JOHN THOMPSON, .

Grievant, .

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v. . Docket Number: 95-23-127

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LOGAN COUNTY BOARD OF EDUCATION, .

Respondent. .

D E C I S I O N

I. Procedural history

John Thompson (hereinafter Grievant) is employed by the Logan County Board of Education (hereinafter Board) as a Math teacher at Chapmanville Middle School. He filed this grievance against his employer, pursuant to the provisions of West Virginia Code §§18-29-1, et seq., on March 28, 1995, challenging a three-day suspension imposed upon him by the Superintendent of Schools, John D. Myers, effective March 27, 1995. Grievant was charged with insubordination, by letter dated March 24, 1995, for refusing to meet with C. Edward Napier, principal of Chapmanville Middle School, on March 8, 1995, to discuss problems with student discipline in his classroom, and for refusing to accept a memorandum concerning an earlier meeting between the two on March7, 1995. A level four, evidentiary hearing was held in the Grievance Board's office in Charleston, West Virginia, on May 25, 1995, and the case became mature for decision at the conclusion of said hearing. (See footnote 1)

II. Parties' positions

Under W. Va. Code §18-29-6, the Board has the burden of factually proving the charges

substantiating Grievant's suspension by a preponderance of the evidence. It has attempted to do so in this case by presenting the testimony of Principal C. Edward Napier and Superintendent John Myers. The Board contends that Grievant was insubordinate on March 8, 1995, when he willfully and intentionally refused to discuss a matter of student discipline with Mr. Napier, and also refused to accept a memorandum which outlined the substance of an earlier meeting he had with Mr. Napier at which Grievant refused to speak.

Grievant argues that he was not insubordinate on the date in question as he did not willfully refuse to meet with Mr. Napier. Further, he contends that an unreasonable request was made of him; therefore, he was justified in refusing said request. Grievant attempts to correlate the fact that he had an attorney-client relationship, his attorney and representative during this procedure, with proof that he did not intend to willfully refuse to obey an order given to him by his superior.

III. Summary of testimony

A discipline committee was created at Chapmanville Middle School to address concerns with students' classroom discipline. As a direct result, a discipline procedure was created and adopted by the school's faculty senate on January 20, 1995, and again on February 17, 1995. This discipline procedure outlines appropriate and inappropriate student conduct. It also establishes the teachers' duties and responsibilities with regard to maintaining order in their classrooms and their ability to expel students from their rooms. The faculty senate adopted for use various discipline forms which are to be filled out by the teachers whenever certain action is taken. Copies of these forms were made available to the teachers in the school.

Mr. Napier testified that he was informed by Dean of Students and chair of the discipline committee, Mr. Ooten, that Grievant was not filling out the appropriate forms when excluding students from his classroom. Therefore, he requested of Grievant that he attend a meeting with Mr. Ooten and him on March 7, 1995, in order to review the procedures established under the discipline policy and to answer questions that he may have. Mr. Napier testified that Grievant did not speak at this meeting, but instead, took notes concerning everything that was said to him. Mr. Napier stated that this meeting was not intended to be disciplinary in nature.

Mr. Napier further testified that after this meeting, he believed it would be best to prepare a written summary of the meeting and give it to Grievant so that he could not later contendhe was unfamiliar with his responsibilities under the discipline procedure. On March 8, 1995, Mr. Napier called Grievant

to his office. When Grievant arrived, Mr. Napier again attempted to discuss with him the substance of the earlier meeting. Grievant refused to speak with Mr. Napier. Mr. Napier testified that Grievant saw the memorandum in his hand and stated that he did not have to meet with him, would not meet with him, would not accept the paper and then left. Mr. Napier stated he requested that Grievant return to his office and that he did come back to his office door but again refused to engage in any communication. Mr. Napier testified that he asked Grievant whether he would sign a letter indicating that he refused to meet with him and Grievant also refused. He stated that Grievant did not request to have his legal counsel present. After this incident, Mr. Napier recommended to Superintendent Myers that Grievant be disciplined.

Mr. Myers testified concerning his decision to suspend Grievant for three days. He testified that he felt Grievant was insubordinate when he willfully refused to accept the letter prepared for him by Mr. Napier. He further stated that it is the customary practice within his schools to have individual staff members signify that they have received documents from their superiors regardless of whether they contain negative commentary or not.

Grievant testified on his own behalf with regard to the March 8, 1995, meeting. He stated that he believed Mr. Napier wanted him to sign a paper about the earlier meeting concerning his allegedfailure to follow the student discipline procedure. He testified that he believed there was a plan to force him to sign something that he did not agree with and, because of that, he stated to Mr. Napier that he did not want to, and would not sign the paper without his representative being available. (See footnote 2) He stated that he was not given the opportunity to review the document and that he was not given the chance to sign another document signifying that he had participated in a meeting the previous day. Grievant stated that he was told his failure to accept the paper could be considered insubordination. He admitted that he did not make an attempt to review the document which he was asked to sign.

Discussion

Insubordination is usually defined by this Grievance Board as "a deliberate, willful or intentional refusal or failure to comply with a reasonable order of a supervisor." Reynolds v. Kanawha-Charleston Health Department, Docket No. 90-H-128, (Aug. 8, 1990), citing Gill v. West Virginia Dep't of Commerce, Docket No. COMM-88-031 (Dec. 23, 1988). "Generally, an employee must obey

a supervisor's order and take appropriate action to challenge the validity of the supervisor's order. Employees are expected to respect authority and do not have the unfettered discretion to disobey or ignore clear instructions." Reynolds, citing Meads v.Veteran Admin., 36 M.S.P.R. 574 (1988); Daniel v. United States Postal Serv., 16 M.S.P.R. 486 (1983); and Davis v. Smithsonian Inst., 13 M.S.P.R. 77 (1983). Further, it has also been stated that insubordination "encompasses more than an explicit order and subsequent refusal to carry it out. It may also involve a flagrant or willful disregard for implied directions of an employer." Sexton v. Marshall University, Docket No. BOR2-88-029-4 (May 25, 1988), (See footnote 3) citing Weber v. Buncombe County Board of Education, 266 S.E.2d 42 (N.C. 1980). A thorough discussion of what constitutes insubordination was had in In re Burton Manufacturing Company, 82 L.A. 1228 (March 2, 1984). In Burton, the Arbitrator recognized that,

> In general, if an employee refuses to obey an order or defies the authority of Management, he is guilty of insubordination. This is a serious offense and may justify disciplinary measures, including discharge. An employee may be charged with insubordination not only if he willfully disobeys an order, but also if he . . . uses abusive, threatening, or profane language in speaking to Management; or assaults a representative of Management. In most cases that come before Arbitrators, the employee either denies the alleged subordinate act or gives reasons why it was justified.

Burton, p. 1234, citing Trotta, Arbitration of Labor-Management Disputes, New York: AMACOM, 1974, pp. 282-283. The Arbitrator in Burton went further to refer to a generally recognized principle of employer-employee relations that,

> Furthermore the company has the right to demand that subordinate personnel not manifest disrespect toward supervisory personnel which undermine their status, prestige, and authority, thus mitigating against plant efficiency.

Burton, p. 1234.

Did Grievant deliberately, willfully or intentionally disobey a reasonable order given to him by Mr. Napier, or was his conduct so disrespectful that he undermined Mr. Napier's status or authority? In the alternative, were Mr. Napier's requests unreasonable given that Grievant contends he requested the presence of his attorney before he would speak with him? These are the issues to be decided.

W. Va. Code §18-29-3(f), states, in pertinent part, as follows

> An employee may have the assistance of one or more fellow employees, an employee organization representative or representatives, legal counsel or any other person in

> the preparation and presentation of the grievance. At the request of the grievant, such person or persons may be present at any step of the procedure, as well as at any investigative meeting or other meeting which is held with the employee for the purpose of discussing the possibility of disciplinary action.

(Emphasis added). This statutory provision appears to give a county board of education employee the right to have a representative present with them at any meeting which may involve a discussion of the possibility of disciplinary action being taken against them, regardless of whether that employee has filed a grievance. (See footnote 4) Grievant relies upon this right to support theargument that his alleged failure to speak with Mr. Napier and to accept the paper prepared by Mr. Napier, or to sign a document signifying such, was not a willful refusal to disobey a reasonable order; therefore, he was not insubordinate in refusing to comply with Mr. Napier's requests.

Grievant's reliance upon this right to representation is misplaced. Regardless of whether the meeting which Mr. Napier requested Grievant to attend on March 8, 1995, was for the purpose of discussing the possibility of disciplinary action, according to the testimony of Mr. Myers, Grievant was not suspended for failure to attend the meeting. Grievant did appear at Mr. Napier's office (albeit he refused to have any meaningful dialogue once there), however, the Board believes that Grievant was insubordinate when he refused to accept the document prepared by Mr. Napier and by not signing a second document signifying his refusal. Grievant was not disciplined for refusing to attend a meeting that he may have been justified in attending only with representation, he was suspended for not accepting a document prepared for him. Therefore, Grievant cannot rely upon Code §18-29-3(f) to contend that Mr. Napier's requests were unreasonable, and therefore, his actions were justified.

Grievant was asked to accept a memorandum prepared by Mr. Napier summarizing a discussion which was had on March 7, 1995. He was then asked to sign a piece of paper signifying that he refusedto take the memorandum. Grievant's refusal to accept this memorandum and to sign the second document is determined to be "a deliberate, willful or intentional refusal or failure to comply with a reasonable order of a supervisor." At the very least, Grievant's actions and attitude were disrespectful of Mr. Napier's status and authority, the type of conduct which extremely frustrates the efficient operation of a school.

Grievant's assertion that he was justified in not receiving the memorandum or signing a piece of paper because he was not given the chance to review the two documents is wholly unpersuasive. Grievant could not have possibly reviewed either document without first having taken possession of

the documents or having asked Mr. Napier to summarize them. However, Grievant's blanket refusal to participate in any meaningful discussion with Mr. Napier made these options impossible. The record does not support the conclusion that Mr. Napier attempted to **force** Grievant to sign any document which he had not first read and acknowledged. Such an assertion is consistent with Grievant's overall defensive and hostile attitude which led to the situation in the first place.

In conclusion, the Board has established that Grievant's conduct on March 8, 1995, amounted to insubordination. Grievant was not entitled to the protection afforded him under W. Va. Code §18-29-3(f). And further, his demeanor and attitude on both March 7, and March 8, 1995, were not consistent with the type of professionalism expected of an experienced teacher of the State's public school system. The foregoing discussion of the case ishereby supplemented by the following appropriately made findings of fact and conclusions of law.

Findings of Fact

1. On March 7, 1995, Grievant was asked to attend a meeting with Chapmanville Middle School Principal C. Edward Napier and Dean of Students Mr. Ooten.

2. Grievant attended the March 7, 1995 meeting but refused to participate in the discussion instead, he took notes concerning what was communicated to him.

3. Because Grievant did not actively participate in the March 7, 1995 meeting, Mr. Napier prepared a memorandum outlining the substance of the discussion at that meeting. On March 8, 1995, Mr. Napier called Grievant to his office and asked whether he would accept this memorandum.

4. Grievant refused to accept or review the memorandum prepared for him by Mr. Napier.

5. Thereafter, Mr Napier asked Grievant whether he would sign a document signifying that he refused to accept the memorandum and Grievant also refused this request.

6. During the brief encounter between Mr. Napier and Grievant on March 8, 1995, Grievant stated that he did not want to, did not have to and would not talk to Mr. Napier.

Conclusions of Law

1. The Logan County Board of Education bears the burden of proving the charges upon which Grievant's suspension was based by a preponderance of the evidence. W. Va. Code §18-29-6.

2. The Logan County Board of Education has established by a preponderance of the evidence that Grievant was insubordinate on March 8, 1995, when he refused to obey a reasonable request made of him by his school's principal, C. Edward Napier.

Therefore, this grievance is hereby **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Logan 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 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.

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ALBERT C. DUNN, JR.

Administrative Law Judge

July 17, 1995

Footnote: 1Grievant filed his complaint directly with the Grievance Board pursuant to W. Va. Code §18A-2-8.

Footnote: 2Grievant's attorney and representative at the level four hearing, sent the Board's attorney a letter dated March 10, 1995, indicating that she was representing Grievant with regard to matters of parental complaints made against Grievant. She requested that, in the future, Grievant be given any documents that he is asked to sign, prior to being required to sign them, so that he could review them and/or consult with her concerning them.

Footnote: 3 Sexton was affirmed in part and reversed in part by the Kanawha County Circuit Court, Docket No. 88-AA-154. It was then appealed to the Supreme Court which reversed the circuit court's ruling. The cite to that Supreme Court case is Sexton v. Marshall University, 387 S.E.2d 529 (W.Va. 1989).

Footnote: 4This right is similar to the right held by many private sector employees who are union members and who deal with their employers through collective bargaining agreements. See, National Labor Relations Act, 29 U.S.C. §158(a)(1) (1973). See also, NLRBv. Weingarten, Inc., 420 U.S. 251, 95 S.Ct. 959, 43 L.Ed.2d 171 (1975).