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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

ARCH A. MOORE, JR.
Governor

MARK E. NICOL

v.

DOCKET NO. '12-88-057-2

GRANT COUNTY BOARD OF EDUCATION

DECISION

Grievant, Mark Nicol is employed as a teacher by the Grant County Board of Education and is presently assigned to Union High School. Mr. Nicol filed a level one grievance on January 29, 1988 in which he alleged violations of W.Va. Code, 18-29-2(m) (n) and (o), State Board of Education Policy 5300 (6) (a) and (b) and State Board of Education Policy 5310 when his principal spoke to him in an unprofessional manner in front of other employees.

The facts in this matter are undisputed. On January 14, 1988 the grievant and two other employees were in the principal's office when a bomb threat was called in to Union High School. The grievant and the other employees were called into Principal Randy Whetstone's office where a discussion regarding

the threat was held and Mr. Whetstone indicated that the rest of the faculty was not to be informed of the incident. After leaving the office the grievant decided to express his opinion that the faculty should be made aware of the situation. He waited outside the principal's office until Mr. Whetstone and Mr. Jim Lent, principal of Union Elementary School, entered the reception area or the secretary's office. The grievant addressed his concern to Mr. Lent who entered the room first. Mr. Whetstone then approached the grievant and made a statement to the effect that if the grievant had something to say then to say it to him (Whetstone), that the situation was under the control of the superintendent and that the grievant was to discuss it with no one. Mr. Lent, another teacher and the school secretary were witnesses to this event. Following a hearing at level two, Superintendent David Adkins determined that while the principal had acted within his authority, that he had acted improperly towards the grievant in front of other employees and directed him to issue the grievant a written or verbal apology and assurance that it would not happen in the future.

Mr. Whetstone filed a grievance on February 23 in which he alleged violations of W.Va. Code, 18-29-2(m) and (o), as he had not received the same fair treatment as others when the level two hearing evaluator exhibited subjectivity during the processing of Mr. Nicol's grievance. Mr. Whetstone further alleged that the level two finding that he acted inappropriately could undermine his ability to perform the duties and responsibilities as principal in any future crisis situation. He requested that: (1) Superintendent Adkins and Mr. Garber (whose position was not identified) issue a letter to the grievant indicating that he has a responsibility to work, cooperate with and assist Mr. Whetstone, the building administrator. (2) Superintendent Adkins and Mr. Garber would attend a faculty meeting and express that they are to support and cooperate with their principal who is the one person in charge to make decisions. (3) The grievant would receive a letter stating that no retaliation would be taken as a result of this or any other grievance. (4) Mr. Nicol would be directed to apologize to the grievant before two witnesses of his choice and (5) the board of education would issue a written statement of support for the grievant's efforts. Following a level three hearing held by the board

of education on March 8 Superintendent Adkins informed Mr. Nicol that the board had voted to dismiss the grievances filed by him and Mr. Whetstone due to a lack of clear violations of policy or statute. The grievant filed a level four appeal on April 7, 1988 in which he alleged the board's action to have been in violation of W.Va. Code, 18-29-4(c) which provides that boards act only on matters appealed by the grievant. As Mr. Nicol had not appealed the level two decision the board had no authority to review it.¹

The board agrees that Mr. Whetstone could not appeal the level two decision rendered in Mr. Nicol's grievance but argues that he did act properly in filing his own grievance based on the decision of Superintendent Adkins which directed him to take specified actions. As Mr. Whetstone's grievance arose

¹A second issue regarding whether the grievant was denied due process when he was not permitted to have representation at the level three hearing in the matter of Whetstone v. the Board of Education was raised by the grievant in his level four brief. As this matter was not addressed previously and the board has had no opportunity to respond it may not now be considered.

from the same precipitating incident as Mr. Nicol's grievance, the board could not address the allegations made by Mr. Whetstone without reviewing the events of January 14. Due to the inter-related nature of these matters it was also impossible to make a decision in Mr. Whetstone's grievance that did not affect Mr. Nicol's level two decision. As no violations of policies or statutes were established in either matter, both grievances were dismissed.

The evidence indicates that two separate grievances were filed as a result of a single incident. Although Mr. Nicol prevailed at level two, the matter was in effect taken out of his control by the intervening grievance filed by Mr. Whetstone. Due to the common historical background there was no alternative for the board but to review the facts of Mr. Nicol's grievance in order to render a decision for Mr. Whetstone. Although the board refers to its action as dismissing both grievances it in fact made a split decision in which it found that Mr. Whetstone had not acted in violation of policy or statute and therefore would not be required to apologize (thereby reversing the level two decision rendered in the Nicol's grievance), neither had Superintendent Adkins violated policy or statute

and therefore the grievant's request for relief was denied.²

In addition to the foregoing narration 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 Grant County Board of Education and is assigned as a teacher at Union High School.

2. As a result of a verbal reprimand from his principal, Randy Whetstone, the grievant initiated grievance proceedings in which he requested an apology.

3. The grievance was awarded by Superintendent David Adkins following a level two hearing. Superintendent Adkins reasoned that a principal had every right to give directions to his staff members but that it was improper to confront an individual in front of other employees.

²This matter has presented a unique situation which the grievant characterizes as Mr. Whetstone appealing the grievant's level two decision (and now the grievant has appealed Mr. Whetstone's level three decision). That is somewhat inaccurate as Mr. Whetstone filed a separate grievance based upon the decision of Superintendent Adkins and now the grievant has filed a second grievance based upon the decision of the board. For the purposes of this decision each matter will be considered a separate grievance.

4. Subsequent to this decision Mr. Whetstone filed his own grievance proceedings in which he alleged violation of W.Va. Code, 18-29-2(m) and (o), 18A-2-9 and 18-1-1.

5. Following a hearing at level three, the Grant County Board of Education determined that neither Mr. Nicol or Mr. Whetstone were entitled to the requested relief as no violations of policy or statute had been shown.

6. Mr. Nicol filed a level four appeal in which he alleged that it was improper for the board of education to reverse the level two decision in his grievance as only the grievant may appeal.

Conclusions of Law

1. The board of education acted properly in considering a second grievance arising from a single incident, the decision for which effectively overruled a level two decision issued in a prior grievance.

2. The grievant has failed to establish any violation of statute or State Board of Education policy.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Grant 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

July 25, 1988

Sue Keller

SUE KELLER

HEARING EXAMINER