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**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**
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Charleston, WV 25301
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DAVID WILSON, et al.

v.

Docket No. 43-88-097

RITCHIE COUNTY BOARD OF EDUCATION

DECISION

Grievants Nellajean Bumgardner, Judith Butta, May Ann Colvin, Clare Snyder, Mike Robinson, Jean Holbrook, Vince Butta, Donna Pratt, Karla Murphy, Pam Rollins, Sandra Merritt, Stephanie Seese, Melissa Layfield, Steven Kaufman, Jean Adams, Marvin Stanley, David Wilson, Barbara Robinson, Sandra Millikin, Patricia Cowan, Jean Cronin, Jack Langford and Linda Jennings are all professionally employed as teachers or support staff by the Ritchie County Board of Education and assigned to Ritchie County High School (RCHS), either for their total teaching work day or as a split assignment with another school or schools. On June 3, 1988 the grievants filed a level four appeal protesting their one day suspension without pay instituted by the board as a disciplinary measure when grievants "walked off the job" on Friday, May 27, 1988. A level four hearing was conducted July 22, 1988 (T.__) and the parties agreed to file proposals by August 19, 1988; grievant's brief was received August 22, 1988 but counsel for respondent has made no submission to date.

The principal of RCHS, Russell Crawford, and the Superintendent of Schools, F. Dixon Law, appeared on behalf of the board. Mr. Crawford testified that after the start of the instructional day on Friday, May 27, 1988 at approximately 10:50 a.m. one of the grievants, David Wilson, informed him that the teachers would walk off the job at 11:11 a.m.; Crawford then notified the superintendent, who had planned to be at the school site for another matter. When nearly all of the school's teachers left the building at the designated time and congregated at an bank automated teller machine (ATM) located nearby but off the school campus, the principal conferred with the superintendent and it was decided to call the buses and return the students to their homes.

Mr. Law generally corroborated the principal's account. As soon as he could, Mr. Law testified, he informed the board members he could reach of the teachers' walkout and the decision to send the students home. He stated that he directed Mr. Crawford to ascertain which staff members were involved in the walkout. The board was scheduled to meet on June 1, 1988 and at that time Mr. Law recommended to the board that the teachers have their pay docked for the one-half day they walked off, be suspended for one day without pay and have the notification letter (letter of reprimand) become part of each teacher's personnel file for a period not to exceed five years. Responding to cross-examination,

Mr. Law stated that he was aware of the county policy for constructive supervision but the policy contemplates remediation for teaching deficiencies and related aspects of the teacher's performance and was not applicable in this situation in his opinion. The board unanimously accepted Mr. Law's recommendation and letters were issued to grievants bearing the date of June 2, 1988.

The notification letter/letter of reprimand advised grievants that they had participated in an illegal action, a concerted work stoppage, and pursuant to W.Va. Code, 18A-2-8 they were being suspended for willful neglect of their duties for the work stoppage.

In his summation at level four, counsel for the board argued that whether or not the action of the teachers was an illegal act as defined by law, it was nonetheless a deliberately executed work stoppage whereby the teachers walked off the job, neglected their duties to supervise and instruct their students and failed to provide adequate notice to school administrators of their intentions that they were not going to properly instruct and supervise their students. Under those circumstances, counsel argued, their actions amounted to willful neglect of their duty as contemplated by W.Va. Code, 18A-2-8 and the board therefore had the right and authority to discipline them via a suspension "at any time" as dictated by the statute.

Several of the involved grievants testified on their own behalf attempting to establish a rationale for their behavior on May 27, individually and collectively. It appears the impetus for the teachers' action arose the previous evening, Thursday, May 26, at a school board meeting. Apparently a senior student at RCHS failed a class taught by grievant Stephanie Seese in the second semester of the 1987-88 school year. The student was thus one-half credit shy of graduation requirements as set forth by the board of education. It is clear from Ms. Seese's testimony that the parents of the boy knew of their son's academic difficulties in another course taught by Ms. Seese the previous fall semester and should have known of the current difficulty. Ms. Seese testified that during the spring semester she had called the parents on at least one occasion seeking return of a test paper graded "F," which she had directed the student to have his parents sign and return to her. The guidance counselor at RCHS, another grievant herein, Jack Langford, recalled that he informed the parents three or four weeks before graduation that the student was in danger of not passing classes. He said he knew that the parents later met with the principal about the matter. Subsequently he met with Ms. Seese on several occasions to determine whether the student could do make-up work to graduate but it was her opinion that an entire semester's work could not be made up in several days. He stated that he supported Ms. Seese's decision. At some point the parents were advised that their only recourse was to take the matter to the board.

Presumably, RCHS personnel were led to believe that the boy's parents would plead their son's case before the board on the evening of May 26. Principal Crawford, Ms. Seese and Mr. Langford attended the school board meeting, although they were not asked to appear. Ms. Seese testified that the board went into executive session with the parents of the affected student and later came back into regular session and voted to award the student sufficient credits to graduate in the upcoming weekend ceremonies. When Crawford, Langford and Seese protested that they had not been given an opportunity to air their position, the board went into executive session again with them but counseled, "It's too late now, we've already voted," according to Ms. Seese.

The grievants who testified voiced concern that their professional integrity to teach and grade students was on the line and if the board usurped their authority once it could do so again. Grievants felt that concerned teachers at RCHS had no recourse on May 27 but to do what they did to gain the board's attention as it was a Friday and graduation ceremonies were to occur the upcoming weekend. Several grievants testified that they were surprised when no one intervened and questioned why they left their posts, ordered them to return to their classes or attempted any other ways or means to halt the work stoppage and resolve the problem.¹

¹ Grievants focused much argument on their position that the board had a duty or "requirement" to investigate, both during and after the walkout. What appeared to emerge in this matter is that grievants wanted the incident involving the student and other dissatisfactions with respect to school matters and the board's "lack of communication" publicly aired.

The grievants denied that the purpose of the walkout was to protest the board's "lack of communication" with respect to a reorganization of the teaching schedule at RCHS from a seven period to an eight period day which the teachers opposed. They also denied the walkout was formally organized by themselves or by State or local teacher advocacy members and claimed the action was mostly spontaneous with individual decisions to participate made only shortly before the designated time.

Grievants contend that the disciplinary actions taken by the board were improper and unjustified because the board and school administrative officials failed to "investigate" and query the teachers about their reason for walking out, failed to ask or order them to return to their classrooms and did not notify them of the possible severity of any disciplinary action which included the double punishment of a letter of reprimand to be placed in their files and the loss of one day's wages.

The grievants' major arguments against the suspension action are as follows: 1) the board failed a "requirement" that it properly investigate the matter to determine specifically who had walked out and/or the extent of each individual's actual work stoppage before it concluded willful neglect of duty on the part of the grievants; 2) the board did not follow established board policy of progressive discipline for undesirable employee behavior starting with oral reprimand and continuing with written

reprimand and harsher sanctions for continued lack of compliance with remediation measures and its failure to follow or comply with its own disciplinary policy should result in the suspension action being overturned; 3) the board failed to demonstrate a "concerted work stoppage" thus not showing a willful neglect of duty as required by statute; and 4) the action of the teachers at RCHS was not an illegal act in West Virginia but was instead a justified spontaneous action, constitutionally protected, to protest a serious situation created by the board itself when it violated its own instituted policies regarding graduation requirements for senior students and usurped the teachers' authority to evaluate and grade their students.

In support of their arguments, grievants submitted six American Arbitration Association decisions involving school personnel from several states and cited those cases as well as other case law.² Grievants urge that the suspension action of the respondent board that resulted in the loss of one day's wages and inclusion of a letter of reprimand in each person's file be overturned.

²The determinations rendered by the various Arbitrators' cases dealt with interpretations of collective bargaining contracts negotiated between each school entity and its employees and are not persuasive or relevant to the instant grievance. Much of the cited case law is creatively applied but not relevant or analogous to the facts of this grievance and are thus inapposite.

The grievants' arguments and legal authority are not persuasive. The issues in this grievance are whether teachers who admittedly left their teaching posts and their students several hours after the beginning of an instructional day have willfully neglected their known duty to their students and whether the school board has properly and reasonably exercised its authority under W.Va. Code, 18A-2-8 to suspend or dismiss employees for any of the named causes including willful neglect of duty.

Grievants correctly argue that public employees have a right to participate in peaceful concerted activities to associate, speak and petition openly on employment matters, to protest against the policies of government and to not suffer retaliation at the hands of their employers as a result of their activities. Grievants' argument that their walkout action to voice their protest was not illegal, however, is not compelling as the legality of their action is not at issue. Regardless of what motivated the grievants' walkout they did willfully abandon their students abruptly with no provisions made for the students' care and supervision and the statute does not require that the incident of willful neglect of duty be either a "concerted" work stoppage or any other illegal act.

Grievants' invocation of county policy GBJA is also unconvincing. The policy, "Constructive Supervision," clearly states that any disciplinary action taken should be proportioned to the seriousness and nature of the offense. The policy sets forth guidelines for general application of remediation from oral to written reprimands and further disciplinary action if necessary.

Abandoning students without provisions for their care is hardly an offense or performance deficiency warranting only a general step-by-step application of the policy but is rather an extraordinary action of an extremely serious nature. The investigation by the board to identify the teachers involved in the walkout, deemed lacking by grievants, was adequate as none of the grievants denied that they participated in the incident. Grievants' argument that an investigation of the incident should have revealed and explored the teacher's rationale for the walkout, i.e., the board's May 26 action, is also without merit as the teachers could exercise options to air their concerns and prevent a recurrence other than to abandon students without timely or adequate notice to school officials.

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

FINDINGS OF FACT

1. Grievants herein are twenty-three (23) professional personnel employed by the respondent board of education and assigned to Ritchie County High School (RCHS); several of these teachers are assigned to one or more other schools for part of the workday.

2. RCHS serves approximately 575 students with a teaching, administrative and daytime support staff of approximately 40 persons. (T.3,4). May 27, 1988 was a scheduled instructional day.

3. On Friday, May 27, at approximately 10:50 a.m. one of the grievants, David Wilson, reported to the school principal, Russell Crawford, that the teachers were going to walk off the job at the end of the period (11:11 a.m.); Wilson was told the superintendent would be notified and "there will probably be (disciplinary) problems with it." (T.5). Mr. Crawford contacted the school superintendent, F. Dixon Law, who had arrived on the school grounds at the vocational building.

4. After giving only twenty minutes notice of their impending actions, approximately 28 teachers departed from the school building and grounds at the designated time to congregate at a bank automated teller machine (ATM) nearby leaving Mr. Crawford and four teachers to manage the entire student population. Students were herded into the school bleachers. The superintendent then called the school buses to take the students home and notified the school board members of the circumstances at the high school as soon as he got back to his own office.

5. The superintendent directed Mr. Crawford to prepare a list of the teachers who participated in the walkout. A protracted investigation was not necessary as school officials could readily count noses to ascertain who remained in the school and check attendance records to eliminate any teacher legitimately absent.

6. None of the grievants herein denied that they participated in the teacher walkout but at least two of them, one who returned to the high school (Jack Langford) and one who reported to an alternate work site (Sandy Millikin) sometime after 2:00 p.m. to perform duties for the remainder of the day, did not inform Mr. Crawford of their return to work. A guidance counselor assigned part-time at RCHS, not a grievant herein, testified that she joined the teachers at the ATM to show her support

and later returned to the high school to assist Mr. Langford with graduation chores. She stated that she was not suspended. Her afternoon assignment, however, was at another school and she normally departed RCHS around noon. She did not inform Mr. Crawford that she had not met her scheduled afternoon assignment.

7. None of the grievants herein informed school officials of the reason for their abrupt walkout or made any demands in lieu of a walkout either before or after they departed the high school on May 27 and their expectation that school officials track them down at the ATM to ask them to explain their reasons or to order them to return to their classrooms is unreasonable under the circumstances since the immediate needs of the school's student population had to be met.

8. Monday, May 30, 1988 was a school holiday and the teachers returned to their classrooms when school resumed on Tuesday, May 31. On Wednesday, June 1, the board convened for a scheduled meeting and Mr. Law recommended that the teachers who participated in the walkout be disciplined by means of a one day suspension without pay with provisions that the notice letter remain a part of their personnel files for a period of time not to exceed five years. The board unanimously accepted Law's recommendation.

9. Notice letters dated June 2, 1988 were prepared for the 28 teachers named on Mr. Crawford's list. The letter informed the teachers of the board's action that the board had determined that the teachers' May 27, 1988 action was an illegal concerted work stoppage; that by participating in the unauthorized work stoppage, the teachers would be suspended for one day without pay for willful neglect of duty in accordance with W.Va. Code, 18A-2-8; that participation in any other work stoppage would be grounds for immediate dismissal; and that the notice letter would become a part of their file for a period not to exceed five years.

CONCLUSIONS OF LAW

1. W.Va. Code, 18A-2-8 provides that a school board may suspend or dismiss an employee at any time for stated reasons, which include immorality, incompetency, cruelty, insubordination, intemperance and willful neglect of duty. This authority is to be exercised reasonably and for good cause shown by a preponderance of the evidence. DeVito v. Board of Education, 317 S.E.2d 159 (W.Va. 1984).

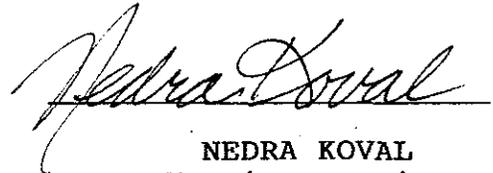
2. It is not the function of the State and Education Employees Grievance Board to modify the discipline meted out to school employees but, instead, to examine and assess the evidence presented upon which the discipline was predicated. Totten v. Mingo County Board of Education, 301 S.E.2d 846 (W.Va. 1983); Pinson v. Cabell County Board of Education, Docket No. 06-87-100-1; McFarlane v. W.Va. Department of Education, Docket No. DOE-87-132-1.

3. The board of education has shown by a preponderance of the evidence that grievants willfully neglected their duty to their students and that the exercise of its powers to discipline and suspend was not unreasonable or so disproportionate to the offense as to be improper or shocking to one's sense of fairness. Gobeli v. Tucker County Board of Education, Docket No. 47-87-257-2.

Accordingly, this grievance is **DENIED** and the board's one day suspension of grievants for willful neglect of duty is affirmed.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Ritchie 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: September 9, 1988



NEDRA KOVAL
Hearing Examiner