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RANDY WHETSTONE

v.

DOCKET NO. 12-88-106

GRANT COUNTY BOARD OF EDUCATION

DECISION

Grievant, Randy Whetstone, was employed by the Grant County Board of Education and assigned as principal at Union High School until his termination effective the end of the 1987-88 school term. A grievance was filed directly to level four on June 13, 1988 and a hearing was conducted on July 22.

Evidence presented at the level four hearing establishes that the grievant was hired to fill the position as principal after the beginning of the school year (on or about September 9, 1987) due to the sudden resignation of the previous administrator. He was evaluated by Harold Garber, Director of Secondary Education, three times during the school year. The evaluations consist of eight performance standards with numerous specific

criteria for each, plus a section denoted for comments by the evaluator.¹ The individual is to be rated for each performance standard as commendable, satisfactory, needs attention or unsatisfactory.

The grievant's first evaluation, dated December 7, 1987, indicated his performance to be "satisfactory" in six areas, learning climate was marked as "needs attention" and personnel evaluations was not rated as it was not applicable at that time. Under "comments" Mr. Garber noted that "communications with staff must be improved and discipline code should be finalized for second semester."

The grievant's second evaluation dated February 15, 1988 indicated that the areas of learning climate and relationships needed attention. The area of personnel evaluations was again not marked with a note that the evaluator had not seen any evaluations to date. Mr. Garber's comment was that "[m]y concern center on communications problems with staff and the chance of the discipline code succeeding without total cooperation by all concerned."

¹The performance standards include instructional leadership, learning climate, student progress, school improvement process, relationships, personnel evaluations, professional work habits and professional growth.

Mr. Garber testified at the level four hearing that the third evaluation, which was undated, was presented to the grievant on April 12. The evaluation indicated that the areas of learning climate, school improvement process, relationships, personnel evaluation and professional work habits all needed attention. Mr. Garber noted that the grievant had been disadvantaged in assuming his position after the beginning of the school term and by a personal injury but that problem areas, especially communications, needed a strong effort to realize improvement. The grievant was rated "Below Standards" and the evaluator conditionally recommended the grievant's reemployment. In a three page appendix attached to the evaluation Mr. Garber addressed those areas of greatest concern and provided an improvement plan. Five areas were included in the plan with recommended action to correct the deficiencies. Monitoring was to continue during the 1987-88 and 1988-89 school terms with a final evaluation of the grievant's progress on April 12, 1989.²

²The plan of improvement indicates April 12, 1988; however, at the level four hearing Mr. Garber indicated that to be in error and should have been 1989.

In the spring of 1988 the board of education approved the superintendent's recommendation that the grievant be reemployed for the 1988-89 school year. However, at a special session held on June 7 the board approved a recommendation that the grievant be dismissed as principal effective the end of the 1987-88 school year due to incompetence and inefficiency in the performance of his duties.³ At the level four hearing the board of education presented the testimony of students, teachers, service personnel, administrators, board members and parents in support of the charges.

The grievant argues that the dismissal action taken less than two months after he was placed on a plan of improvement for which he had been allowed no input was in violation of State Board of Education Policy 5300 (6) (a); Grant County Board of Education Policy GCN/GDN and holdings of the W.Va. Supreme Court of Appeals.

³The board minutes reflect that the recommendation for dismissal was made "[d]ue to the continuing unrest of the teaching staff, the parents, and the students at Union High School, as well as the communities of the Mountaintop...".

State Board of Education Policy 5300(6)(a) provides that any decision concerning termination of employment shall be based upon open and honest evaluation of the individual occurring on a regular basis. Further, every employee is entitled to the opportunity of improving his performance prior to the termination of his services. The due process rights of employees established by this policy have been upheld by the W.Va. Supreme Court of Appeals on numerous occasions. See generally, Mason County Board of Education v. State Superintendent of Schools, 247 S.E. 2d 435 (W.Va. 1980); Trimboli v. Board of Education of the County of Wayne, 254 S.E. 2d 561 (W.Va. 1979); 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).

Grant County Board of Education Policy GCN/GDN provides employees further protection. It requires that an improvement plan, written by the evaluator and using input from the employee, shall be devised for the areas in which the employee needs improvement as indicated by ratings of "needs improvement" or "unsatisfactory". The plan of improvement is to consist of a statement of the deficiency(ies) and the specific performance standard(s) not met, a plan to remedy the deficiency(ies), a

monitoring system and a specified timeline for evaluating progress. If satisfactory progress is not made, a second improvement plan will be implemented with an improvement team. In any event the employee is to be given one year to improve. "Demotion, dismissal and non-rehiring decisions because of unsatisfactory performance will only be made on the basis of unsatisfactory evaluations after all improvement processes as outlined in this policy have been implemented and have not resulted in satisfactory improvement."⁴

While the board of education has unequivocally established that the grievant's performance was unacceptable in the position as principal it did not convey that fact to him until April 1988. He was not given the opportunity to provide input into the plan of improvement attached to the April evaluation and there is no indication that the grievant was observed or evaluated between the time the plan of improvement was given to him and the superintendent recommended his dismissal.

⁴This policy would be in compliance not only with the above-cited decisions requiring that an employee be given a plan of improvement but also with the theory addressed in Wren v. McDowell County Board of Education, 327 S.E. 2d 464 (W.Va. 1985) which indicates that the employee must also be given a reasonable period of time in which to demonstrate the improvement.

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 was hired on or about September 9, 1987 by the Grant County Board of Education to fill the position of principal at Union High School.

2. The grievant was evaluated by the Director of Secondary Education in December 1987, February and April 1988.

3. On the December and February evaluations only one and two areas, respectively, out of eight were marked "needs attention". The director had also made "comments" to the effect that the grievant needed to improve the communications with his staff and school discipline. No plan of improvement was given after either of these evaluations which indicated the grievant's performance to be generally satisfactory.

4. The grievant's April evaluation indicated that his performance was "below standards" overall and that he needed to improve in five of the eight areas evaluated.

5. The grievant was provided a plan of improvement which was attached to the April evaluation. He had not been given the opportunity to provide input to the plan prior to its development.

6. The plan of improvement provided a timeline for monitoring with an evaluation of the grievant's progress under the plan due in April 1989.

7. The superintendent recommended and the board of education approved the grievant's reemployment for the 1988-89 school term.

8. In June, as a result of staff and community protest against the grievant the superintendent recommended and the board of education approved his termination of employment effective the end of the 1987-88 term.

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, Docket Number 25-87-274-3; Shillingburg v. Mineral County Board of Education, Docket Number 28-86-136-2 and Hastings v. Ohio County Board of Education, Docket Number 35-87-304-3.

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, 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 Number 20-87-073-1.

3. Pursuant to Grant County Board of Education Policy GCN/GDN an employee shall be given the opportunity to correct any incompetency through an improvement plan. Should satisfactory progress not be made a second plan shall be implemented through an improvement team. In any event the employee is to be given one year to improve. An administrative body must abide by the remedies and procedures it properly establishes to conduct its affairs. Powell v. Brown, 238 S.E. 2d 220 (W.Va. 1977) and Kelly v. Jackson County Board of Education, Docket Number 18-87-179-3.

4. The dismissal of the grievant less than two months after he was given an unsatisfactory evaluation and plan of improvement is violative of both state and county policies regarding termination for incompetency.

Accordingly, the grievance is **GRANTED** and the board of education is Ordered to reinstate the grievant as principal at Union High School with any lost wages incurred. Interest and attorney fees may not be awarded at this level.

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

August 29, 1988

Sue Keller

SUE KELLER
HEARING EXAMINER