls on the school telephone. (Board Exhibit No. 5).

4. Grievant took no exception to his February 12, 1987 evaluation in which he was not accorded the minimum 24 points to attain an overall "Meets Performance Standards." The document cited numerous work deficiencies and recommended that he ask the head custodian for assistance. A Plan of Assistance was compiled and given to grievant on March 26, 1987 noting specific remediation measures and advising that failure to comply by May 15, 1987 could result in his dismissal.

5. Although his overall performance still did not meet standards, grievant's May 15, 1987 evaluation showed some improvement on his part. Instead of nine "Does Not Meet Standards" (0 points) marked on the February evaluation, he had only six marked in May. However, he dropped in six areas marked "Exceeds" (2 points) in the first evaluation to "Meets" (1 point) in May and had those entire areas remained constant, grievant would have just barely attained the 24 points needed to meet overall performance standards. (The May evaluation added an area, Employee Relationships With Students not evaluated in the February process which gave grievant an extra point.) The principal explained that he inflated the first evaluation somewhat so as to encourage the grievant and could not explain why all six dropped from "Exceeds" to "Meets" in the second (T.___). The Plan of Assistance was extended to October 1987 and grievant made no protest or written exception to the criticisms of the May evaluation.

6. The principal did not always conduct face to face conferences with grievant on a weekly basis from May until October, but written checklists and admonishments from the head custodian and principal continued over that period of time reflecting for the most part, dissatisfaction with grievant's performance.

7. Custodial personnel at WPHS who are on an extended Plan of Assistance continue to have structured weekly meetings with supervisors but the record is silent as to whether the meetings are the result of ongoing cited deficiencies, remediation or quality control. In addition, unlike Warwood elementary, the high school has a larger support staff to accomodate this system.

8. Grievant was reevaluated on October 30, 1987 and the principal recommended that he be dismissed for failure to improve his work performance to an acceptable standard. He had attained only 13 points of the required 24 points for "Meets" standards and grievant noted in writing, "I don't agree with this evaluation. I felt that I have improved my work since the beginning of the school year until October 30, 1987."

CONCLUSIONS OF LAW

1. A board of education may suspend or dismiss any person in its employment at any time for incompetence and such charges must be proven by a preponderance of the evidence. W.Va. Code, 18A-2-8; Garcia v. Marshall County Board of Education, supra; Shillingburg v. Mineral County Board of Education, supra.

2. Pursuant to State Board Policy 5300 every school employee is entitled to be apprised of and given opportunity to correct prior misconduct or incompetency prior to dismissal from employment by a board of education. Wilt v. Flanigan, supra; Holland v. Board of Education of Raleigh County, supra; Carrell v. Kanawha County Board of Education, supra.

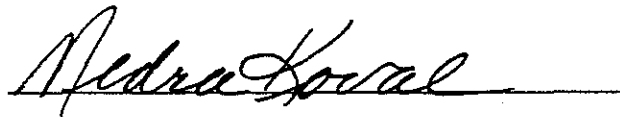
3. The respondent board herein complied with the requirements of State Policy 5300 and neither statute, case law or policy requires that a board of education provide an employee with unending improvement opportunities when the work performance offenses are repeated. Garcia v. Marshall County Board of Education, supra; Shillingburg v. Mineral County Board of Education, supra; Belcher v. Barbour County Board of Education, Docket No. 01-86-001.

4. The board of education has shown by a preponderance of the evidence that grievant was subject to dismissal for incompetence. Belcher v. Barbour County Board of Education, supra; Curry v. West Virginia University, Docket No. 30-86-128-2.

Accordingly, this grievance is DENIED and the board's termination of grievant is affirmed.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Ohio 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 29, 1988

A handwritten signature in cursive script, reading "Nedra Koval", is written over a horizontal line.

NEDRA KOVAL
Hearing Examiner