



REPLY TO:  
401 Davis Avenue  
Suite 315  
Elkins, WV 26241  
Telephone: 636-1123

**Members**  
James Paul Geary  
Chairman  
Orton A. Jones  
David L. White

**WEST VIRGINIA EDUCATION AND  
STATE EMPLOYEES GRIEVANCE BOARD**

**GASTON CAPERTON**  
Governor

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

DOROTHY UNDERWOOD

v.

DOCKET NO. 17-88-254

HARRISON COUNTY BOARD OF EDUCATION

DECISION

Grievant, Dorothy Underwood, is employed by the Harrison County Board of Education (Board) as a teacher at Bridgeport High School. Ms. Underwood filed a level one grievance on May 25, 1988 in which she alleged violations of W.Va. Code §18-29-2 and State Board of Education Policy 5300 when a letter of reprimand and an observation report were placed in her personnel file. The grievance was denied at levels one and two; the Board waived consideration at level three and a level four appeal was filed on December 20, 1988. An evidentiary hearing was scheduled for February 8, 1989; however, the parties agreed that the matter could be submitted for decision on the evidence presented at the level two hearing. Proposed findings of fact and conclusions of law were filed by July 15 and the record was received on July 24, 1989.

Lindy Bennett, principal at Bridgeport High School, issued a letter of reprimand to the grievant dated May 6, 1988 in reference to two incidents of April 15. Specifically, Mr. Bennett stated that the grievant became very upset and left her room to go to the resource room during a conversation with a North Central evaluation team interviewer and second, that when he (Principal Bennett) attempted to ask what he could do to assist her, she interrupted stating that he was the last person in the world she wanted to see. Mr. Bennett continued that such outbursts were surely not good for the grievant's health, interfered with classroom instruction and presented an unfavorable professional appearance of the grievant and the school. Mr. Bennett requested that the grievant notify him if she became upset in the future so that appropriate arrangements could be made and advised her that any future similar outbursts would be reported to the office of the Superintendent.

An observation report dated May 12, 1988 by Mr. Bennett contained only one comment: "The purpose of giving you this form is to call to your attention the fact that your emotional behavior is interfering with the instructional environment of your classroom and it is interfering with line-staff relationships."

The grievant testified at the level two hearing that she was under a great deal of stress on April 15 in part because a North Central evaluation team was visiting Bridgeport High School on April 14 and 15. She described

the visitation as stressful because the employees were on edge to make a favorable impression. At the conclusion of the first day of the evaluation a faculty meeting was held which added to her stress when she was not given an adequate opportunity to say all that she wanted. After she was given the floor to speak she was interrupted and when she requested the person's attention she was referred to as a "bitch". She did not appreciate this comment and became even more upset when booklets containing faculty information, compiled as a part of the evaluation, were distributed and she noted that a great deal of the information regarding the teachers' years of experience, degrees, etc. was inaccurate. Although an administrator commented that the accuracy of the information was not really important, the grievant stated that she felt degraded as a professional. The stress of these situations was further compounded by the recent loss of a very significant person in the grievant's life.

The grievant's account of April 15 was that she reported to school feeling "...very depressed, very, very sad (T. p 17). She had given the class an assignment when the evaluator (Mr. Forst) came to her room and asked to speak with her. In her own words from the level two transcript, their conversation was as follows:

AND I TOLD HIM, I SAID, "I'M REALLY  
UPSET." I SAID, "WOULD YOU PLEASE LEAVE ME ALONE."  
I SAID, "I JUST NEED SOME TIME."  
HE SAID, "BUT I NEED TO TALK TO YOU."

AND I SAID, "PLEASE."  
AND HE WOULDN'T STOP. HE SAID "I NEED  
TO TALK TO YOU."

SO I STOOD AT THE DOORWAY OF MY CLASS-  
ROOM. I DID NOT WANT TO TALK AND DISTURB MY  
STUDENTS WHO WERE BUSY AT WORK. I WANTED TO KEEP  
OUR CONVERSATION PRIVATE BETWEEN THE TWO OF US AND  
YET NOT DISTURB MY STUDENTS.

HE KEPT ASKING ME QUESTIONS, AND I WAS  
MORE AND MORE SAD, AND HE SAID TO ME -- HE SAID,  
"I JUST WANT TO KNOW WHAT'S WRONG HERE?"

AND I SAID -- I WAS SO UPSET. I SAID,  
"PLEASE LEAVE ME ALONE." I SAID, "I NEED TIME."  
AND I SAID, "EVERYTHING IS WRONG HERE," AND I  
STARTED TO CRY.

AND I TURNED AROUND, AND I GRABBED MY  
STOMACH -- MY STOMACH HURT -- AND I PUT MY ARMS ON  
THE DOOR FRAME AND STARTED TO SOB AND CRY, AND HE  
LEFT ME ALONE (T. pp 18-19).

In regard to the second incident the grievant testified  
that after her encounter with Mr. Forst she had gone to the  
resource room and was talking to a counselor when Mr.  
Bennett appeared. Again, from the level two transcript, the  
grievant describes what occurred in response to questions by  
her representative:

Q MR. BENNETT INDICATES IN HIS LETTER THAT  
THE SECOND INCIDENT INVOLVED HIM, AS HE ATTEMPTED  
TO ASK YOU WHAT HE COULD DO TO HELP YOU, AT WHICH  
TIME YOU INTERRUPTED HIM SAYING THAT "YOU ARE THE  
LAST PERSON IN THE WORLD THAT I WANT TO SEE."

A UN-HUH.

Q NOW, WOULD YOU REACT TO THAT. PICK UP  
WHERE YOU WERE.

A OKAY.

I TOLD HIM I DIDN'T WANT TO TALK TO HIM,  
AND I DID NOT. I FELT LIKE AT THAT TIME THAT I  
NEEDED TO TALK TO SOMEONE THAT I FELT WAS A PERSON  
WHO LISTENS, AN EMPATHETIC LISTENER, SOMEONE WHO  
REALLY CARED, AND I DO NOT FEEL THAT WAY ABOUT MR.  
BENNETT (T. pp 20-21).

The grievant addressed what she believed was the previous outburst identified by Mr. Bennett, which she dated from the prior school year, when he had denied her request to cover her class so that she could attend a professional meeting:

GRIEVANT: I REMEMBER HIM BRIEFLY TALKING ABOUT ONE INCIDENT THAT SUPPOSEDLY HAPPENED IN THE HALLWAY ON A DAY THAT I HAD ASKED THAT MY CLASS BE COVERED WHILE I WENT TO A PROFESSIONAL MEETING, AND I REMEMBER -- IF HE'S TALKING ABOUT THAT BEING AN OUTBURST, I REMEMBER ME ASKING HIM -- THIS WAS THE YEAR BEFORE. SO WE'RE TALKING ABOUT SOMETHING TWO YEARS AGO.

I REMEMBER HIM ASKING ME -- ASKING HIM ON MY WAY TO FOURTH PERIOD, WHICH IS RIGHT BEFORE LUNCH, ABOUT WHAT HIS DECISION HAD BEEN REGARDING THE QUESTION I'D ASKED HIM.

AND HE DECIDED "NO", AND HE SAID HE WANTED TO SEE ME IN HIS OFFICE.

AND I SAID "NO". AND I TURNED AROUND, AND I LEFT THE HALLWAY AND WENT TO MY ASSIGNED DUTY, WHICH WAS IN THE I.S.S. ROOM AT THAT TIME, ACROSS THE HALL FROM HIS OFFICE.

IN THAT I.S.S. ROOM AT THAT TIME THERE WERE NO STUDENTS PRESENT. I WAS IN THERE BY MYSELF, WHICH WAS EXACTLY WHERE I WAS SUPPOSED TO BE, DOING MY JOB.

AND I REMEMBER MR. ROMEO COMING INTO THAT ROOM AND SAYING HE WANTED TO TALK TO ME, AND HE TALKED AND TALKED. AND I REMEMBER ASKING HIM "PLEASE LEAVE ME ALONE. PLEASE, I DO NOT WANT TO CRY. PLEASE LEAVE ME ALONE. I WILL DO MY JOB AND THEN TAKE MY PERSONAL LEAVE DAY," WHICH IS WHAT I HAD PLANNED TO DO, "AND GO TO MY PROFESSIONAL MEETING."

AND HE WOULD NOT LEAVE ME ALONE.

AND FINALLY HE DID LEAVE.

AND THEN WHEN HE WAS GONE AND I WAS ALONE IN A ROOM BY MYSELF, I DID CRY, AND I CRIED BECAUSE, ONE, I HAD FELT HARASSED, AND TWO, I HAD FELT THAT I HAD BEEN TREATED UNFAIRLY AND UNJUSTLY (T. pp 22-23).

The grievant asserts that in consideration of the stress and grief which she was suffering, her actions were

not necessarily irrational or disturbed. She submitted into the record two letters from Dr. Patricia Gainer dated May 27 and June 8, 1988 attesting to her stable mental state. The grievant asserts that Mr. Bennett's perception of "professional" is the stereotypical male front of cool stoicism and that the reprimand and observation report were in essence kicking her while she was down. (Grievant's proposed findings of fact #5). The Grievant argues that such treatment based upon sexual stereotyping is discriminatory.

The Board argues that the letter and observation report were appropriate and justified under the circumstances and that the grievant has failed to prove any violation of policy or discrimination. Testifying on behalf of the Board, Mr. Bennett recited Mr. Forst's account of the April 15th incident which he had verbally reported at the time of the incident and later documented in a memorandum to Mr. Bennett. That memo, in pertinent part, is as follows:

Upon approaching Ms. Underwood in her classroom, during the first period on Friday morning, I asked if I may speak to her about the area she chaired for the self evaluation. She replied that she was not really in the mood to do so but that she would try. We stepped outside the classroom. My first question was a request for her committee's general appraisal and overview, as it was not in the booklet prepared for the visiting team as were all the other committees' general appraisals and overviews. Ms. Underwood replied that she was sorry but she did not have it. I thought this to be odd at the time as I had seen a copy of it that Ms. Moccia had at the dinner the night before. (Ms. Moccia was absent on Friday)

I continued by telling her that I would like to have her answer several questions. Again she replied that she would try. I asked if the teachers in the English department had the

opportunity to meet frequently for the purpose of developing continuity in program within grades and between grades. At this point Ms. Underwood became highly irrational and began screaming and crying. She first screamed that she was very unhappy here (at Bridgeport High I assume) and she continued that nobody cared about teachers. After that she cried and brought her fists up to her chest and moved toward the wall, her face was very red.

I asked her to move to the LD parent resource center and I would get someone to stay with her, Ms. Janice Riley volunteered.

I then reported to Mr. Bennett and then to Mr. Clendennin, chairman of the visiting team.

Mr. Bennett and Assistant Principal Jim Romeo both testified regarding the grievant's emotional distress which occurred previously when she requested time off to attend a conference (T. pp 62-63, 71-72).

It is reasonable to expect an immediate supervisor to be compassionate to an employee experiencing difficulty of a personal nature which may, to some extent, affect the employee while at work. Treatment of an employee based upon sexual stereotypes is discrimination and is prohibited by law. While not devaluing either of these points, it must also be acknowledged that it is a priority for the Board to secure capable teachers to effectively present its educational agenda. If an employee fails to meet acceptable standards for the position held, personnel laws require the Board to notify the employee of the deficiency through evaluation and provide an opportunity to improve upon any misconduct or incompetency which is correctable (State Board

of Education Policy 5300). Because the occurrence of April 15 interfered with the grievant's ability to perform her duties as a teacher it was appropriate to document the incident.<sup>1</sup>

In addition to the foregoing narration it is appropriate to make the following specific findings of fact and conclusions of law.

### Findings of Fact

1. The grievant has been employed as a teacher by the Harrison County Board of Education for twenty-two years and is presently assigned to Bridgeport High School.

2. In May 1988 the grievant was issued a letter of reprimand and a personnel observation form both in reference to incidents which occurred on April 15 and involved the grievant, a North Central evaluator and the school principal.

3. When the evaluator appeared at the grievant's classroom to request information she began to cry, clutched either her stomach or chest and asked him to leave her alone. She then proceeded to the resource room where she advised the school principal that he was the last person she

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<sup>1</sup>It appears that the Harrison County Board of Education has established a policy for the removal of letters of reprimand from a personnel file (T. p 9) and the grievant may pursue that avenue of relief if she so desires.



wanted to see when he entered to inquire about her condition.

4. On at least one other occasion the grievant exhibited a very emotional response after the principal had denied her unofficial leave time to attend a conference.

#### Conclusions of Law

1. The grievant has failed to show that the letter of reprimand or the observation report were placed in her personnel file in violation of any statutory or policy provisions. On the contrary, the documents were required by State Board of Education Policy 5300 which mandates that any misconduct or incompetency be brought to an employee's attention through evaluation and that they be given an opportunity to improve prior to being demoted, dismissed, etc.

2. The grievant has failed to prove discrimination as defined by W.Va. Code §18-29-2(m).

Accordingly the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Harrison County or 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.

DATED: October 31, 1989

Sue Keller

SUE KELLER

SENIOR HEARING EXAMINER