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DANIEL J. BLEDSOE

v.

Docket No. 55-88-215

WYOMING COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Daniel Bledsoe, was employed by the Wyoming County Board of Education (Board) as Maintenance Supervisor until his dismissal on November 9, 1988. A Level IV appeal pursuant to W.Va. Code §18A-2-8 was filed November 10, 1988 and a hearing was held before the West Virginia Education and State Employees Grievance Board on December 2, 1988. Proposed findings of fact and conclusions of law were received by December 22, 1988.

The events preceding grievant's dismissal are undisputed. On August 30, 1988 grievant entered a plea of guilty in United States District Court to a one-count information charging him with conspiracy to obstruct, delay and affect interstate commerce by extortion in violation of 18 United States Code, Section 1951.

On October 25, 1988 the plea was accepted and grievant was placed on probation for a term of five (5) years and fined Five Thousand Dollars (\$5,000.00).¹ Under the terms of his probation grievant was ordered to perform twenty (20) hours per month of community service work for twenty (20) months and was confined to his residence at all hours except for certain essential activities for a period of six (6) months. On November 3, 1988, during a meeting of the Wyoming County Board of Education, members engaged in a discussion of grievant's guilty plea. Subsequent to the discussion Board member, Warren McGraw, made a motion that grievant be dismissed from his employment. The acting Superintendent of Schools, Mr. Gerald Short, was then instructed to contact the Board's attorney for an opinion on legal obligations in the matter. A vote was then taken on the motion and it was defeated

¹A partial transcript of the sentencing hearing (Employee's Exhibit No. 1) and a copy of the information (Board's Exhibit No. 1) reveal grievant improperly solicited a total of \$1,000.00 in campaign contributions sometime between May 1982 and August 1988. The Court specifically found that the grievant was asked by the Superintendent of Schools of Wyoming County to collect the contributions and that the grievant was under the impression that his continued employment depended upon his participation. The Court further found that the grievant had a "minimal role in the criminal enterprise".

by a vote of 3 to 2 (Employee's Exhibit No. 20). On November 7, 1988, after an executive session, Board members and counsel again engaged in a discussion of grievant's guilty plea and counsel presented copies of documents concerning the plea and informed the members they had a legal obligation to "respond to the situation" and a failure to do so might expose them to "possible impeachment proceedings". Mr. McGraw again made the motion to dismiss the grievant and the motion passed by a vote of 3 to 2. Counsel for the Board was instructed to prepare the dismissal letter and Mr. Short was directed to deliver it to the grievant on November 9, 1988 (Employee's Exhibit No. 21). That letter informed grievant the Board had been presented with United States District Court records showing he had been convicted on a conspiracy charge of felony proportions which was adverse to the performance of his duties in his present position as an employee of the Board and he was, therefore, dismissed on the grounds of immorality.

At the Level IV hearing the Board acknowledged its burden of proof in the matter² but declined to present any evidence other than copies of the information, plea bargaining agreement, transcript of the hearing in which the grievant entered the plea and probation terms. Counsel for the Board also proposed a

²See Putnam v. Roane County Board of Education, Docket No. 04-88-022-4 (June 13, 1988); Garcia v. Marshall County Board of Education, Docket No. 25-87-274-3 (December 29, 1987).

stipulation of fact, which the grievant accepted, that he (grievant) had performed very well in his position and there was no evidence of his performance being affected by his conviction. Grievant proceeded to present extensive documentary evidence and testimony regarding his reputation and standing in the community.³ Grievant also advanced three legal arguments for reversal of the Board's decision:

1. The failure of the Board to provide the grievant any opportunity to respond to the charges against him prior to the decision to dismiss was a denial of his right to due process.
2. Since grievant was not given regular performance evaluations, his dismissal was in violation of West Virginia State Board of Education Policy 5300 which requires a county board of education to make decisions concerning the promotion, transfer or termination of school employees on such evaluations.
3. The dismissal was in direct contravention of certain decisions of the West Virginia Supreme Court of Appeals requiring the establishment of a "rational nexus" between grievant's actions and his performance in his job.

While grievant's first argument has a great deal of merit, it is not dispositive of the matter. Tenured education employees unquestionably have a property interest in their continued uninterrupted employment which requires certain procedural due process

³This evidence consisted mainly of testimony of various school employees and residents of Wyoming County and letters they had written to Judge Elizabeth Hallanan in support of the grievant prior to his sentencing hearing. A petition bearing 1,923 signatures urging the Board to reinstate grievant to his position (Employee's Exhibit No. 26) was also offered and admitted without objection.

safeguards. Clarke v. West Virginia Board of Regents, 279 S.E.2d 169 (W.Va. 1981); Beverlin v. Board of Education of Lewis County, 216 S.E.2d 554 (W.Va. 1975); Knauff v. Kanawha County Board of Education, Docket No. 20-88-095 (January 10, 1989). The remedy for a failure to provide those safeguards at the administrative level, however, is not reinstatement but a remand to the lower tribunal for correction. Clarke, supra. Counsel for the grievant strongly opposed a remand despite evidence that there had been no notice or right to a hearing before the dismissal and that opposition must be considered a waiver of such defects.⁴ See generally, Wilson v. Putnam County Board of Education, Docket No. 40-88-088 (January 1989).

Grievant's second contention is based on a misinterpretation of West Virginia State Board of Education Policy 5300(6)(a), which in pertinent part provides:

Every employee is entitled to know how well he is performing his job, and should be offered the opportunity of open and honest evaluation of his performance on a regular basis. Any decision concerning promotion, demotion, transfer or termination of employment should be based upon such evaluation, and not upon factors extraneous thereto. Every employee is entitled to the opportunity of improving his job performance, prior to the terminating or transferring of his services, and can only do so with assistance of regular evaluation.

⁴Counsel for the Board also opposed a remand and joined in the grievant's request that the merits of the case be heard.

It is clear the policy's purpose is to prevent disciplinary actions for incompetency or other correctible behavior when an employee has neither been advised of deficiencies nor given a chance to improve. It is the "correctible" conduct or conduct which affects professional competency which triggers the application of the policy. Mason County Board of Education v. State Superintendent of Schools, 274 S.E.2d 435 (W.Va. 1980); Rovello v. Lewis County Board of Education, Docket No. 21-86-081 (June 16, 1986). In the present case there is no serious contention that the behavior for which grievant was dismissed could have been corrected or even addressed through the use of regularly performed personnel evaluations.

The grievant's third argument is well grounded in case law and because of the Board's stipulation concerning the grievant's work performance following his conviction, there are no facts which would prevent the application of that law. In Golden v. Board of Education of the County of Harrison, 285 S.E.2d 665 (W.Va. 1981), the West Virginia Supreme Court of Appeals held that the dismissal of a guidance counselor on the grounds of immorality required the establishment of a rational nexus between the conduct complained of and the performance of the employee's duties.⁵ The Court also rejected the contention that a conviction is "per se" immoral behavior. The West Virginia

⁵See also, Rogliano v. Fayette County Board of Education, 347 S.E.2d 220 (W.Va. 1986).

Education and State Employees Grievance Board has held the same standards applicable in cases involving other school employees. Haught v. Wetzel County Board of Education, Docket No. 52-87-230-3 (March 31, 1988). When these standards are applied in grievant's case there can be no doubt that the dismissal was unwarranted. When it made its decision to dismiss, the Board had received no evidence whatsoever indicating grievant's conviction had impaired his ability to perform the duties and responsibilities of his position. Its action was based solely on an assumption to that effect. Furthermore, the Board, as previously noted, not only declined to present testimony during Level IV proceedings in support of a "rational nexus" between grievant's conduct and his job performance but even stipulated that there was no evidence of such a connection.⁶ It should also be noted that the holdings in Golden related to conduct separate and apart from an employee's job and the Board made no effort to establish that grievant's behavior occurred during regular working hours or was related to the performance of his official functions.⁷ Such evidence would preclude the application of the "rational nexus" standard.

⁶In this regard the Board's actions during those proceedings are nearly inexplicable. Similarly, the position taken in the post-hearing legal memorandum submitted by counsel for the Board that, despite its stipulation, there exists a direct correlation between the conviction and grievant's job performance is extremely difficult to understand.

⁷The records of the proceedings in United States District Court do not reveal where or at what time the solicitation of funds took place.

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

FINDINGS OF FACT

1. Grievant, Daniel Bledsoe, was employed by the Wyoming County Board of Education as Maintenance Director until his dismissal on November 9, 1988 for immorality.

2. Pursuant to the provisions of W.Va. Code §§18-29-1, et seq., grievant appealed his dismissal and during a Level IV hearing held December 2, 1988, the only evidence offered by the Board in support of the charge of immorality were documents showing the grievant had entered a plea in United States District Court to a one-count information charging him with a violation of conspiracy to obstruct, delay and affect interstate commerce by extortion in violation of 18 United States Code, Section 1951 and had been placed on probation.

3. A county board of education may, pursuant to the provisions of W.Va. Code §18A-2-8, suspend or dismiss an employee for grounds contained therein.

4. In order to dismiss a school employee for acts performed at a time and place separate from employment, a county board

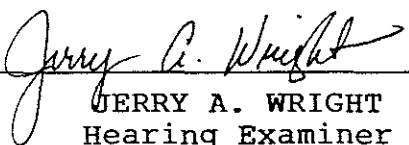
of education must demonstrate a "rational nexus" between the alleged misconduct and the duties and responsibilities of the employee's position. Haught v. Wetzel County Board of Education, Docket No. 52-87-230-3 (March 31, 1988); Rogliano v. Fayette County Board of Education, 347 S.E.2d 220 (W.Va. 1986); Golden v. Board of Education of the County of Harrison, 285 S.E.2d 665 (W.Va. 1981).

5. A county board of education cannot rely on an abstract characterization of conduct per se as immoral as evidence that an employee is not fit to perform his or her job. Rogliano, supra; Golden, supra.

6. The Wyoming County Board of Education failed to demonstrate any rational nexus between grievant's conviction for a violation of extortion 18 United States Code, Section 1951 and his job performance as Maintenance Director.

Accordingly, the grievance is **GRANTED** and the Wyoming County Board of Education is hereby **ORDERED** to reinstate the grievant, Daniel Bledsoe, to his position as Maintenance Director and to compensate him for any loss of wages he may have incurred as a result of his improper dismissal, less any appropriate set-off. Grievant's request for attorney's fees and costs is denied.

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


JERRY A. WRIGHT
Hearing Examiner

Dated: January 24, 1989