BRENDA MAHON,

Grievant,

v. **Docket No. 96-29-417**

MINGO COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Brenda Mahon, a teacher, originally grieved the "[i]nequitable application and distribution of building facilities." At Level II, she was allowed to amend her grievance to "discrimination, favoritism, unsafe working conditions, unsuitable space to put desk, supplies, equipment, denial to use [sic] provisions made by [respondent] for health reasons, etc." Level II Decision. Relief sought was "[a separate] work area, use of chalkless marker board mounted on a wall, [and a] key to the building." (See footnote 1)

This grievance was granted, in part, and denied, in part, at Level II. The Level II Grievance Evaluator made several rulings. He found Grievant was entitled to a suitable work space, and suchspace had been provided to her. He also found that whether Grievant received a master key to the building or was allowed to mount a permanent, chalkless marker board in another teacher's room, was within the discretion of the school's principal, Ms. Jada Hunter.

The parties had initially agreed to submit this case on the record, but when there was some difficulty obtaining the lower level record, Grievant requested a Level IV hearing. By the time of the scheduled Level IV hearing, on April 2, 1997, the lower level record had been received, and the parties again elected to submit the case on the record. On that date, the parties also informed the Undersigned that Grievant had received a key to the building, and Grievant would be transferred next year, thus, her request to mount the board may be moot. (See footnote 2) The case became mature for decision the day of the scheduled hearing, as the parties did not wish to file proposed findings of fact or conclusions of law.

The Undersigned makes the following Findings of Fact.

Findings of Fact

1. Grievant is one of four traveling teachers hired by the Mingo County Board of Education ("MCBOE") at Matewan High School ("MHS"). Traveling teachers are the ones at MHS with the lowest seniority (See footnote 3) , and they do not have permanent classrooms. Space isprovided for them, in a variety of places, for their classes, planning periods, and storage.

2. Principal Hunter and MHS teachers were not suppose to enter the school building during the Summer of 1996 because of construction by the Army Corps of Engineers.

3. Upon entering the building at the start of the 1996-1997 school year, teachers and custodians complained to Principal Hunter that their keys would not fit the lock on the Teacher's Lounge anymore. Teachers also noted Grievant was the only one with a key that unlocked this door.

4. The reason the keys no longer worked was because Grievant had entered the school during the Summer of 1996 and, without the permission of any one, changed the lock to the Teachers' Lounge to make it into her personal office. Principal Hunter discussed the situation with Grievant and offered her several places to store her materials during the day and at night, and told her of several places she could have a desk for her planning period. (See footnote 4)

5. Other teachers offered Grievant places she could store her equipment and have a desk to plan.

6. Grievant did not like any of the reasonable alternatives offered to her.

7. Grievant is allergic to chalk dust and asked Principal Hunter for a chalkless marker board. Principal Hunter obtained a portable, chalkless marker board the next day, and gave it toGrievant. Principal Hunter heard nothing further on the subject and thought this situation was resolved. Some time later, Grievant presented her with a request to mount a large, chalkless marker board in one of the four rooms she used during the day. Principal Hunter was reluctant to grant this request as Grievant was only in this room for one of her four periods. The teacher who occupied the room on a permanent basis did not want such a large object permanently mounted in his room, but he stated would "go along" with the board's placement in order to cooperate, if necessary.

Discussion

Grievant has alleged discrimination and favoritism, and states she was treated differently than other similarly situated employees. W. Va. Code § 18-29-2(m) defines discrimination as "any

differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing." W. Va. Code § 18-29-2(o) defines favoritism as "unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of another or other employees."

To prove discrimination or favoritism a grievant must establish a prima facie case which consists of demonstrating:

> (a) that he is similarly situated, in a pertinent way, to one or more other employee(s);
>
> (b) that he has, to his detriment, been treated by his employer in a manner that the other employee(s) has/have not, in a significant particular;

and,

> (c) that such differences were unrelated [to] actual job responsibilities of the grievant and/or other employee(s), and were not agreed to by the grievant in writing.

Steele, et al. v. Wayne County Bd. of Educ., Docket No. 89-50-260 (Oct. 19, 1989).

If a grievant establishes a prima facie case, a presumption of discrimination or favoritism exists, which the respondent can rebut by presenting a legitimate, nondiscriminatory reason for the action. However, a grievant may still prevail if he can demonstrate the reason given by the respondent was pretextual. Id. Although Grievant alleged discrimination and favoritism, she is unable to make a prima facie case. She is treated the same as other traveling teachers. Additionally, Grievant has been given most of what she asked for, including keys to the building. As far as the keys were concerned, it appears all she had to do to obtain these was ask Principal Hunter or remind her she did not have them. Level II Trans. at 17.

As for storage and planning space, Grievant has the same access to storage space and a place for her planning periods that all other traveling teachers have. The fact that she does not like any of the multiple places offered to her appears to be a personal issue, and one which Principal Hunter could only solve by giving Grievant her own classroom.

Principal Hunter's refusal to allow Grievant to mount a large, chalkless, marker board in a classroom Grievant only uses for one of four periods a day, cannot be seen as arbitrary and

capricious. This is especially true when the teacher who permanently occupiesthe room would prefer not to have this large object in his room, and Grievant has a portable, chalkless, marker board at her disposal. MCBOE is correct when it argues that Principal Hunter "supervise[s] the management and operation of the school", and it is for her to decide the best way to utilize the space at MHS. W. Va. Code § 18A-2-9.

The above-discussion will be supplemented by the following Conclusions of Law.

Conclusions of Law

1. A grievant, in a non-disciplinary action, has the burden of proving his case by a preponderance of the evidence. Napier v. Logan County Bd. of Educ., Docket No. 94-23-541 (Apr. 25, 1995).

2. Grievant failed to demonstrate a prima facie case of discrimination and/or favoritism.

3. Grievant failed to prove that MCBOE did not provide her with acceptable working conditions.

4. The principal of a school supervises the management and operation of the school, and her decision to not place a large permanent, chalkless, marker board in a classroom where Grievant only teaches one of four class periods is not arbitrary and capricious. W. Va. Code § 18A-2-9.

Accordingly, this grievance is **DENIED**.

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

_____

JANIS I. REYNOLDS

Administrative Law Judge

Dated: July 31, 1997

Footnote: 1

Grievant's allergies to chalk dust, and a discussion of reasonable accomendations to this problem, are discussed in Mahon v. Mingo County Bd. of Educ., Docket No. 94-29-305 (Mar. 17, 1995).

Footnote: 2

As the new school year had not started, the Undersigned could not be sure the issue of the chalkless board would be moot. Grievant also continued to be dissatisfied with the planning period area and storage arrangements.

Footnote: 3

Grievant has approximately eight years of seniority.

Footnote: 4

Apparently, no disciplinary action was taken against Grievant for these actions.