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DONAREETA SEBOLT

v.

**DOCKET NOS. 23-87-051-4
23-87-091**

LOGAN COUNTY BOARD OF EDUCATION

DECISION

Grievant, Donareeta Sebolt, is employed as a teacher by the Logan County Board of Education and is assigned to Verdunville Grade School. Ms. Sebolt filed level four grievance appeals on March 12 and May 18, 1987 in which she alleged that she had been denied professional leave in violation of past practice and county policy, said denial was discriminatory and motivated by personal and professional hostility. A third grievance was filed on April 16, 1987 in which she alleged that she had been denied an open and honest evaluation in violation of W.Va. State Board of Education Policy 5300. The grievances were consolidated for hearing at level four on October 1 and 28, 1987. Proposed findings of fact and conclusions of law were submitted on behalf of the grievant on November 30 and Principal Barbara Porter on December 8, 1987. As of the date of this decision

no submission had been made by the board of education.¹

Testimony and evidence made a part of the record at level four establishes that the grievant is an active member of the West Virginia Education Association (WVEA) and serves as an elected member of the Executive Committee. She also serves as a member of the Board of Directors of the Appalachian Educational Laboratory (AEL), a four state, federally-funded project. The grievant submitted a written request for professional leave on October 10, 1986 to attend a meeting of the Executive Committee with the State Board of Education. Ms. Barbara Porter, principal at Verdunville Grade School, responded, "I feel Mrs. Sebolt's absence in the classroom is much more important", and denied the request "[d]ue to her extensive absences during the school year." The grievant subsequently used personal leave time to attend the meeting.

A teacher observation form completed by Principal Porter and dated January 13 (Grievant's Exhibit No. 11) indicated that the grievant did not meet standards on five of eleven observable indicators in the category of professional work habits and in

¹When Chief Hearing Examiner Leo Catsonis conducted the level four hearings in October he determined that Principal Porter would be permitted to participate through her privately retained counsel even though she is not the statutory respondent. This matter was transferred to the undersigned examiner upon the resignation of Mr. Catsonis from the Education Employees Grievance Board and the decision is based upon the recorded testimony made during the level four hearings and the record as developed by the parties.

one of three observable indicators in the category of professional growth. An undated comment was included by Principal Porter under this category: "Mrs. Sebolt cannot accept constructive criticism. She becomes defensive immediately without waiting to be told of the problem or incident. Plan of improvement - Accept the fact that none of us are perfect. Use whatever suggestions are made to enhance teaching skills." Apparently in reply, the grievant noted her disagreement with specific items and her intent to address them at a later time, dated January 16, 1987. The second observation dated what appears to be March 4, 1987 indicated the same "does not meet standards" as the January observation.

Attached to the observation form is the annual evaluation form which indicates that the grievant did not meet performance standards in only one area - professional work habits. The grievant signed the document but indicated that she was not in agreement with the evaluation which was presented to her in March 1987.

Also attached is a document which addresses those areas in which the grievant was found to be deficient, incidents supporting the evaluation and an "improvement plan" for each item.

At its April 28, 1987 meeting the board of education approved the request of the Logan County Education Association to authorize professional leave for twelve delegates to the WVEA Delegate Assembly, with the amendment that the leave would be contingent upon the approval of the individual's principal. The grievant's request for professional leave on May 14 and 15, 1987 for the purpose of attending the WVEA Delegate Assembly was denied by Principal Porter who cited the grievant's extensive absenteeism.²

The grievant argues that the denial of professional leave was contrary to past county policy which permits the use of professional leave, paid time which is not deducted from the individual's personal leave, for the purpose of attending professional meetings or conferences and past practice which was to routinely award such leave. Further, "...that the denial was discriminatory and based upon the opposition and hostility of the principal and administration to her affiliation with

²As a result of legal action the grievant was permitted to take the days without pay and attend the assembly with a final decision as to whether they should be granted to be determined through the grievance process.

and activities in behalf of WVEA..." and the personal hostility of Principal Porter toward the grievant.

The grievant asserts that WVEA is the only organization required to obtain approval for professional leave days by formal resolution of the board and that at the time of her requests there were no policies or guidelines which a principal or other administrator could apply to determine whether to grant or deny a request for professional leave. As she was the only employee denied professional leave and she had not requested an excessive amount of professional leave time or otherwise abused the policy the grievant argues the denial of leave to have been discriminatory, arbitrary and capricious and requests that she be paid for the days in question as were the other employees in similar circumstances.

Principal Porter testified that she denied the grievant's request for professional leave due to her excessive absenteeism. Although the grievant had not missed any school at the time of her first request, Principal Porter stated that based upon her pattern of usage in prior years she anticipated the absenteeism would occur. As she does not believe that attendance at WVEA

meetings improves the grievant's professional skills but does cause additional disruption and harm to the educational process caused by the grievant's absences due to illness, the requests were denied.

Samuel Sentelle, former Superintendent of Logan County Schools, testified that the Logan County Education Association's request for professional leave in May had been amended to allow principals the discretion to grant or deny individual requests due to the board's concern with excessive absenteeism. He counseled the principals to treat everyone consistently but was aware of only the grievant having an usually high rate of absenteeism. He concurs that absenteeism is detrimental to the educational process and was not surprised by Principal Porter's decision to deny the leave.

The grievant contends that she was denied an open and honest evaluation as required by State Board of Education Policy 5300 for the 1986-87 school term. Although not explicitly stated the grievant appears to argue that Principal Porter was motivated by reprisal and harassment resulting in an inaccurate evaluation of her professional abilities.

Principal Porter denies any malice towards the grievant but states that on the contrary she has been giving the grievant the benefit of the doubt on prior evaluations. She indicated that her relationship with the grievant has deteriorated making their working relationship difficult.

Board's exhibit three, admitted without objection, indicates that beginning with the 1972-73 school term through the conclusion of the 1985-86 term the grievant had used two hundred and ten personal leave days and had been in "out of pay status", i.e., absent without pay, one hundred and forty-seven days for a total of three hundred and fifty-seven days over a thirteen year period. The grievant has apparently suffered from ongoing personal illnesses and the board does not question the legitimacy of these absences, neither does it indicate that the grievant abused or overused professional leave time. Rather, it opposed granting her leave with pay for the purpose of attending meetings of a professional organization when she was so frequently absent from her classroom because of illness. The board's concern relating to the consistent and effective presentation of the educational program to the children of Logan County is valid.

However, the general policy establishing professional leave time with no criteria or guidelines regarding its award, together with an established practice of liberal approval, supports the grievant's argument that the denial of her leave request was discriminatory.³ While the board has since amended the policy so that professional leave may not be granted if all personal leave time has been exhausted, no such criteria existed in April 1987 and would not have been applicable in October 1986 as the grievant had not yet used any of her leave time. Therefore, the denial of the grievant's request for professional leave time in October 1986 and May 1987 was discriminatory, and arbitrary and capricious.

The grievant's claim that she was denied an open and honest evaluation is less meritorious. Testimony regarding those areas in which the grievant was determined to be deficient is as follows: III 1) Implements administrative decisions. Principal

³Although not a part of these grievances, professional leave was apparently granted to the grievant in November 1986 to attend an AEL meeting but was denied in January 1987 to attend another quarterly meeting of the AEL. This incident does serve to illustrate the arbitrariness of Ms. Porter's actions.

Porter indicated that the grievant had refused to send home permission forms for student participation in remedial programs when requested to do so by another teacher. When questioned by the principal the grievant indicated that she would hold the forms until she could draft cover letters with her own recommendation as to whether the child should be in the program. Ms. Porter indicated she was not aware that the grievant was sending such letters and it was not necessary, and possibly inappropriate, for her to do so. She also cited incidents when the grievant had hired her own substitute and during one prolonged illness the grievant called in each morning rather than giving her a general idea of when she could return to work. This made it difficult for Ms. Porter to obtain substitutes as there were so few available and resulted in a lack of consistency for the students.

The grievant's response was that she had not been told that she could not make recommendations regarding the remedial programs and that her doctor had advised her that her recovery would have to be determined on a day-to-day basis depending upon her symptoms, therefore she could not give Ms. Porter a general idea of when she could return to work.

III- 2) Complies with county personal leave policy for professionals. Principal Porter indicated that she understood the grievant's personal illness or illness in the family but that in this case it was extreme and excessive. The grievant stated that Ms. Porter had never questioned her medical excuses.

III- 5) Works cooperatively with school personnel, teachers and other at the school and county level. Ms. Porter indicated that teachers had complained to her about the grievant's interference in their personal and professional lives, that she intimidated them so that some avoided the teacher's lounge when she was there. The grievant states that Ms. Porter has been critical of her activities as building representative in encouraging new teachers to join WVEA.

III- 6) Recognizes and uses the appropriate channels of authority. Ms. Porter testified that she could not make a decision without the grievant going over her head and provided several illustrations.

The evidence indicates the grievant had utilized her position with WVEA to arrange a call from the State Superintendent of Schools to Superintendent Sentelle requesting that she be allowed to attend the October 1986 meeting. The grievant also consulted with a WVEA attorney in October and November 1986 concerning a report on air quality testing for the presence of asbestos in the building. The testing had occurred on October 22 and the grievant requested a copy of the report on October 31 and November 3. The WVEA attorney submitted a Freedom of Information Act request on November 20. The grievant was subsequently given a copy of the report. Ms. Porter testified that she made the report available upon receiving it sometime after the Freedom of Information Act request was filed.

III- 7. Displays professional behavior. Ms. Porter indicated that the grievant exhibits inappropriate behavior with parents by "talking over their heads" and in a manner of rebuff, that she has imposed unacceptable discipline upon students such as forcing them to hold their arms up for extended periods of time, standing with their nose to the wall, placing them in a "box" and striking them on the head.

VII- 3. Receptive to constructive suggestions. Ms. Porter indicated that she has difficulty conferring with the grievant

who either wants to leave or to bring in a WVEA representative as she did during the evaluation conference. The grievant indicated that she perceived the evaluation to be more subjective than objective and that the conference had developed a negative tone warranting the presence of a representative.⁴

These and other examples contained within the record but too numerous to address indicate a strained relationship wherein Ms. Porter attempts to control the grievant who in turn does not hesitate to summon WVEA assistance in any and all matters as opposed to discussing the matter directly with Ms. Porter.

As the issues are appropriate for consideration as part of a professional evaluation and have been substantiated by specific incidents, it does not appear that Ms. Porter was acting out of reprisal or to harass the grievant. While evaluations are by necessity subjective in nature and therefore colored by one's perception it appears that in this instance it was completed honestly and in compliance with State Board of Education Policy 5300.

⁴Ms. Porter used this incident to illustrate the grievant's lack of cooperation or willingness to discuss problems. The grievant states that when she attempted to call a representative, Ms. Porter locked the phone, prohibiting its use. The grievant submits this as another illustration of Ms. Porter's harassment.

Findings of Fact

1. Grievant has been employed by the Logan County Board of Education since 1972 and is assigned as a fifth grade teacher at Verdunville Grade School.

2. The grievant is an active member of the Logan County Education Association and the WVEA. She is presently serving as an elected member of the Board of Directors of the Appalachian Educational Laboratory, a federally-funded regional project which holds quarterly meetings.

3. It is a policy of the Logan County Board of Education to grant professional leave, paid leave not a part of personal leave, to its employees for the purpose of attending professional meetings. It appears that the award of this leave has been liberally applied in the past as several individuals testified as to their experience of it never being denied.

4. The grievant requested professional leave for October 10, 1986 for the purpose of attending a meeting of the WVEA Executive Committee with the State Board of Education.

5. That request was denied by Barbara Porter, principal, due to the grievant's excessive absences. At that time the

grievant had missed no school during the 1986-87 school term, however, Ms. Porter indicated that the denial was based on anticipated absenteeism which the grievant has established as part of her work history. The grievant subsequently used a personal leave day and attended the meeting.

6. From 1972 through 1986 the grievant has used two hundred and ten sick leave days and has been "out of salary schedule" or "docked" one hundred and forty-seven days for a total of three hundred and fifty-seven days or approximately one and three-fourths school years out of thirteen.

7. The grievant has suffered from a long term illness and the board does not question the validity of the sick leave usage stated above.

8. After the October meeting the grievant became ill and missed nineteen days of school, exhausting her remaining personal leave time for the 1986-87 school year.

9. Sometime in November the grievant requested and was granted leave to attend a meeting of the Appalachian Educational Laboratory. A request to attend a second AEL meeting in January 1987 was denied. The grievant notes that no grievance was filed as a result of that denial and there is no indication

that it is a part of the present grievances.

10. In April 1987 the Logan County Education Association petitioned the board for professional leave for twelve of its unnamed members to attend the WVEA Delegate Assembly in May. The request was granted subject to the approval of the individuals' principals.

11. Ms. Porter denied the grievant's request for professional leave in May due to her excessive absenteeism.

12. Testimony of former Superintendent Sam Sentelle indicates that the board's contingency of principal approval was based upon its concern regarding absenteeism and that he agreed with Ms. Porter that excessive absences by a teacher was disruptive to the educational process.

13. No other delegate was denied professional leave in May although Dr. Sentelle stated that no one else had an absenteeism rate comparable to the grievant. No standards or policies were in place at that time upon which approval or denial was to be decided.

14. Both the record and the body of this decision contained a multitude of incidents occurring between the grievant and Principal Porter and will not be restated herein. The testimony

indicates that the grievant engages in behavior which Ms. Porter does not find to be professionally acceptable. The grievant does not appear to trust or cooperate with Ms. Porter and frequently summons assistance from WVEA before attempting a more informal resolution.

15. The observation form completed by Ms. Porter indicates several categories in which the grievant did not meet standards, however, the annual evaluation shows the only area of deficiency to be professional work habits.

16. Although some frustration could be detected on the part of Ms. Porter regarding her supervision of the grievant, she provided supportive evidence for her evaluation and did not appear to be acting out of reprisal or to harass the grievant.

Conclusions of Law

1. W.Va. Code, 18-29-2(m) defines discrimination as any differences in the treatment of employees unless such differences are related to actual job responsibilities of the employees or agreed to in writing by the employees.

2. When a board of education determines that its employees may be granted professional leave to attend a professional meeting,

the denial of that leave to one individual due to excessive absenteeism when no policies or criteria exist to provide guidelines for the decision constitutes discrimination and is arbitrary and capricious in light of an approved request for that individual within the same school year.

3. Personnel policies must be in writing and available to all employees to be enforceable. Clevenger v. Harrison County Board of Education, Docket No. 17-86-261-3; Miller v. Fayette County Board of Education, Docket No. 10-86-284-4.

4. The grievant has failed to show that she did not receive an open and honest evaluation as required by State Board of Education Policy 5300 or that the evaluation was a form of reprisal or harassment as defined by W.Va. Code, 18-29-2(d) and (n).

5. It is incumbent upon the grievant to prove all of the elements of a grievance by a preponderance of the evidence. Young v. Kanawha County Board of Education, Docket No. 20-87-210-1; Morris v. West Virginia University, Docket No. BOR1-87-168-2; Damion v. Mingo County Board of Education, Docket No. 29-86-254-4.

According, the grievance regarding professional leave is

GRANTED and the board is hereby ORDERED to compensate the grievant for October 10, 1986 and May 14 and 15, 1987. The grievance regarding the 1987 evaluation is DENIED.

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

May 2, 1988

Sue Keller

SUE KELLER

HEARING EXAMINER