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

v.

Docket No. 26-88-206

MASON COUNTY BOARD OF EDUCATION

DECISION

Grievant William Webb has been employed by Respondent Mason County Board of Education as a mathematics teacher at Point Pleasant High School (PPHS) for approximately the past twenty years. In this much-publicized case, Grievant has at least twice been suspended for his failure to comply with a dress code first distributed to teachers on August 29, 1988, after the commencement of the 1988-89 school term for personnel.¹ This disputed policy was authored by Mason County Superintendent of Schools Charles Chambers² and

¹Some teachers including Grievant had heard, during the Summer, 1988 hiatus from work, that there was at least the possibility that a dress code would be implemented for the following school year.

²Although Chambers is not formally named as a party herein, he and Respondent were separately represented at Level IV.

provides, in pertinent part, as follows:

According to [West Virginia State Superintendent of Schools] Dr. Tom McNeel in his Superintendent's Interpretations of May 16, 1988, a county superintendent of schools can establish a dress code for personnel.

Beginning with the 1988/89 school term the following dress code will apply to all regular and substitute personnel when students are present:

Professional Employees

1. No jeans will be permitted
2. Male employees will wear ties
3. Female employees will wear normal street clothes
4. Shop instructors are to abide by safety regulations
5. Physical education personnel are to dress neatly and appropriately for their position

[P]rincipals will be responsible for insuring that personnel for whom they are responsible abide by this code.³

This policy was promulgated after Chambers' formal request, in May of 1988 or earlier, for McNeel's opinion on the subject, and McNeel's response thereto. Chambers' question,

Can the [county] superintendent of schools establish a dress code for . . . teaching personnel?
Example: Males wear ties and neither male nor female

³Although the outcome herein is not affected, the record is unclear as to whether this was the specific language presented to Grievant on August 29, or it was both that and the following, or simply the following:

Personal Appearance

All faculty members should be neat, clean and appropriately dressed at all times. Male faculty members are to wear shirts and ties. Jeans will not be permitted for faculty attire.

personnel wear jeans to work,
was answered by McNeel, on May 16, 1988, as follows:

Yes, although I recommend that this sort of thing be done through policy by the county board of education because §§5300-4 and 5 of the Policies, Rules and Regulations of the West Virginia Board of Education encourage dialogue between school personnel and their county board of education. Social dialogue, whether it be in commerce or ordinary living is important. Cf. Article III, §16, of the Constitution of West Virginia.

Chambers, believing it crucial that a dress code for professionals, disallowing jeans and requiring males to wear ties, be implemented for the 1988-89 school year, and further that not enough time existed to allow either input from personnel or action by Respondent, see T. 45-46 (Oct. 24, 1988), unilaterally issued the policy. His reasons for doing so, as conveyed to Grievant, included what he, Chambers, perceived as the necessities to "instill in your students a sense of responsibility and respect, present them with a model of good grooming, and instill in them order and discipline." Respondent's employees had never before been subject to a specific dress code of any type.

Grievant, believing his choice of attire improves his instruction of and rapport with his students, and is practical due to his constant exposure to chalk dust and other agents, has consistently refused to wear a tie and to not wear jeans to work; accordingly, after several warnings from Chambers and PPHS Principal Michael Whalen, and at least one meeting of those three individuals on the matter, Chambers

suspended him from employment on September 16 for four days. This suspension was upheld by Respondent on September 27.⁴ After another series of admonitions and meetings, Chambers again suspended Grievant on October 7,⁵ for eleven days.⁶ On October 24, Respondent upheld the latter suspension and specifically ordered Grievant to report back to work in compliance with the dress directive. It was stipulated during the Level IV hearing, conducted November 15, 1988, that the instant grievance is limited to a review of Respondent's October 24 action.⁷ Both it and Grievant's earlier suspension were based on W.Va. Code §18A-2-8, which provides, in pertinent part, as follows:

⁴A county superintendent's authority to suspend employees, subject only to approval of his or her board of education, is codified at W.Va. Code §18A-2-7.

⁵It is undisputed that Grievant, prior to each of these two suspensions, was given ample opportunity to comply with the dress code; clear indication that his failure to do so would be considered not only a bad example for Mason County students, but also an act of insubordination against Respondent; careful explanation of the theory behind the directive; and thorough advisory on the education employees grievance procedure, W.Va. Code §§18-29-1 et seq., and of its applicability to this situation.

⁶This suspension was originally "not to exceed thirty days"; the period was designated eleven days by Respondent.

⁷The within grievance was first initiated at Level IV, per Code §18A-2-8. The transcripts of the September 27 and October 24 suspension hearings before Respondent were submitted as part of the record at Level IV. Any reference made to Levels I, II or III, either at the Level IV hearing or in post-Level IV hearing submissions, should be understood to be to either or both of those suspension hearings.

[A] board [of education] may suspend or dismiss any person in its employment at any time for: . . . insubordination. . . .

Respondent, bearing the burden of proof to establish Grievant was insubordinate,⁸ submitted its evidence on that issue on the record of Grievant's suspension hearings before it. Grievant's defense was two-fold: one, that he had, in May or June, 1988, signed his status form for school year 1988-89,⁹ and the dress code constitutes an improper material change in the terms of either or both that document and his continuing contract with Respondent; and two, that Respondent alone, and not Superintendent Chambers, has the authority to promulgate policy which, if violated by an employee, might result in disciplinary action against that individual.¹⁰

Regarding his contract, upon the successful completion of three years as a teacher with the Mason County Schools, Grievant was granted a continuing contract of employment.

⁸See Sexton v. Marshall University, Docket No. BOR2-88-029-4 (May 25, 1988).

⁹This status form, which Grievant characterizes as his 1988-89 contract with Respondent, contains only the location of assignment, salary, and dates of employment for the year, and was not offered into evidence at Level IV.

¹⁰At the Level IV hearing, Grievant withdrew any other defense, including those based on Amendment I, U.S. Const., and dissimilar treatment of males and females by the dress code.

Although this document was not offered into evidence at Level IV, according to unrefuted testimony at that level, it requires Grievant to abide by Respondent's policies and directives. Regarding the authority of Respondent, as opposed to Chambers, to promulgate a dress code, Grievant concedes that Respondent could have properly adopted the policy in question, at least prior to the time 1988-89 status forms were executed.

It is uncontradicted in the record that Grievant, throughout his employment with Respondent, has been a popular and effective instructor, and that there have been no complaints about his performance save those related to the within matter. Further, Grievant has never seriously alleged that it would have been impossible or even difficult, either for financial or other reasons beyond conscience and principle, to comply with the dress code while seeking adjudication of its validity as promulgated.

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

FINDINGS OF FACT

1. Grievant William Webb is employed by Respondent Mason County Board of Education as a mathematics teacher at Point Pleasant High School (PPHS). He has been so employed for twenty (20) years and thus has a continuing contract with Respondent. This contract, entered into roughly seventeen (17) years ago, was not presented into evidence at Level IV.

2. That contract requires Grievant to abide by Respondent's policies and directives, according to unrefuted testimony at Level IV.

3. Grievant has consistently worn jeans and no tie to work for at least the past fifteen years and specifically at all times during school term 1988-89. He believes that his attire improves his work performance and is eminently practical.

4. Grievant's work performance has been rated as meeting or exceeding standards by written evaluations covering his entire period of employment with Respondent. In at least some of these, his personal appearance and attire were among the factors evaluated.

5. Charles Chambers assumed the duties of Superintendent of Schools for Mason County, West Virginia, July 1, 1988.

6. In May of 1988, in response to Chambers' request therefor, West Virginia State Superintendent of Schools Tom McNeel issued his formal opinion that a county superintendent of schools has authority to issue a dress code such as the disputed one herein. However, McNeel's opinion was tempered with the caveats that a county superintendent should request input on dress policy from affected employees and recommend that his/her county board of education promulgate any such policy.

7. Chambers, believing it crucial that a dress code for professionals, disallowing jeans and requiring males to wear ties, be implemented for the 1988-89 school year, and further believing not enough time existed to allow either input from personnel or action by Respondent, unilaterally issued such a policy on August 19, 1988.

8. On August 29, 1988, after the commencement of the school year for personnel, teachers, including Grievant, were first officially advised of the dress code.

9. Prior to this date, Grievant had signed his "status form" for school year 1988-89. Grievant characterizes this

status form, which was not presented into evidence at Level IV, as his 1988-89 contract with Respondent.

10. Chambers, at a September 14 meeting with Grievant and PPHS Principal Michael Whalen, indicated to Grievant that he was setting a bad example for the students of Mason County and that the grievance procedure, W.Va. Code §§18-29-1 et seq., was the appropriate means for challenging the dress code.

11. On September 16, Grievant was suspended without pay for four days, September 20-23, via letter from Chambers. This was after Grievant was directed, both orally and in writing, to comply with the dress code and was given reasonable time to do so. These directions came from both Whalen and Chambers.

12. On September 27, after hearing, Respondent upheld the four-day suspension but provided that it be with pay. Significantly, this hearing focused on the substantive and procedural reasonableness of the dress code, as well as Grievant's alleged insubordination.

13. On October 3, Grievant received a letter from Whalen, charging him with insubordination for his continued refusal to comply with the dress code.

14. On October 4, Chambers met with Grievant, Whalen and another teacher in Respondent's employ, and again urged Grievant to comply with the dress code and pursue his complaint through the statutory procedure. After this meeting, Chambers wrote Grievant a letter outlining specific reasons for the implementation of the dress code, e.g., to "instill in your students a sense of responsibility and respect, present them with a model of good grooming, and instill in them order and discipline," and ordering him to comply therewith. Chambers again opined at this time that Grievant was "setting a bad example for the students of Mason County by continuing to defy authority."

15. On October 7, Chambers suspended Grievant, via letter, for a time period not to exceed thirty (30) days.

16. On October 24, after hearing, Respondent upheld this suspension, without pay, for a period of eleven (11) days. Signficiantly, as part of its decision, Respondent ordered Grievant to comply with the dress code upon his return to work.

17. Grievant has been directed to comply with the dress code, either by Respondent, Chambers, Whalen, or by more than one of those parties simultaneously, on at least eleven occasions.

18. It was stipulated at the Level IV hearing, held November 15, 1988, that Respondent's decision of October 24 is the sole subject of this grievance.

19. Respondent's only reason for suspending Grievant is its allegation that he has been insubordinate.

20. Grievant has never seriously alleged that it would have been impossible or even difficult, either for financial or other reasons beyond conscience and principle, to comply with the dress code while seeking adjudication of its validity as promulgated.

21. Grievant concedes that Respondent has the authority to issue a dress code such as the one in the question, but not one effective during a school term for which status forms have already been executed by employees.

22. Both Grievant and Chambers were highly credible witnesses and obviously quite sincere proponents of their opposing viewpoints.

CONCLUSIONS OF LAW

1. The purpose of the grievance procedure for education employees in West Virginia, W.Va. Code §§18-29-1 et seq., is to provide a means for such employees to reach

solutions to problems arising from an alleged "violation, . . . misapplication or. . . misinterpretation of the statutes, policies, rules, regulations or written agreements under which such employees work." Code §§18-29-1, 18-29-2(a).

2. When an education employee in West Virginia is suspended for insubordination, he or she may initiate a grievance at Level IV in the first instance. Code §18A-2-8.

3. In such grievance, the respondent board of education has the burden of proof, and must prove its case by a preponderance of the evidence. Sexton v. Marshall University, Docket No. BOR2-88-029-4 (May 25, 1988). In addition, the suspended employee has the burden of production of evidence of any defense he or she presents.

4. Insubordination may be defined as "willful failure or refusal to obey reasonable orders of [a] superior. . . entitled to give such orders." Ware v. Morgan County School Dist. R-3, 719 P.2d 351, 352 (Colo.App. 1985); Gill v. W.Va. Dept. of Commerce, Docket No. COMM-88-031 (Dec. 23, 1988); also see State ex rel. Rogers v. Bd. of Educ. of Lewis Co., 25 S.E. 537, 541 (W.Va. 1943); Sexton, supra.

5. A county board of education may adopt the actions of its Superintendent of Schools. In this matter, by its decision of September 27 upholding the four-day suspension,

after a hearing on both the substantive and procedural aspects of the dress code, Respondent made Chambers' policy its own. Therefore, Chambers' authority to unilaterally promulgate the same is not in issue.

6. By his concession that Respondent has authority to promulgate a dress code such as the one in question, Grievant admitted the directive was substantively reasonable and limited his complaint to the procedure whereby it was effected. See Finding of Fact No. 21.

7. Public school teachers in West Virginia are contractual employees of, and thus subordinate to, the board of education of the county in which they work. Code §18A-2-2; State ex rel. Hawkins v. Tyler Co. Bd. of Educ., 275 S.E.2d 908, 915 (W.Va. 1980).

8. "The continuing contract of any teacher shall remain in full force and effect except as modified by mutual consent of the school board and teacher, unless and until terminated. . . ." Code §18A-2-2. Therefore, the mandate of Grievant's continuing contract that he abide by Respondent's policies and directives applies to all such policies and directives put into effect during his employment with Respondent.

9. Grievant has failed to show any violation of his employment contract by a change in the terms thereof.

10. An order for a teacher to comply with board of education policy need not come from the board of education itself, but may also appropriately come from administrators employed within the county, including the teacher's principal or the superintendent of schools.

11. Grievant was insubordinate to Respondent as a matter of law.

Accordingly, this grievance is DENIED, and Respondent's October 24, 1988 eleven-day suspension of Grievant without pay is AFFIRMED.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mason County and such appeal must be filed within thirty (30) days of receipt of this decision. See 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: January 5, 1989

A handwritten signature in dark ink, appearing to read "M. Drew Crislip", written over a horizontal line.

M. DREW CRISLIP
HEARING EXAMINER