



**Members**  
James Paul Geary  
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**WEST VIRGINIA EDUCATION AND  
STATE EMPLOYEES GRIEVANCE BOARD**

**GASTON CAPERTON**  
Governor

**Offices**  
240 Capitol Street  
Suite 515  
Charleston, WV 25301  
Telephone 348-3361

**NANCY BONNETT**

**v.**

**Docket No. 20-89-007**

**KANAWHA COUNTY BOARD OF EDUCATION**

**DECISION**

Grievant Nancy Bonnett was a Secretary III at Nitro High School (NHS) for Respondent Kanawha County Board of Education until her dismissal on January 16, 1989. Ten days before, she instituted the following claim:

I have been suspended from my employment. .  
.[based on] written charges filed against me.  
Pursuant to. . .[W.Va. Code §18A-2-8], I am  
seeking immediate appeal to Level IV.

These "written charges" were conveyed to Grievant by letter, dated December 22, 1988 and marked "confidential," from Richard D. Trumble, Ph.D., Superintendent of Schools for Kanawha County. The letter reads:

I am in receipt of a recommendation from Mr. Paul McClanahan, Principal of Nitro High School, that you be suspended pending and [sic] investigation into an allegation that you have, over a period covering at least the past two years, embezzled from school monies an amount in excess of \$14,000.00.

It is my understanding that you were provided with an opportunity to explain the apparent shortages and failed to provide a satisfactory explanation.

Based upon the foregoing, you are hereby suspended, with pay, pending a hearing upon the question of whether I should recommend the termination of your employment to the Kanawha County Board of Education. You will be advised of the date, time and location of such hearing. During the period of your suspension, you are not to enter the Nitro High School premises.

The hearing referenced was conducted on January 11, 1989;<sup>1</sup> as a result thereof, Grievant's dismissal was effected. At the Level IV hearing held February 15, 1989,<sup>2</sup> Grievant, without objection from Respondent, amended her complaint to include her termination and attendant request for reinstatement.<sup>3</sup>

The unrefuted evidence reveals that Grievant had, for a number of years, been secretary to NHS Principal Paul McClanahan and also the school's bookkeeper. In that latter capacity, her duties included maintaining records of money generated by daily lunch and breakfast programs; collecting

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<sup>1</sup> At this hearing, a transcript of which is in the record at Level IV by joint motion of the parties, evidence was presented that Respondent's losses potentially attributable to Grievant might have exceeded \$22,600.00 over several years. T. 50.

Transcript references in this Decision are to that of the suspension hearing. Inasmuch as Grievant, NHS Principal Paul McClanahan and NHS teacher Norma King testified both at that meeting and at Level IV, some of the suspension hearing testimony was duplicated at the hearing before this Grievance Board.

<sup>2</sup> The Level IV hearing, originally scheduled for February 1, was continued upon Respondent's motion and for good cause shown. Grievant had no objection to this delay.

<sup>3</sup> It was represented at Level IV hearing that criminal charges were not then pending against Grievant, and the undersigned must assume this is status quo.

lunch money from students as they entered the cafeteria line; and bank-depositing each day's meal money less \$50.00.<sup>4</sup> NHS' cooks took up breakfast program money and also kept statistics on regular (full price paid), reduced-cost and free meals and extra milks served each morning on the "Daily Hot Lunch Report" form, reproduced approximately as Appendix 1, which they delivered to Grievant just before lunch along with the cash they had collected. Grievant, in turn, recorded the number of regular, reduced and free lunches and extra milks requested on the same form, and monies collected for same. Persons eligible to receive free or reduced meals<sup>5</sup> were listed by name; those eating breakfast on a given day were to be identified by the cooks' slash to the left of their name, and those taking free or reduced lunch were noted with Grievant's checkmark to the right. See Appdx. 1. Another of Grievant's duties was to ensure that fifty dollars, in appropriate denominations, was deleted from the meal money each evening prior to deposit,

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<sup>4</sup> For further explanation of this procedure, see this Decision, infra.

<sup>5</sup> Some of these were students from families with low incomes; others were NHS employees with cafeteria-related responsibilities.

At pertinent times, students' meal prices were as follows: regular breakfast, forty-five cents; reduced breakfast, thirty; regular lunch, eighty-five cents; and reduced lunch, forty-five. Extra milks were fifteen cents per serving.

so that the cooks could start the next morning with this amount in change.<sup>6</sup>

In November 1988, NHS cooks Beulah Pritt and Hazel Casto approached Principal McClanahan and expressed concern that the amount of breakfast money they certified on the daily reports as having been collected ("Total Money Breakfast," Appdx. 1) was regularly being altered, perhaps by Grievant. At first, McClanahan minimized the problem, but the cooks persisted and he investigated by reviewing several of the forms. As a result, he discovered what he thought could be significant discrepancies; specifically, "Total Money Banked" regularly was less than indicated by "Total Number Regular Meals," and more persons were counted as having eaten free or reduced meals than names marked with a slash and/or a check. He began suspecting that Grievant might be misappropriating funds. Without revealing his suspicions, McClanahan enlisted the assistance of Ms. Norma King, NHS accounting instructor, in an analysis of school meal money matters. McClanahan also called Mr. Stan Keller, Respondent's Director of Accounting, to do what amounted to an emergency audit of certain of NHS' meal program records to get his opinion. Mr. Keller concluded that, over the

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<sup>6</sup> Other particulars about the collection and record-keeping of NHS meal money have limited pertinence to this grievance and as such have been excluded.

years, several thousand dollars had possibly been stolen or otherwise lost from NHS' meal program. See n. 1.

On December 16, 19, 20 and 21, 1988,<sup>7</sup> Ms. King collected lunch money and completed the daily report delivered to her along with breakfast money by the cooks, but transferred the cash to Grievant for delivery to the bank. An amount less than Ms. King had readied for deposit was placed in NHS' bank account on each of those days, specifically, forty dollars less on December 20, fifty dollars less on December 19 and 21, and sixty dollars less on the 16th. She testified that, on each of the four days, she had already deleted the fifty dollars in change money for the next day prior to arriving at her deposit figure. She added that she had placed this money in "the cash box" and had handed this receptacle to Grievant with an explanation of its contents. On one of these days, according to Ms. King, Grievant criticized her for her poor choice of denominations of money for change. T. 44-45.

Ms. King explained that she had reviewed the daily reports for December 1988 and that, almost without exception, Grievant had not used the cooks' slashes but had listed all 23 students eligible for free or reduced breakfast as having eaten that meal. It also appeared to Ms. King that Grievant had changed the dollar amount the cooks

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<sup>7</sup> These were consecutive school days.

had verified as collected for breakfast each day. It is noted that the slashes on Gr. Ex. 4 and 5, reports for December 16 and 19, do not match the number shown by the cooks as having eaten free or reduced breakfast; also, Ms. King admitted that the cooks had given her what they counted as \$52.35 in change money on December 16, which she later discovered to be \$50.00. T. 37-38.

Mr. McClanahan testified he had given Grievant every opportunity to explain all the perceived discrepancies, but that she had, in effect, "not given him anything to help her." See T. 23. On cross-examination at Level IV, certain information related to possible personal animosity between McClanahan and Grievant was adduced. The undersigned is satisfied that, if such problems did exist, they did not taint McClanahan's motivation to charge Grievant with embezzlement.

At the suspension hearing, Mr. Keller agreed with Grievant's counsel that NHS' daily reports were not obfuscated in any way; instead, Grievant's notations rather clearly revealed how she had arrived at the amount ultimately deposited. Keller also conceded that it would have been easy for Grievant as keeper of the books to add slash or check marks to the forms to give the appearance that more students had eaten than was actually true, if she had been so inclined. T. 70-72. Keller stated that he had performed an annual audit on NHS' books but had "never had any problem" with them, although his audits had not included the hot

lunch report forms. He also said he has conferred over the years with Ms. Bonnett at her instance, sometimes regarding meal monies. T. 60-63. He added that Respondent is only "in the . . .beginning states to develop a system whereby head counts times rates will have to tie into the amount deposited." T. 56. He admitted that, at relevant times, there was no independent verification of the daily lunch/breakfast reports, such as a cash register tape. T. 59-60.

Ann Howland, Ph.D., Clinical Psychologist, presented at Level IV as an expert witness on Grievant's behalf. Dr. Howland, who often administers psychological instruments to prospective personnel on behalf of employers such as 7-11 Stores, supervised the completion of the Minnesota Multiphasic Personality Inventory (MMPI) by Grievant.<sup>8</sup> The results indicated to Dr. Howland that Grievant was "normal" in all measured areas, including honesty, reliability, judgment and energy level. Grievant was further revealed to be independent, pleasant, sociable, courageous, idealistic, perhaps hypersensitive to criticism, not likely to act out behavior, and with a major defense mechanism of denial of her emotional feelings. Dr. Howland concluded that Grievant would likely be a good employee. On cross-examination, she

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<sup>8</sup> Dr. Howland explained that the MMPI is a well-recognized and generally accepted psychological test. No evidence to the contrary was offered.

admitted that Grievant's MMPI validity scales were elevated, revealing she possibly was "trying to put her best foot forward." She explained, however, that the MMPI was corrected for such deviation and that it would be nearly impossible for a subject to "fool" a trained examiner. Dr. Howland conceded that the MMPI was no guarantor that the testee was incapable of non-indicated behavior, just that he or she would be unlikely to engage in such.

Mrs. Jody Smith testified at Level IV that she had known Grievant for over twenty years as a client of her husband, Abbott Smith, D.V.M. Mrs. Smith related that she had often travelled with her husband from their home in Ohio to Grievant's horse farm to render veterinary services. According to Mrs. Smith, Grievant had always been very fair and honest in her dealings with them; she had paid her bills on time; and often, when Dr. Smith undercharged Grievant, it was she who brought the error to his attention.<sup>9</sup>

Ms. Bonnett, who explained she had never been provided "training" in handling lunch money, testified she regularly failed to check off the students who are served free or

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<sup>9</sup> Over Respondent's objection, Grievant's attorney also elicited testimony from Mrs. Iva Moody, who had been secretary to NHS principals during the 1950's. The thrust of Mrs. Moody's offering was that "there were problems with the lunch program then too." Grievant argued, from this, that NHS' difficulty with its collection and recording of meal funds extends from then to today and is thus one of longstanding. This testimony and Grievant's attendant argument is of such limited pertinence that it has been afforded virtually no weight.

reduced lunch due to the confusion of the crowd, noise, change-making, lunch options<sup>10</sup> and other factors. She further averred that the cooks often orally reported to her that a higher number of students than those indicated on the form had actually eaten breakfast, due at least in part to the cooks' responsiveness, "to keep the count up," to tardy students coming to the cafeteria and requesting something to eat. Grievant opined that the cooks may make repeated mistakes in counting breakfast funds. She continued that, no matter what the amount was that had been written on the form as having been collected, she had to make the figures match the money she had in hand at the end of the day. She also said that she did not count the cash given to her before she started collecting lunch money, and that the cooks did not always keep the change money separate from breakfast collections. She additionally alleged they sometimes commingled personal funds with the change, using "change from their own purses." T. 86.

She claimed she had expressed concern many times over the amount of money not balancing with the figures on the form, to McClanahan, NHS' cooks and Ms. Mary Pullen, Respondent's now-retired Coordinator of Food Services. Grievant said Ms. Pullen always advised her "lunch money never comes

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<sup>10</sup> On most days, NHS students and others may choose from a tray, bag or salad lunch. See Appdx. 1.

out, not to worry about it." T. 75.<sup>11</sup> Grievant added that the amount of money in her possession at the end of the day hardly ever was the same as what the count on the form indicated it should be, and that at times she had an overage. When asked about the four days in December when Mrs. King collected lunch money, she denied knowing that the change money had already been excluded from the deposit figure and explained the "missing" \$200.00 as being her subtraction of the change money over a four-day period from the King deposit figure. She had no explanation for discrepancies on other days, except to say that they were not at all unusual in her experience and again, she had been advised "not to worry" about them.<sup>12</sup>

Respondent presented rebuttal evidence from Ms. Beulah Pritt, NHS cook. Ms. Pritt testified that she had never given Grievant verbal information that students not listed on the report had eaten meals. She stated that she always slashed the names of students when they ate free or reduced-cost breakfast. She had no explanation when presented with forms from several days in October 1988 indicating several students had eaten free or reduced breakfast

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<sup>11</sup> Ms. Pullen did not testify or otherwise present evidence at either the suspension hearing or Level IV.

<sup>12</sup> At one point, Grievant made reference to meal monies lying open on top of her desk for a period during the day; however, she did not seriously contend, and indeed there is no evidence, that funds were ever stolen from her or misplaced or lost by her.

but with no slash marks beside their names. Ms. Pritt also stated it was her understanding that the more meals a school sold, the more help it was likely to retain in its kitchen.

W.Va. Code §18A-2-8 provides, in pertinent part:

[A] board [of education] may suspend or dismiss any person in its employment at any time for: Immorality, incompetency, cruelty, insubordination, intemperance or willful neglect of duty, but the charges shall be stated in writing served upon the employee within two days of presentation of said charges to the board [of education]. The employee so affected shall be given an opportunity. . .to request. . .a level four hearing. . .

Code §61-3-20<sup>13</sup> provides, in pertinent part:

If any. . .agent. . .or servant of any. . .school district. . .embezzle or fraudulently convert to his own use. . .money. . .which shall have come into his possession, or been placed under his care or management, by virtue of his. . .employment, he shall be guilty of the larceny thereof. . . [I]t shall not be necessary to describe in the indictment, or to identify upon the trial, the particular. . .money. . .appropriated or used for his own benefit. . .

Code §62-2-5 provides, in pertinent part:

In a prosecution against a person accused of embezzling, or fraudulently converting to his own use,. . .money,. . .it shall be sufficient to allege the embezzlement or fraudulent conversion to be of money. . .without specifying the particular kind of money. . .and such allegation, so far as it regards the description of the property, shall be sustained, if the accused be proved to have embezzled or fraudulently converted to his own use, any. . .money. . .(although the

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<sup>13</sup> Even though certain portions of this statute, not reproduced here, have been declared constitutionally infirm, State ex rel. Cogar v. Kidd, 234 S.E.2d 899 (W.Va. 1977), "this does not render the entire statute unconstitutional since what remains is capable of standing independent of the rejected portion." Id., Syl. Pt. 3.

particular item or thing embezzled or converted be neither alleged nor proved).

And in any indictment, warrant or information in which it is necessary to describe money current in this State, a description of such money as "United States currency" will be sufficient without specifying the number and denominations thereof, and such description shall be construed to mean. . .any. . .form of money issued by the United States government and current as money in this State.

The remainder of this Decision will be presented as formal findings of fact and conclusions of law.

#### FINDINGS OF FACT

1. Grievant was employed by Respondent as Secretary, Nitro High School (NHS) until her dismissal January 16, 1989, based on written charges, per W.Va. Code §18A-2-8, of embezzlement of \$14,000.00 in meal monies over a two-year period.

2. Ms. Bonnett's duties included the collection of lunch money and recordkeeping and bank-depositing of money generated from NHS breakfast and lunch programs.

3. In November 1988, NHS cooks Beulah Pritt and Hazel Casto approached Principal Paul McClanahan with concerns that Ms. Bonnett was altering breakfast money information on "Daily Hot Lunch Report" forms. Ms. Pritt and Ms. Casto collected breakfast money, completed the breakfast portion of the "Daily Hot Lunch Report," and delivered both to Ms. Bonnett before the lunch hour each day. Ms. Bonnett then collected lunch money, completed the Report and deposited

each day's meal money less fifty dollars, see Finding of Fact 4, in the bank.

4. Eventually, it was determined by Mr. McClanahan, NHS accounting teacher Norma King, and Respondent's Coordinator of Accounting Stan Keller that NHS might have experienced significant shortages of money in its meal programs over a period of time. Accordingly, on December 16, 19, 20 and 21, 1988, Ms. King collected lunch money, counted it along with breakfast money given her by NHS' cooks, and prepared the "Daily Hot Lunch Report." She delivered the cash each day to Grievant and verified the amount to be deposited in the bank, which was the total amount less fifty dollars. The fifty dollars was to be retained as change for the next day, and Grievant was aware that Ms. King had deducted this figure from the deposit amount each time.

5. Grievant knowingly delivered to the bank forty dollars less than Ms. King had verified on December 20; fifty dollars less on each of December 19 and 21; and sixty dollars less on the 16th.

6. Over the past several years, and prior to December 16, 1988, NHS may have lost a large amount of meal account money. However, there is no reliable verification of this; it is further noted that a number of individuals with responsibilities for various aspects of NHS' meal program have made errors during this period and thereafter, some of them quite understandable due to school cafeteria meal time

confusion, in keeping records, counting money and perhaps other areas.

7. Psychological testing and expert and character testimony identified Grievant as having a general propensity toward honesty in business and perhaps other dealings. However, none of this evidence is a guarantor of Grievant's actual honesty in any given situation, including the instant one.<sup>14</sup>

#### CONCLUSIONS OF LAW

1. In a grievance related to the suspension and/or dismissal of an employee, a county board of education has the burden of proving its charges by a preponderance of the evidence. Webb v. Mason Co. Bd. of Educ., Docket No. 26-89-004 (May 1, 1989).

2. A county board of education in West Virginia may properly suspend or dismiss any employee for behavior constituting "immorality," W.Va. Code §18A-2-8. That term, as it appears in the statute, may be defined as "conduct 'not in conformity with accepted principles of right and wrong behavior; contrary to the moral code of the community; wicked; especially, not in conformity with the acceptable standards of proper sexual behavior.'" Golden v. Bd. of

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<sup>14</sup> In arriving at this finding, at least insofar as it relates to psychological testing and other expert evidence, the undersigned relies on the representations of Dr. Howland to this effect.

Educ. of the Co. of Harrison, 285 S.E.2d 665, 668 (W.Va. 1981), quoting from Webster's New 20th Century Dictionary, Unabridged (2d Ed. 1979), at 910; see also Copenhaver v. Raleigh Co. Bd. of Educ., Docket No. 41-86-175-1 (Aug. 15, 1986) (DUI conviction held to be immorality).

3. "The essential elements of embezzlement are a trust relationship to the. . .money involved, belonging to someone else and in the possession of the. . .[employee] by virtue of his office and converted to his own use with intent to defraud." State v. Riley, 151 S.E.2d 308 (W.Va. 1966); accord, State v. Frasher, 265 S.E.2d 43 (W.Va. 1980).

4. "Embezzlement is generally held to be among those offenses which involves moral turpitude as a matter of law." Committee on Legal Ethics v. Six, #18971 (W.Va. S. Ct. App. 4/21/89), Syl. Pt. 4.

5. Neither the expert nor the character evidence referenced in Finding of Fact 7 is persuasive of Grievant's lack of culpability in this scenario. See, e.g., Finding of Facts 4, 5.

6. Respondent established that Grievant embezzled \$200.00 in NHS meal money over a four-day period in December 1988, and thus engaged in a continuing course of conduct that may reasonably be considered immoral; however, Respondent failed to show any other money to have actually been misappropriated or otherwise unaccounted for.

7. While county boards of education should take care to be as detailed as practicable in the drafting of written

charges to present to an employee per W.Va. Code §18A-2-8, it is recognized "there are limitations in the English language with respect to being both specific and manageably brief." U.S. v. Hariss, 347 U.S. 612, 618 (1954) (discussing validity of federal statutory law challenged as void for vagueness). Despite this, the boards of education should strive to use language which, as fairly and completely as reasonably possible, informs affected personnel of charges against them to afford them a meaningful opportunity to respond.


8. Even in embezzlement indictments and trials in West Virginia, in which the accused has potential criminal exposure, the particular money alleged to be taken need not be identified. Code §§61-3-20, 62-2-5. However, in this matter, the \$200.00 proven embezzled was included in the \$14,000.00 figure and was thus part of the express written charges made against Grievant. Therefore, the §18A-2-8 written charges in this case were adequate basis for suspension and/or dismissal.<sup>15</sup>

Accordingly, this grievance is **DENIED**, and Grievant's suspension and dismissal are upheld.

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<sup>15</sup> It should be pointed out that Grievant has made no claim of any procedural impropriety on Respondent's part in the processing of her suspension and dismissal.

Either party may appeal this decision to the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code §18-29-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Hearing Examiners is a party to such appeal, and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate court.

  
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M. DREW CRISLIP  
HEARING EXAMINER

Dated: May 19, 1989

APPENDIX I

RESPONDENT'S EXHIBIT 1 - Approximation

NITRO HIGH SCHOOL

DAILY HOT LUNCH REPORT

DATE: C

BREAKFAST PAID C  
TOTAL FREE & PAID C

TOTAL NUMBER LUNCHES SERVED B  
LESS PAID & FREE ADULT B  
LESS STUDENT FREE & REDUCED B  
TOTAL NUMBER REGULAR MEALS B

TOTAL MONEY REGULAR MEALS B  
TOTAL MONEY BREAKFAST C  
TOTAL MONEY ADULT LUNCH B  
TOTAL EXTRA MILK MONEY B  
TOTAL MONEY BANKED B

(breakfast - C)  
EXTRA MILK SOLD B

ADULT LUNCHES B

BREAKFAST

LUNCH

FREE ADULTS

~~STUDENT~~ #1✓  
~~STUDENT~~ #2✓  
C ~~STUDENT~~ #3✓ B  
STUDENT #4  
STUDENT #5✓  
~~STUDENT~~ #6  
STUDENT #7  
~~STUDENT~~ #8✓  
STUDENT #9  
STUDENT #10✓  
STUDENT #11  
~~STUDENT~~ #12✓  
STUDENT #13  
STUDENT #14  
~~STUDENT~~ #15  
STUDENT #16  
STUDENT #17  
STUDENT #18✓  
STUDENT #19  
~~STUDENT~~ #20  
STUDENT #21✓

~~PAUL MCCLANAHAN~~✓  
EARL TULLY  
C ~~BEULAH PRITT~~✓ B  
~~HAZEL CASTO~~✓  
GENE ANGELL✓  
~~PHYLLIS GODBEY~~  
~~NANCY BONNETT~~

30¢ REDUCED 40¢  
C ~~STUDENT~~ #22✓ B  
STUDENT #23✓

BAGS B (given by C)  
TRAYS B (given by C)  
SALADS B (given by C)  
TOTAL B (given by C)

KEY

B = Bonnett (Mrs. Bonnett responsible for completing this part of report)  
C = Cooks (Cooks responsible for completing this part of report)