CATHY WHITE, et al.

v. Docket No. 93-30-371

MONONGALIA COUNTY BOARD OF EDUCATION

DECISION

Grievants, Cathy White, Paul Christopher, Charlene McMillen, Elaine Prickett, Darryl White, Cheryl Murray, and Donna Laishley, all bus operators, Betsy McMillen, secre tary, and Aida Meredith, bus aide, are employed by the Monongalia County Board of Education (Board) assigned to the Transportation Department. Grievants initiated these proceedings at level one on October 9, 1992, at which time they stated:

We the above join together in filing a griev ance against bus operator Janis Thorn. This driver has made a very stressful work environment. We believe that by rights we do not have to listen or tolerate her actions. She uses excessive vulgar profanity, constantly defaming us, loud screaming. We feel that her actions is [sic] putting a large amount of stress on us, therefore creating an unsafe work place. We feel that this driver should be permanently dismissed from her job. We also feel that our employer has to provide a stress free working environment. We feel that no employee has to work under these conditions. Janis has been doing theseactionsevery [sic] since she was hired. We believe she is a habitual trouble maker.

After Grievants' immediate supervisor Leroy Tennant responded that he could not resolve the matter, Grievants filed an appeal to level two on October 13, 1992. When no action was taken at level two, Grievants advanced the matter to level three on December 8, 1992. Again, no action was taken by the Board and an appeal was filed at level four on April 27, 1993. By Order dated May 19, 1993, the matter was remanded to level two for hearing as required by W.Va. Code §18-29-4(b). Grievant Cathy White advised the undersigned by letter dated September 8, 1993, that as of that date the Board had yet to consider the grievance. Subsequently, the matter was reinstated at level four and a hearing conducted on November 15, 1993.

Seven of the Grievants testified at the level four hearing. Their statements are summarized as

follows:

Cathy White stated that her trouble with Ms. Thorn began in October 1992 when she called Ms. White "fat-ass." Later that day Ms. White learned that Ms. Thorn had written derogatory remarks about her on the chalkboard in the employeelounge. A photograph of the writing submitted by Ms. White establishes that "fat ass, lazy ass,
dead ass, or any ass" was written on the board. Although the writing does not refer to any individual, Ms. White and others believe the comments were directed to her. On another occasion Ms. White stated that she was outside when Ms. Thorn, who was with some other employees, stated that there was just some people she could not stand, so she stayed away from them. Pointing to Ms. White she continued to state "present company included." In addition to these two incidents, Ms. White states that Ms. Thorn generally continues to constantly badger her, making any time spent in the employees' lounge miserable. Ms. White also notes that Ms. Thorn has attracted a following of sorts, apparently other employees who find her antics humorous.

Paul Christopher states that he has never heard Ms. Thorn say anything about him but that he has known her to cuss and badger other employees and he once witnessed her "give Aida Meredith the finger."

Donna Laishley claims that Ms. Thorn does not talk but yells at the other employees. She recalls being shocked at the writing on the chalkboard, and when she asked, Ms. Thorn confirmed she was responsible and that she had done it because she was "tired of that f___ bitch." Ms. Thorn also advised Ms. Laishley that she had a complaint about the office secretary and that "as far as that fat, f___ bitch in the office goes, I'm not taking any more of her stuff." Ms.Laishley noted that Ms. Thorn had also slammed the door in her face at one time when she was entering the lounge and told her that she was in the wrong job. Ms. Laishley notes that Ms. Thorn has been known to make "oink, oink" noises at people who walk past her and her language commonly consists of obscenities.

Betsy McMillen also witnessed Ms. Thorn calling Ms. White fat. Ms. McMillen's office is apparently adjacent to or near the lounge area. She stated that Ms. Thorn is in the lounge throughout the day, before, after, and between runs from 5:00 or 5:30 a.m. until approximately 4:30 p.m. Ms. McMillen stated that she has also been the victim of Ms. Thorn's attentions. One incident to which she referred occurred when she walked into the lounge and heard Ms. Thorn's state that "this is the first time I've really looked at Betsy with my glasses on and is she really getting fat." Ms. McMillen also states that

the harassment is continual.

Charlene McMillen testified that Ms. Thorn publicly accused her of doing sexual favors for the boss to secure trip assignments. Later, Ms. Thorn called Ms. McMillen's husband and advised him that she was trading sexual favors for assignments. Ms. McMillen stated that Ms. Thorn had also hit the mirror on her bus, an act she believes was intentional, has caused her problems when lining up the buses, and once kicked a chair at her in the lounge. Aida Meredith stated that Ms. Thorn frequently makes smart remarks about her hair, clothes, etc. or other com ments pointed at her.

Elaine Prickett testified that she no longer sits in the employee lounge due to Ms. Thorn's obnoxious behavior, including referring to Ms. Prickett as a "wannabe Betsy." (See footnote 1) Ms. Prickett also recalled that Ms. Thorn had recently yelled out her bus window to another driver that "someone should shove [bus number] 107 [driven by Ms. Prickett] in the ass so we can get out of here." Ms. Prickett was also aware that Ms. Thorn had told the Transportation Director that if she had been in her own private vehicle she would push Ms. Prickett's ass down over the hill. (See footnote 2)

In response to Grievants inquiry as to why some action had not been taken, Assistant Superintendent Jacob Mullett stated that he had met with Ms. Thorn and her representa tives during the summer. At that time Ms. Thorn admitted the writing on the chalkboard was inappropriate and had been done in a fit of anger, but that she had later sent her son into the lounge to erase the board. Both parties agreed that if there was no further behavior of this nature by Ms. Thorn, no further action need be taken. Mr. Mullett assert ed that he was aware of one recent incident, which apparently did not involve any of the Grievants, but that he was under the impression the Transportation Director was moni toring Ms. Thorn's behavior and he believed that the situation had improved this school year.

Transportation Director Richard Gemas testified that he was aware of "bickering in the lounge" and he had believed that his assistant was observing the situation. Mr. Gemas also stated that employees other than the Grievants have advised him that they do not use the lounge any longer due to the offensive environment created by Ms. Thorn.

Although the basis of the complaint involves the actions of a co-worker, this matter is in fact a grievance filed against the Board whose administrators knew, or had reason to know, of the situation and failed to take appro priate action to stop the harassment. The Board was formal ly advised of the situation in October 1992, when the grievance was filed at level one. Then Transportation Director

Leroy Tennant responded that he could not resolve the matter. Upon appeal, no action was taken at levels two or three. The Board further disregarded an Order, dated May 19, 1993, of the Education and State Employees Grievance Board, Remanding the grievance to level two for hearing. Only after Grievants again appealed to level four on Septem ber 8, 1993, was a hearing conducted.

Mr. Mullett's meeting with Ms. Thorn in the summer of 1993, appears to have involved only an informal agreement that no action would be taken if the offensive behavior wasdiscontinued. Neither Mr. Mullett nor any other administra tor appears to have monitored the situation after that meeting. The Assistant Superintendent stated that he was "under the impression" that Transportation Director Richard Gemas was observing the offending employee's behavior; however, Mr. Gemas stated that while he was aware of the "bickering" among the employees, and that employees other than Grievants had told him that they could no longer use the lounge due to Ms. Thorn's behavior, he took no action and believed that his assistant was supervising the employ ee. No testimony was given by the assistant director. Clearly, Grievants have established by a preponderance of the evidence that the Board had knowledge of the offensive behavior and failed to take any effective action to stop the harassment, demonstrated by the repeated or continual disturbance, irritation or annoyance caused by another employee which is contrary to the demeanor expected by law, policy and profession. See: W.Va. Code §18-29-2(n). (See footnote 3)

In addition to the foregoing narration it is appropri ate to make the following formal findings of fact and conclusions of law.

FINDINGS OF FACT

1. Grievants are employed by the Monongalia County Board of Education as bus operators, bus aide, and secretary in the Transportation Department.

2. Grievants complain that another employee harasses them in the employee lounge and elsewhere.

3. Grievants' testimony regarding specific acts of harassment is undisputed.

CONCLUSIONS OF LAW

1. W. Va. Code §18-29-2(n) defines harassment as the repeated or continual disturbance, irritation or annoyanceof an employee which would be contrary to the demeanor expected by law,

policy and profession.

2. Grievants have proven by a preponderance of the evidence that they are subject to harassment by another employee.

3. A board of education bears some responsibility to intervene and stop an employee from engaging in conduct which by definition constitutes harassment.

4. Grievants have proven by a preponderance of the evidence that the Board was aware of the co-worker's offen sive behavior and has taken no meaningful action to correct the situation.

Accordingly, the grievance is Granted to the extent that the Board is Ordered to take whatever steps that are appropriate and necessary, utilizing the corrective and disciplinary measures available to it, to resolve this situation.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Monongalia County and such appeal must be filed within thirty (30) days of receipt of this decision. W.Va. Code §18-29-7. Neitherthe West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

DATED March 31, 1994 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

Ms. Prickett stated that she assisted Betsy McMillen in the office on a voluntary basis.

Footnote: 2

Grievants did not attach a specific date to each incident addressed but it appears that the actions leading to this complaint began sometime before October 1992, and had most certainly continued through the 1993-94 school year.

Footnote: 3

Ms. White advised that Ms. Thorn is known to experience severe headaches, usually after a "spell" of ranting and raving which leads to laughing and crying. Although Ms. Thorn usually places wet paper towels on her head when she gets a headache, she once called for an ambulance from her bus because her head was "bursting." This information could

indicate that Ms. Thorn's behavior may be the result of a medical problem. In any event, one employee cannot be permitted to harass numerous other employees in this manner.

- 3 -