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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

ARCH A. MOORE, JR.
Governor

JUANITA PUTNAM

v.

Docket No. 04-88-022-4

BRAXTON COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Juanita Putnam, has been employed by the Braxton County Board of Education as a bus operator since January 19, 1978. She filed a Level IV appeal on February 10, 1988 protesting her dismissal. A Level IV evidentiary hearing was held on March 15, 1988.

Grievant received a letter dated February 4, 1988 informing her the Board had voted unanimously on February 2, 1988 to dismiss her for incompetence, insubordination and willful neglect of duties. (Board's Exhibit No. 26) This letter specifically noted certain examples of the grievant's past performance within each category.

Within the charge of incompetence the Board cited personnel evaluations of March 25, 1982, April 14, 1983, May 11, 1983, April 26, 1984, May 9, 1985, March 6, 1987 and February 1, 1988 nearly all of which note unacceptable levels of performance. The evaluation of March 25, 1982 indicates Ms. Putnam received "needs improvement" notations in initiative and promptness. (Board's Exhibit No. 1) The April 14, 1983 evaluation noted additional deficiencies in "displays accuracy" "personal traits" and "quality of work". An attached sheet contained remarks about grievant's tardiness in completing reports and numerous complaints from parents regarding late arrivals at designated bus stops. (Board's Exhibit No. 3) The evaluation of May 11, 1983 listed two additional deficiencies in the areas of "acceptance of responsibility and appropriate grooming, dress and cleanliness". The attached improvement plan reiterated the need for grievant to maintain her bus schedule and turn in required reports on time. It also indicated she should improve her personal appearance, assure her bus is in good mechanical order and recognize the need for following the directions of her supervisor. May 13, 1983 was the deadline for correction of these deficiencies. (Board's Exhibit No. 31) Ms. Putnam received another written evaluation on April 26, 1984 and she was given only one satisfactory rating and this was in the area of "appropriate cleanliness, grooming and dress". Her supervisor, Everett Shaver, again noted grievant was not staying on her bus schedule or submitting reports on time. This evaluation additionally indicated

grievant had missed seventy-five (75) days of work due to illness and parents were still making complaints about the sporadic schedule. (Board's Exhibit No. 5) Grievant declined to sign this evaluation and initially refused to do a self evaluation but did complete one on April 27, 1984. She indicated she felt her performance was satisfactory in all areas and made statements to the effect that she was experiencing some personal problems. (Board's Exhibit No. 6) The May 9, 1985 evaluation also gave grievant only one satisfactory mark in the area of personal appearance and Mr. Shaver attached a rather comprehensive improvement plan. This plan was a reiteration of past concerns but included recommendations that certain precautions be taken in the operation of her bus and suggested different discipline practices be initiated to control student behavior on the bus. (Board's Exhibit No. 12) By April 22, 1986 grievant had shown some obvious improvement and her evaluation on that date noted "meets standards" in all categories. Mr. Shaver made remarks on this form to the effect that grievant had improved greatly during the preceding two months by keeping a better bus schedule and establishing a better relationship with students. (Board's Exhibit No. 14) By March 6, 1987, however, grievant's supervisor again had concerns about her tardiness in her bus schedule, timely completion of reports, bus safety maintenance and control of students. Grievant was given a "needs attention" grade in all these areas on her evaluation of that date. (Board's Exhibit No. 1) On her last evaluation (January 1, 1988) Ms. Putnam received "does not meet standards" in twelve (12) areas and "needs attention" in the remaining three. Mr. Shaver testified

he felt all of these evaluations were true and accurate assessments of grievant's job performance beginning in March 1982 and grievant offered little if any evidence to rebut this assertion. (T.__) It should also be noted that the evaluation forms of March 25, 1982, May 11, 1983, May 9, 1985 and April 22, 1986 indicated the grievant agreed with the ratings contained therein.

In further support of its charge of incompetence, the Board cited at least nine (9) letters or memoranda dated from March 1983 to January 1988 which specifically informed the grievant of matters requiring immediate attention including the appearance of her bus, the recurring lateness of reports, neglect for the maintenance of her bus, student discipline and meeting her bus schedule. (Board's Exhibits No. 2,11,15,16,17,18,23,30,32) Mr. Shaver testified that while grievant would show some improvement after receiving this correspondence, generally most of it went unheeded.¹

The Board contends grievant was also insubordinate in that she was either not submissive to authority or merely disregarded instructions. Mr. Shaver testified he asked Ms. Putnam on numerous occasions

¹ This refusal to take instructions and follow the directives of superiors also forms the basis of part of the Board's charge of insubordination.

to complete and submit monthly reports on time but her practice of turning them in late continued and in January 1988 this was still a serious problem. (T.____) Due to a number of student discipline problems, grievant was presented an assertive discipline plan with instructions to provide a copy and a letter of explanation to each student and it was the Board's assertion she simply did not carry out this order. The Board also claims grievant was given general instructions on at least eleven (11) occasions to take steps to gain control over students on her bus but as of February 1988 this had not been accomplished and this inaction on her part constituted insubordination. (Board's Exhibit No. 26, Letter of Dismissal)

In regard to the charge of willful neglect of duty, the Board alleges grievant either allowed or encouraged the mistreatment of a handicapped student by other students on her bus in March 1987. Additionally the Board asserts grievant was given numerous instructions to make proper pre-trip inspections of her bus and her failure to do so resulted in a flat tire during one of her runs.² The disregard for numerous instructions to exercise discipline over student passengers was also cited as an example of neglect of duty and the final charge

² Grievant was suspended on this occasion when the Board determined she had driven nearly two and one half (2½) miles with the flat tire instead of stopping and reporting to the garage.

within this area was an allegation that grievant altered a physician's report in July 1987 so that it reflected a lower blood pressure than she actually had at the time.³

Grievant generally admitted to submitting required reports late but she contended this was caused by personal and family illnesses and on one occasion the fault of the post office. (T.__) As reasons for tardiness in reaching her bus and designated stops, Ms. Putnam cited inclement weather and student discipline problems. She denied any failure to make adequate pre-trip inspections of her bus or timely report any mechanical defects. (T.__)

Ms. Putnam further alleges that the alleged conduct was correctible and the Braxton County Board of Education's failure to provide her with an improvement period after the February 2, 1988 evaluation vitiated any termination based on said conduct. According to grievant this lack of conformance with West Virginia Board of Education Policy 5300, et seq., precludes any consideration of the

³ West Virginia Board of Education transportation regulations deny bus operator certifications to persons who have been found to have a systolic blood pressure greater than 150 and/or diastolic blood pressure greater than 100.

sufficiency of the evidence presented against her.⁴ This argument is correct insofar as terminations can be made for reasons of misconduct or incompetency only when such behavior has been called to the attention of the employee through evaluation. Trimboli v. Board of Education of the County of Wayne, 254 S.E.2d 561 (W.Va. 1979); Mason County Board of Education v. State Superintendent of Schools, et al., 274 S.E.2d 435 (W.Va. 1980). There is, however, no requirement in the language of Policy 5300, et seq. or the holdings in these decisions that the improvement period immediately precede the termination. The record in grievant's case indicates she was given adequate improvement plans on March 25, 1982, April 15, 1983 and May 9, 1985. These plans were also accompanied by regular letters and memoranda specifically noting areas of deficiency and particular incidents which required grievant to take immediate corrective actions. Additionally grievant was given evaluations on April 22, 1986, March 6, 1987 and January 28, 1988 and although attached comments could not be constituted as

⁴West Virginia Board of Education Policy 5300 (6) (a) provides:

(a) Every employee is entitled to know how well he is performing his job, and should be offered the opportunity of open and honest evaluation of his performance on a regular basis. Any decision concerning promotion, demotion, transfer or termination of employment should be based upon such evaluation, and not upon factors extraneous thereto. Every employee is entitled to the opportunity of improving his job performance prior to the termination or transferring of his services, and can only do so with assistance of regular evaluation.

improvement plans, the evaluations clearly placed grievant on notice that her job performance was considered extremely poor. A decision reached by the Board in January 1988 that further improvement plans would be of no use and grievant's behavior was no longer correctible was not illogical and cannot be considered arbitrary or capricious. It should further be noted that the cumulative evidence in grievant's case reveals an almost unceasing desire on the Board's part to keep the grievant informed of shortcomings and steps needed for improvement. In such situations a county board of education is not required to provide an employee with unending opportunities for improvement. Garcia v. Marshall County Board of Education, Docket No. 25-87-274-3; Wilt v. Flanigan, 294 S.E.2d 155 (W.Va. 1982); Hastings v. Ohio County Board of Education, Docket No. 35-87-304-3.

Upon review the Board's evidence in support of its charge of incompetence is more than sufficient to meet the burden of proof in such cases. Beginning in March 1982 grievant established a pattern of reporting to work late, a practice which caused her in turn to be late at all designated stops. While grievant did establish inclement weather as the cause for this tardiness on several occasions (T.__), she offered little explanation for the continuing nature of this practice. There was also the testimony of Mr. Shaver which indicated this was one of the main causes of student discipline problems on her bus. (T.__) Grievant had also established a routine of submitting required reports late despite the repeated requests and demands to

do so by her supervisor. In addition to demonstrating incompetence or an inability to carry out tasks, these actions on the grievant's part could also be easily construed as insubordination and willful neglect of duty.

There was also evidence produced which established the grievant's general neglect of her bus. Ms. Putnam received numerous letters, memoranda and evaluations which notified her the bus was not maintained properly. (Board's Exhibit Nos. 28,29,30,32) A State Board of Education school bus inspection report completed on December 12, 1984 revealed twenty-seven (27) defects on grievant's bus and the testimony of Mr. Shaver indicated the state average on such inspections was less than one defect. (Board's Exhibit Nos. 33,34) (T.___) The evidence does not support the Board's claim that Ms. Putnam failed to conduct pre-trip safety checks on her bus but it is clear the bus was not kept clean and its routine maintenance was neglected. Grievant similarly neglected student discipline on her bus and while the Board did not substantiate its contention that she allowed or condoned the mistreatment of a handicapped student, there is ample evidence that she was either unable or unwilling to initiate consistent and long range assertive discipline techniques on the bus. As previously noted the grievant's repeated tardiness at bus stops appears to have fostered a general lack of respect and obedience among the students.

The Board's remaining charge that grievant on July 30, 1987 altered her physician's report to reflect a lower blood pressure was

included in the area of willful neglect but such a claim is best characterized as one of immorality. Evidence in support of this charge produced at the Level IV hearing was circumstantial but sufficient to substantiate that either grievant or someone at her direction changed a notation of 152 under systolic blood pressure to 142. (Board's Exhibit No. 19) This change was so obvious that Mr. Shaver took notice and called the examining physician and his personal notes on the examination revealed a blood pressure of 152/98. (Board's Exhibit No. 20) Mr. Shaver asked grievant to go to another doctor on August 4, 1987 and her blood pressure during an examination on that date was recorded as 164/100. (Board's Exhibit No. 21)⁵ Considering the West Virginia Board of Education's school transportation regulations which prohibit blood pressure greater than 150 and the subsequent re-examination, the Board was justified in concluding grievant had made the alteration on the original form. During the Level IV hearing grievant admitted this form appeared altered but denied doing so.

⁵ Ms. Putnam subsequently lost her bus operator's certification because of this examination and did not work until November 1987 when an examination revealed her blood pressure was within regulation limits.

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

FINDINGS OF FACT

1. Grievant has been employed by the Braxton County Board of Education as a bus operator since January 1978.

2. On March 25, 1982 grievant received an evaluation which indicated she needed improvement in two out of ten (10) listed areas of performance and notations on this evaluation by grievant's supervisor encouraged her to arrive promptly for work and take steps to improve student discipline on her bus; grievant noted her agreement with this evaluation.

3. On April 14, 1983 grievant was given an evaluation which indicated she needed improvement in five (5) of nine (9) listed areas of performance and an attached improvement plan suggested she report on time for work, submit bus reports when due, improve the general appearance of her bus and observe county rules and regulations.

4. On May 11, 1983 grievant received an evaluation which indicated she needed improvement in seven (7) out of ten (10) listed areas of performance and an attached improvement plan set timelines for the completion of achievements in certain areas including reporting

on time for work, assuring her bus was in good mechanical order and submitting reports on schedule; grievant noted her agreement with this evaluation.

5. On April 26, 1984 grievant received an evaluation which indicated she needed improvement in six (6) out of seven (7) listed areas of performance and remarks on this evaluation noted her failure to make any progress on previous suggestions for improvement.

6. On May 9, 1985 grievant received an evaluation which indicated she needed improvement in nine (9) out of ten (10) areas of performance and previous suggestions for improvement were again noted in an attached improvement plan; grievant noted her agreement with this evaluation.

7. On April 22, 1986 grievant received an evaluation which indicated she met standards in all ten (10) listed areas of performance and remarks made on this evaluation noted a great deal of improvement in the preceding two months; grievant noted her agreement with this evaluation.

8. On March 6, 1987 grievant received an evaluation which indicated she needed attention in seven (7) areas of performance and met standards in thirty-eight (38) other areas.

9. On January 29, 1988 grievant received an evaluation which indicated she did not meet standards in twelve (12) listed areas of performance and needed attention in three (3) other areas.

10. Between March 1983 and January 1988 grievant received at least nine (9) warnings concerning her failure to maintain discipline on her bus, her tardiness in reporting to work and deadlines for submitting written bus reports.

11. Between March 1983 and January 1988 grievant's supervisor, Mr. Everett Shaver, had numerous conversations with her concerning her poor job performance wherein she was given suggestions on how to improve.

12. With the exception of improvements in performance made between February 1986 and April 1986, grievant established a pattern between March 1982 and January 1988 of either disregarding or failing to follow the directions of her supervisor, Mr. Shaver, and Mr. Jim Rogers, Director of Supportive Services, to report to work on time, submit bus reports on schedule and improve student discipline on her bus.

13. During this period of time grievant also established a pattern of neglect for the cleanliness, general appearance and mechanical condition of her bus.

14. On or about July 30, 1987 grievant submitted to her supervisor a required physician's report which had been altered to reflect a lower blood pressure than had actually been recorded during her physical examination.

15. By letter dated February 4, 1988 grievant was informed the Braxton County Board of Education had voted on February 2, 1988 to dismiss her on the grounds of incompetence, insubordination and willful neglect of duty.

CONCLUSIONS OF LAW

1. A county board of education may suspend or dismiss any person in its employment at any time for incompetence, insubordination or willful neglect of duty upon a showing by a preponderance of the evidence that the employee was sufficiently apprised of his or her deficiencies and given a period of time in which to improve. W.Va. Code, 18A-2-8; Garcia v. Marshall County Board of Education, supra; Hastings v. Ohio County Board of Education, supra; Wilt v. Flanigan, supra.

2. Pursuant to State Board of Education Policy 5300, et seq., 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 county board of education. Wilt v. Flanigan, supra; Hastings v. Ohio County Board of Education, supra.

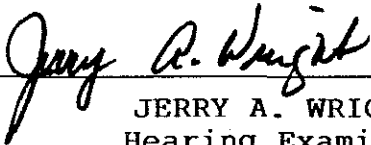
3. A county board of education is not required to provide an employee with unending improvement opportunities when poor work behavior is repeated. Garcia v. Marshall County Board of Education, supra; Belcher v. Barbour County Board of Education, Docket No. 01-86-001; Hastings v. Ohio County Board of Education, supra.

4. The Braxton County Board of Education complied with State Board Policy 5300, et seq. by regularly apprising the grievant, Juanita Putnam, of deficiencies in her work performance from March 1982 to January 2, 1988 and giving her opportunities to improve said performance.

5. The Braxton County Board of Education has proven by a preponderance of the evidence charges of incompetence, insubordination and willful neglect of duty against the grievant, Juanita Putnam.

Accordingly, the grievance is **DENIED** and the decision of the Braxton County Board of Education to dismiss grievant is hereby affirmed.

Either party may appeal this decision to the Circuit Court of Braxton County or the Circuit Court of Kanawha County and such appeal must be filed before thirty (30) days of said 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: May 13, 1988