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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

**BRENDA JOHNSON**

**v.**

**Docket No. 89-20-255**

**KANAWHA COUNTY BOARD OF EDUCATION**

**D E C I S I O N**

Brenda Johnson is employed by Respondent Kanawha County Board of Education as a teacher at Tiskelwah Elementary School. In early March 1989, she submitted the following grievance to her immediate supervisor, Principal Barbara S. Hill:

Based on. . .[your] suggestion, I lowered the grades of eight pupils. I now believe that was wrong: The relief I seek is to restore the eight pupils' grades to what they were before I lowered them.

Ms. Hill, as the Level I evaluator, responded as follows:

At no time was Mrs. Johnson directed to alter grades. When I offered the suggestion concerning the grades, I also suggested that she think it over before arriving at a decision. She made the decision to change the grades. Since my duty as instructional leader is to monitor the academic progress of students, and since discussing and offering suggestions concerning student evaluation, performance, and progress are a part of the monitoring process at Tiskelwah, I feel that the suggestions were appropriate.

Thereafter, Grievant advanced to Level II, where she was likewise unsuccessful; Respondent waived consideration at Level

III; and Grievant filed her complaint at Level IV on June 9, 1989. The parties agreed that the matter may be resolved on the basis of information, as submitted by them, adduced at the lower levels, along with proposed findings of fact and conclusions of law, by July 7, 1989.<sup>1</sup>

The facts surrounding this controversy are, in essence, the subject of stipulation.<sup>2</sup> Grievant, in accordance with Respondent's Policy VI-H-12, presented a set of report cards<sup>3</sup> to Ms. Hill for her review prior to their distribution to students. Ms. Hill, "on January 31, 1989, recommended that Grievant revise [one letter] downward the . . . grades. . .[of] eight of Grievant's pupils. . .[and] after much introspection, Grievant revised the grades."<sup>4</sup> Sometime after the report cards were presented to the students, Grievant had second thoughts and approached Ms. Hill, seeking reinstatement of the original marks. Ms. Hill refused to honor this request.<sup>5</sup>

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<sup>1</sup> The original closure date of June 30, 1989, was extended due to illness of Respondent's counsel. Grievant had no objection to this brief delay.

<sup>2</sup> In fact, this Decision is an application of the law to pertinent facts of this case as those facts were agreed to by the parties.

<sup>3</sup> These cards were related to the 1988-89 second nine-weeks' grading period, November 3, 1988, through January 24, 1989.

<sup>4</sup> Grievant's Proposed Finding of Fact 3.

<sup>5</sup> It appears that the eight pupils and not Grievant would benefit most if the relief sought herein were awarded. However, even if this were true, it is of no consequence. See Conclusion of Law 1.

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

#### FINDINGS OF FACT

1. Grievant, in accordance with Respondent's Policy VI-H-12, submitted a set of report cards to her principal, Barbara S. Hill, for review before distribution to students. Ms. Hill suggested that Grievant consider revising the grades of eight students downward one letter and, "after much introspection," Grievant decided to take this step.

2. After the grade cards had been published to the students and their families, Grievant asked Ms. Hill to reinstate the originally-proposed grades. Ms. Hill declined to honor this request.

#### CONCLUSIONS OF LAW

1. "[A]ny claim. . .alleging. . .any action. . . constituting a substantial detriment to or interference with effective classroom instruction. . .[and/or] job performance" is viable within the West Virginia education employees grievance procedure. W.Va. Code §18-29-2(a). Grievant's complaint in essence charges her principal with interference in one of her duties, i.e., grading students, and thus satisfies the definition of "grievance." See id.

2. Neither Ms. Hill's original suggestion that Grievant consider revising grades, nor her refusal to allow Grievant to reinstate original marks after report cards had been distributed to students, was unreasonable, arbitrary, capricious or in any way improper.<sup>6</sup>

Accordingly, this grievance is DENIED.

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 Examiner is a party to such appeal and should not be named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate Court.



M. DREW CRISLIP  
Hearing Examiner

Date: July 21, 1989

<sup>6</sup> The following facts are noteworthy: Ms. Hill's original comments to Grievant were in the form of recommendation and not command; Grievant admittedly pondered the matter with care before she lowered the grades; and the report cards were made public prior to Grievant's change of heart.

Information that Grievant has been appropriately counseled in the past for grade inflation and that Principal Hill had personal knowledge of the performance of the eight "downgraded" students, while not necessary to this Decision, certainly lend further credence to it.