

**THOMAS P. HARRY**

**v. Docket Nos. 95-24-575/96-24-111**

**MARION COUNTY BOARD OF EDUCATION**

**DECISION**

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Grievant, Thomas P. Harry, employed by the Marion County Board of Education (Respondent) as a teacher assigned to North Marion High School, filed a grievance directly to level four on January 16, 1996, after he was suspended from his duties based upon charges of sexual harassment. Grievant complained that the suspension was imposed without a proper hearing, in violation of his due process rights. This matter was held in abeyance, at the request of the parties, pending further action by Respondent. On March 11, 1996, Respondent voted to terminate Grievant's employment and the second appeal was filed. A level four hearing was subsequently held on June 10, 1996. The matter became mature for decision with the submission of post-hearing fact/law proposals on September 3, 1996.

Events leading to the termination began on October 23, 1995, when Mr. William Noel telephoned Paul J. Donato, principal of North Marion High School (NMHS), to report that his wife, Victoria, a teacher at that school, had been raped by Grievant. Mr. Donato noted that the alleged incident had not occurred during the work day or on school premises, and suggested that Mr. Noel contact the local authorities. By memorandum of the same date, Mr. Donato and Assistant Principal Judd Ashcraft reminded Ms. Noel of her prior report that Grievant was sexually harassing her but that no action had been taken because she had declined to submit the complaint in writing. They assured her that sexual harassment would not be tolerated and encouraged her to report in writing any job related sexual misconduct.

On October 30, 1995, Joseph E. Brock, also a faculty member at NMHS, delivered a letter of that same date to Mr. Donato. In the letter, Mr. Brock stated that the previous Sunday morning, at

approximately 1:00 a.m., Grievant had called his home. In a state of intoxication, Grievant told Mr. Brock that he was at a bar and wanted to talk about his (Grievant's) son. Mr. Brock's primary concern was that his daughter, who had answered the telephone, told him the following morning that while she was trying to learn the caller's identity, Grievant had said, "[s]hut up bitch and get your father." Mr. Brock indicated that he knew of other, similar, incidents and opined that the situation could strongly impact students and the school system.

The next event, set forth in Mr. Donato's notes (MCBOE Exhibit No. 3), indicates that on November 8, 1995, he received a telephone call from Mr. Rocco Muriale who informed the principal that Grievant was no longer in his employment. [\(See footnote 1\)](#) He had heard that Grievant had used his name to take advantage of the spouse of one of his employees (Mr. William Noel). Supposedly, Grievant "had told Mrs. Noel that if she did not grant him sexual favors he would see that her husband was fired." Ms. Noel complied with Mr. Donato's request and expressed her complaints regarding Grievant in a letter dated November 9, 1995. Ms. Noel stated that Grievant initially propositioned her for sexual favors within the first two months of his employment at NMHS. She provided, in graphic detail, examples of his alleged behavior, including his rubbing her back and "down to [her] breast," and rubbing across her back with his penis, while she was seated. On one occasion, she claimed, he thrust himself rhythmically on her backside while she was standing at her desk. She also complained that he would sit with her at the table in the faculty preparation room and run his hand up the inside of her upper leg, and would make lewd comments to her, such as, referring to some male students, "they probably want to ---- you as much as I do."

Ms. Noel claimed that Grievant would periodically ask if she had ever "done a student" and would opine that there was "nothing as good as having a young piece." He bragged that he had sexual relationships with five female staff members and insinuated that he had been sexually involved with teens as well. She recalled that he had written sexually oriented comments on a "cheer-up" note she had sent him, and given the note back to her. On each "smile face" he wrote, "doggy style with you, sixty-nine for two, and screw you till you are blue." The most recent example of his behavior was noted on October 20, 1995, when Ms. Noel claimed that Grievant informed her that she "could pay him what [she] owed him for having gotten [her] husband his job [at the FBI center]. . . jobs were so hard to come by, if I got his drift." She was to meet him off the premises.

Ms. Noel blamed what she characterized as "at times, daily onslaughts of 'when are we going to

get together' genre" for a deterioration in her condition, leaving her anorexic and incapacitated. She claimed that she had made Mr. Ashcraft aware of Grievant's actions in January of 1991, and that she had later informed Ms. Linda Elmer and Mr. Donato of the situation, and asked for help. Ms. Noel noted that while she did at times push Grievant's hand away from her or tell him to act professional, as time went on she became overwhelmed and resigned herself. By her own admission she "became increasingly submissive to the assaults . . . ." She expressed fear in physically lashing back in that he could have subdued her or charged her with assault.

Carla Harper, a Children's Protective Service Worker with the Department of Health and Human Services (DHHR), testified at the level four hearing that a call was made to the Child Abuse Hotline reporting that Grievant might be sexually abusing students at North Marion High School. On November 6 a fax to the Hotline provided student names and advised that Grievant had bragged to students and teachers. The case was assigned to Ms. Harper and the Sheriff's department for investigation.

Ms. Harper stated that she interviewed four female students who reported that Grievant made them feel uncomfortable because they believed he would look up their skirts and down their blouses. She learned that a student named Erica was referred to by Grievant as "Erotica," and that he told another female student that he couldn't wait to see her in her Speedo swimwear. Ms. Harper also met with the parents of three of the students, Principal Donato, and an Assistant Prosecuting Attorney. She concluded there was no evidence of crime and that the parents would not press charges relating to "sexual exploitation."

By memorandum dated November 27, 1995, Mr. Ashcraft notified Superintendent Robert J. Brewster that on November 21 a female student reported to him that Grievant had taken her from her second period class and proceeded to a stairwell where he demonstrated exercises for treating shin splints. The student stated that while Grievant did not touch her or make any inappropriate comments, the incident made her feel uncomfortable. When asked if she had any similar experiences with Grievant, the student responded that a few weeks earlier Grievant had said to her "[g]ood luck at the sex-onals," referring to the upcoming volleyball tournaments. On November 27 the student's mother requested, and received, a schedule change removing her daughter from Grievant's class.

The following day, November 28, 1995, Mr. Ashcraft issued a second memorandum to Superintendent Brewster in which he reported that in October 1994 two female students had

approached him complaining that Grievant had given them detention. After hearing their story he concluded that Grievant had acted properly; however, at that point one of the students stated that Grievant was also making improper comments. When asked to be more specific, she responded that he had said to her, "I bet you would look good in a swimsuit." Mr. Ashcraft indicated that he met with Grievant and cautioned him about such comments.

In a second memorandum of November 28, 1995, Mr. Ashcraft advised Superintendent Brewster that he had met with Grievant that day, at Grievant's request, to discuss the student who was removed from his class. Grievant also raised the issue of the "Vicki Noel Thing" implying to Mr. Ashcraft that she was the aggressor in much of what did occur.

On November 29, 1995, a meeting was conducted by Superintendent Brewster with his secretary, Assistant Superintendent Dennis Edge, Grievant, and Grievant's attorney. At this time Grievant denied raping or sexually harassing Ms. Noel, and insisted that it was she who pursued him. He stated that she would sit in provocative positions and regularly approached him. He recollected that on October 13 he was at a bar at approximately 3:30 p.m., when Ms. Noel entered the establishment. Apparently, she left at some point, because he stated that she came back into the bar about forty-five minutes later and sat with him until 7:45 p.m., when he left to attend a ball game. Although there is a discrepancy in the dates, Grievant opined this was the date of the alleged rape. He commented that Ms. Noel was not mentally stable and was likely "ticked off" because he had rejected her advances. He suggested that perhaps Ms. Noel had experienced some problems with her husband when she got home, and thus accused him of assaulting her. Grievant characterized himself as a "sacrificial lamb."

Grievant denied ever having sexual relations with a student. He explained that he did remove the female student from a class to show her exercises for shin splints, at the request of her coach. He stated that he did not touch her, but that he did take her to a stairwell, which he concedes was probably a bad idea, because "I didn't want anyone to see us doing this in the hallway because they're rather awkward exercises." Grievant recalled wishing the student good luck in the sectionals, not sex-onals, as she interpreted it, but claims that if he did say sex-onals, it could have been a slip of the tongue. He also recalled asking if the swimmers would wear Speedos, but denies directing the comment to the student who complained.

Grievant admitted that he has had a drinking problem since 1983. He stated that he tries to stay

sober, and after rehabilitation in 1983, did not drink for seven and one-half years. Most recently, he had been sober for one hundred twenty-two days after being charged with a DUI in the summer of 1995.

By letter dated November 30, 1995, Superintendent Brewster advised Grievant that he was suspended, with pay, effective that date. The suspension continued until December 19, 1995, when the Board voted to suspend Grievant, without pay. On January 25, 1996, Superintendent Brewster advised Grievant that he would recommend the termination of his employment to the Board on February 13, 1996. The basis for this recommendation was "several and repeated violations" of County Policy No. 1.27, which forbids sexual harassment by any employee or student. The Superintendent cited the following in support of the recommendation:

1. Apparently beginning in the fall of 1990, Thomas Harry began making remarks of a sexual nature to a co-employee at North Marion High School, Victoria Noel.
2. At a time not later than \_\_\_\_\_ and from time to time from the fall of 1990 through the fall of 1995, Mrs. Noel advised Mr. Harry that such remarks of a sexual nature were unwelcome.
3. Within a few months of Mr. Harry's employment at North Marion High School, he engaged in physical conduct of a sexual nature, which conduct was directed toward Mrs. Noel.
4. At a time not later than \_\_\_\_\_ and from time to time, Mrs. Noel advised Mr. Harry that such physical conduct of a sexual nature was unwelcome.
5. In spite of being told by Mrs. Noel that his verbal and physical conduct of a sexual nature was unwelcome, Mr. Harry persisted in such conduct through October or November of 1995.
6. According to Mr. Rocco Muriale, Mr. Harry acknowledged to him that he had a) used Mr. Muriale's name to solicit sexual favors from Mrs. Noel and b) disclosed to Mr. Muriale that he (Mr. Harry) had engaged in sexual relations with school staff members.
7. Approximately two and one-half (2 1/2) years ago, Mr. Harry made oral statements of a sexual nature to another co-employee at North Marion High School, Frances Courtney.
8. Students at North Marion High School have reported to Frances Courtney that Mr. Harry had made

statements of a sexual nature to or in the presence of students.

9. A co-employee of Mr. Harry at North Marion High School, Joy Nestor Gaines, reported that she had been told by Mr. Harry that he a) was emotionally involved with a student and b) had been involved in casual affairs with co-employees at North Marion High School.

10. Mr. Harry made remarks of a sexual nature to female student(s) who were participating on a school swim team concerning his desire to see them in their swim suits. The comment was 'I can't wait to see you in your Speedo.'

11. The West Virginia Department of Human Services and the Marion County Sheriff's Department, pursuant to a report from or on behalf of female students at North Marion High School, have interviewed or investigated Mr. Harry's reported behavior toward female students. Detective Wayne Barrow has reported that, although in his opinion there was no evidence of actual crimes having been committed, Mr. Harry's actions, including placing his arms around the shoulders of female students, making sexually suggestive comments with double meanings, and staring or glaring at female students, were inappropriate.

12. Referring to an upcoming girls' volleyball tournament, Mr. Harry commented to a female student, "Good luck at the 'sex' onals." For this and at least one other incident, this female student, with her mother, requested that her schedule be changed to remove her from Mr. Harry's actions.

13. During calling of the roll, Mr. Harry referred to one of his female students whose name is "Erica" as "Erotica." This occurred in front of the entire class.

14. Policy No. 1.27, B.2.(c). specifically prohibits an employee from subjecting a student to any conduct of a sexual nature. Policy No. 1.27, A.2.(c). creates a presumption that any conduct of a sexual nature directed toward a student is unwelcome. Therefore, the student is not, for obvious reasons, required to tell a teacher that the action or comment is inappropriate for such to be considered sexual harassment.

15. Comments which may have double meanings, "double- entendres," such as those reported by Detective Barrow are considered as conduct of a sexual nature by Policy No. 1.27, A.1.

16. Mr. Harry's conduct as set forth above has substantially interfered with the performance of

employees and students at North Marion High School and has created an intimidating, hostile, and/or offensive work and school environment as prohibited by Policy No. 1.27, B.1.(c).

In addition to the summary of investigation which is set forth above and which constitutes sexual harassment as defined in Policy No. 1.27, the investigation revealed other incidences of inappropriate conduct by Mr. Harry.

17. Joseph E. Brock reported that Mr. Harry telephoned his home at approximately 1:00 a.m. on a Sunday morning in October 1995 in what appeared to be a very intoxicated condition. Mr. Harry spoke in an abusive manner to Mr. Brock's daughter saying, "Shut up bitch and get your father." After a discussion with Mr. Brock, Mr. Harry hung up.

18. Mrs. Noel reported an off-school-premises sexual assault against her by Mr. Harry. Mr. Harry denied this. The Superintendent has advised Mrs. Noel to report the alleged sexual assault to law enforcement authorities.

19. The totality of Mr. Harry's conduct is unbecoming as a professional educator who is exposed to high school students on a daily basis.

20. Mr. Harry's continued employment with the Marion County Board of Education, in light of the facts and circumstances now known to it, will create a situation which may subject the Marion County Board of Education to civil liability for Mr. Harry's actions of sexual harassment if such occur in the future.

The Board voted unanimously on March 11, 1996, to terminate Grievant's employment.

In addition to the foregoing information submitted through documentation, and the testimony of Ms. Harper, Mr. Brock, Mr. Ashcraft, and Mr. Edge, the Board called Joy Gaines as a witness at the level four hearing. Ms. Gaines, employed as a teacher at North Marion, testified that two or three years ago Grievant had told her that he was involved with a student. Reportedly, they "went places together" and he had bought her a piece of jewelry. He was concerned at the time because he and the student were corresponding through notes left under his desk blotter. He asked Ms. Gaines to remove the notes if anything happened. Ms. Gaines stated that she did not report this information because she understood the student was eighteen and that her parents were aware of the

relationship. Grievant also reportedly told her that he had engaged in sexual affairs with “a few” co-employees, more or less a dozen, but that she had no knowledge as to whether they had actually occurred.

The Board also submitted, over objection, four unsigned notes, purportedly between Ms. Noel and Grievant. Three of the notes include sexually suggestive comments, ostensibly written by Grievant. The first note contains an inquiry relating to use of a word processor. The response was “you look great I'd really like to get in your pants.” Attached to this page, on what appears to be a post-it note is the message, “lunch? Then the session this afternoon 1:00 St. Anthony's Church in back.” A second note comments “[y]ou look so pitifully bored. You still haven't warmed up to computerized modern life, have you. Fess up, dearie!” The response, “you look like you need some deep thrusting some hot sensual talking.” The firstparty continued, “[w]ell, have you become computer literate yet or not?” Response, “[n]o - you can teach me. Is there something the big mouse finds a hole to play in.” A typed note to Ms. Noel stated, “[m]ay I suggest that it is not all your responsibility to involve yourself in another person's life without being invited, regardless of the reason. I would think twice before doing it again.” The note was unsigned; however, a handwritten note, the author of which was not identified, states, “[n]ote supposedly given to V.N. by T.H. after her discussion with him about being involved with a student at NMHS.”

Consistent with the provisions of W.Va. Code §18-29-7, Grievant elected to not testify, but did offer the testimony of four co-workers at the level four hearing. David Michalic, a teacher and Girls' Basketball Coach, confirmed that he had spoken with Grievant regarding the student's shin splints, and that Grievant had advised him of exercises to alleviate the condition. Mr. Michalic stated that he had not advised the student of his conversation with Grievant but that he had no qualms about Grievant working with the student. Two other teachers testified that they had not observed Grievant making any inappropriate comments or gestures.

Jill Brock, librarian and wife of Joe Brock, stated that she had known Grievant five years and Ms. Noel eight years. She recalled that Grievant had hidden in her room from Ms. Noel because, he said, Ms. Noel was driving him crazy and would not leave him alone. Ms. Brock stated that she had observed Ms. Noel walking up and down the hall, past the door where the social studies teachers were eating. She opines that Ms. Noel is not stable, and questions her own daughter's veracity regarding the telephone call, noting that she has emotional problems and is not always



truthful. Pursuant to W.Va. Code §18-29-6, the burden of proof in disciplinary matters rests upon the employer, which must prove the acts relied on for the imposition of a penalty by a preponderance of the evidence. Ford v. W.Va. Dept. of Health/Welch Emergency Hospital, Docket No. 91-H-096 (Jan. 17, 1992); Davis v. W.Va. Dep't. of Motor Vehicles. Docket No. 89-DMV-569 (Jan. 22, 1990). Formal rules of evidence are not applied in grievance proceedings under W.Va. Code §29-6A-6, except for the rules of privilege recognized by law. Hearsay evidence is generally admissible and the issue is generally one of weight rather than admissibility. Seddon v. W.Va. Dept. of Health/Kanawha-Charleston Health Dept., Docket No. 90-H-115 (June 8, 1990).

Factors which may be used when allocating weight to hearsay evidence include: the availability of persons with first-hand knowledge to testify at the hearing; whether the declarants' out-of-court statements were in writing, were signed or were in affidavit form; the agency's explanation for failing to obtain signed or sworn statements; whether the declarants were disinterested witnesses to the events and whether the statements were routinely made; the consistency of the declarants' accounts with other information in the case, their internal consistency, and their consistency with each other; whether corroboration for the statements can otherwise be found in the agency's records; the absence of contradictory evidence; and the credibility of the declarants when they made the statements attributed to them. Borninkhof v. Dept. of Justice, 5 M.S.P.B. 150 (1981).

In this case, the Board did not produce any of the alleged victims to testify at hearing. The bulk of the case for dismissal was the testimony of administrators Ashcraft and Edge. Two other witnesses, NMHS faculty members Joy Gaines and Joe Brock, offered no information regarding Grievant's relationship with Ms. Noel or the specific students cited in this matter.

Although Ms. Noel filed three dated letters, she does not state that she was raped by Grievant. As is usually the case, the letters raised many questions which remain unanswered due to her absence. Ms. Noel's absence also leaves unsubstantiated whether she and Grievant authored the notes submitted as Board Exhibit No. 9. If she did, as the Board asserts, her participation through several pages of correspondence would indicate some encouragement by her of Grievant's actions.

Furthermore, Grievant was deprived of the opportunity to question her regarding the allegations she raised. Also, Ms. Noel's credibility is placed into question by the testimony of Mrs. Brock, who characterized her as unstable. An example given by Mrs. Brock was that she would have a conversation with Ms. Noel and when it concluded, not have any idea what she (Ms. Noel) was

talking about.

Mr. Ashcraft's notes (Board Exhibit No. 4) indicate that on October 27, 1995, Mr. Noel called to advise him that Ms. Noel had been admitted to Chestnut Ridge Hospital and that she was "a very sick woman." Taken with Grievant's denial of the allegations at the pre-termination hearing with Superintendent Brewster on November 29, and Ms. Noel's failure to file criminal charges, it cannot be concluded that Respondent has proven Grievant sexually harassed Ms. Noel.

The evidence regarding Grievant's actions with the students is more persuasive to the extent they were addressed through the testimony of the Childrens' Protective Service Worker, by Grievant at the November 29 meeting with Superintendent Brewster, and by Grievant's counsel at the termination hearing. Those issues, and Grievant's responses to them at the November 29 meeting are as follows. The first, addressed in Mr. Ashcraft's November 28, 1995, memorandum to Superintendent Brewster, stated that in October 1994, student J.C. told him that she did not like some of the comments Grievant was making to her. When asked to be more specific, she stated that during a conversation about swimming, Grievant said "I bet you would look good in a swimsuit." The statement referred to "Speedos" in other parts of the record. Grievant's recollection is that he asked the group in general, "are you guys all going to wear Speedos?"

The second and third incidents occurred in late 1995 and involved student H.S., to whom Grievant allegedly wished "Good Luck at the SEXonals" and assisted with the shin splint exercises. Grievant confirms that after his discussion with Mr. Michalic, he called H.S. out of class to show her the exercises for shin splints. Addressing the SEXonal issue, Grievant first stated that he had said "sectional," but that it sounded like sexual. Later he stated that it could have been a slip of the tongue.

Grievant's alleged reference to a student named Erica as "Erotica" was confirmed by the Childrens' Protective Service Worker. This issue was not discussed at the November 29 meeting; however, Grievant's counsel stated at the hearing before the Board on March 11, 1996, that after the student told Grievant it embarrassed her, and she did not like it, it never happened again. Although no physical or verbal improprieties were alleged when Grievant instructed the student regarding shin splint exercises, taking her from a class to a remote area was inappropriate.

Sexual harassment of students is clearly grounds for dismissal. Shaffer v. Preston County Bd. of Educ., Docket Nos. 94-39-1127/95-39-030 (August 25, 1995). Comments of a sexual nature from a

teacher to a student cannot be tolerated, and excuses such as it was only teasing, it was a slip of the tongue, that the comment was unintentional, and/or that a comment was stopped once told that it was offensive, does not abrogate the harm or exonerate the perpetrator. Alcohol abuse does not appear to have played a role in any of the major allegations in this matter, but probably was a factor in the call to the Brock home. In any event, substance abuse does not constitute a viable excuse for sexual harassment.

In conclusion, the Board has proven that Grievant acted in an inappropriate and improper manner with the students. However, misconduct alone does not always support a dismissal. Rovello v. Lewis County Bd. of Educ., 381 S.E.2d 237 (W.Va. 1989). In the present case, dismissal is clearly disproportionate to the offense proven. See Parham v. Raleigh County Bd. of Educ., Docket No. 91-41-131 (Nov. 7, 1991). Given the nature of the actions, together with the harm incurred, it must be concluded that the Board acted arbitrarily and capriciously in dismissing Grievant. Nevertheless, the record lacks any evidence that the Board's action was malicious, and Grievant's wrongdoing merits a sanction. Considering all the circumstances of the case, Grievant should be reinstated, but without back pay or reimbursement of benefits or costs.

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

### **Findings of Fact**

- 1. Grievant is employed by the Marion County Board of Education as a teacher at North Marion High School.**
- 2. In October 1995, Grievant was accused of rape by Ms. Noel, a co-worker. Ms.Noel subsequently complained that she had been sexually harassed by Grievant since at least 1991.**
- 3. In November 1995, two reports were filed with the Child Abuse Hotline stating that Grievant might be sexually abusing students at North Marion High School.**
- 4. In an ensuing investigation the Childrens' Protective Service Worker concluded there was no evidence of a crime.**
- 5. In March 1996, the Board accepted Superintendent Brewster's recommendation that Grievant's employment be terminated based upon an investigation of the claims made by Ms.**

**Noel and the students.\_**

### **Conclusions of Law**

1. Pursuant to W.Va. Code §18-29-6, the burden of proof in disciplinary matters rests upon the employer. The standard of proof is by a preponderance of the evidence. Hayes v. Kanawha County Bd. of Educ., Docket No. 94-20-1143 (June 28, 1995).

2. Under W.Va. Code §18-29-6, the formal rules of evidence shall not be applied in grievance proceedings and hearsay evidence is generally admissible. The weight accorded to hearsay evidence depends on several factors. The hearsay evidence in this case is not entitled to much, if any, weight because it was not corroborated by any direct evidence and no showing was made that direct testimony was not available.

3. The Board failed to prove the alleged act of misconduct involving a co-worker by a preponderance of the evidence.

4. The Board has proven by a preponderance of the evidence that Grievant engaged in the alleged acts of misconduct involving students.

5. The Grievance Board is empowered to fashion relief which is “deemed fair and equitable” in the circumstance of a particular case. W.Va. Code §18-29-5(b). The authority to mitigate the punishment imposed on a school employee is encompassed by the statute. Phillips v. Summers County Bd. of Educ., Docket No. 93-45-105 (Mar. 31, 1994); Bell v. Kanawha County Bd. of Educ., Docket No. 91-20-005 (Apr. 16, 1991).

6. When considering whether to mitigate the punishment, factors to be considered include whether the penalty is clearly disproportionate to the offense proven. Parham v. Raleigh Bd. of Educ., Docket No. 91-41-131 (Nov. 7, 1991).

7. In the present matter, the Board's termination of Grievant was excessive in relation to the actions proven by a preponderance of the evidence.

Accordingly, the grievance is GRANTED to the extent that the Board Ordered to reinstate Grievant. Claims for back pay and benefits are DENIED.

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

**Date: September 23, 1996** \_\_\_\_\_

**SUE KELLER**

**SENIOR ADMINISTRATIVE LAW JUDGE**

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**Footnote: 1**     *Grievant was apparently a part-time employee for Mr. Muriale.*