JEAN FALLS

v. Docket No. 97-13-119

GREENBRIER COUNTY BOARD OF EDUCATION

DECISION

The grievant, Jean Falls, is employed by the Greenbrier County Board of Education (Board) as an eighth grade Math teacher at Rupert Elementary/Junior High School (REJS). She filed a grievance at Level I in October 1996, (See footnote 1) alleging that on October 16, 1996, REJS Principal Sandy Aldredge "had violated W.Va. Code 18-29-2(a) by engaging in actions that constituted a substantial detriment and interference with effective classroom instruction and job performance." The complaint was denied at the lower levels and appeal to Level IV was made March 5, 1997. The parties subsequently agreed to submit the case for decision on the record developed at Level II. The Board submitted proposed findings of fact and conclusions of law by April 17, 1997. The grievant declined to make proposals.

Background

It is not necessary to recount or resolve the many differences between the grievant's account of the events of October 16, and those of Board witnesses. The operative facts of the case are not in dispute. On that date, Principal Aldredge made an unannounced observation of the grievant's fourth period class, and the grievant believed it to be a response to a previous grievance she had filed. In front of the class, the grievant announced that she would not teach in the principal's presence, and then stood or sat quietly for five to ten minutes before beginning instruction. It appears that Ms. Aldredge left prior to the end of the class period.

Argument

The grievant concedes that school principals have a duty to make classroom observations and does not contend that Principal Aldredge said or did anything during the class period to embarrass

her or interfere in her instruction. She essentially alleges that the visit was prompted by the previous complaint, and it was, therefore, inherently intimidating, disruptive, and otherwise improper. (See footnote 2) As relief, the grievant asks that Ms. Aldredge be directed to apologize and make a commitment that she will work "cooperatively" with her in the future. The Board denies that the principal acted improperly in any manner, and asserts that she was merely carrying out her duty to make routine classroom observations.

Findings and Conclusions

For whatever reason, neither party presented evidence on the previous grievance. The grievant did not assert that the complaint was directed at or even concerned Principal Aldredge. The record suggests but does not establish that prior to October 16, the principal may have had concerns over the grievant's performance, and the observation was part of an evaluation process or improvement plan. It can be inferred that there had been some previous dispute between the two.

It would not be possible, however, to conclude that the principal harassed the grievant in order to intimidate and/or retaliate without finding that the prior complaint was injurious or could have been perceived as injurious to the principal. There is no assertion or evidence that she was prompted by other motive. Simply stated, the grievant presented no evidence which even tends to establish that the principal harassed her or had reason to.

Moreover, relief which is illusory in nature is not available at Level IV. See, Bell v. Lincoln County Bd. of Educ., Docket No. 94-22-236 (Sept. 7, 1994). The grievant's request for an apology and commitment falls into that category.

Accordingly, the grievance is **DENIED.**

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Greenbrier 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 appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate Court.

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JERRY A. WRIGHT

Administrative Law Judge

DATE: July 2, 1997

Footnote: 1

The record does not reveal the precise date the grievance was filed. At Level II, counsel for the Board briefly questioned the timeliness of the complaint during cross-examination of the grievant but did not pursue the issue. There is no evidence of record which establishes that it was not timely filed.

Footnote: 2

W.Va. Code §18-29-2(a) permits employees of a county board of education to grieve "any specifically identified incident of harassment. . .or any action, policy or practice constituting a substantial detriment to or interference with effective classroom instruction, job performance or the health and safety of students or employees." Code §§ 18-29-2(n) and 18-29-2(p) define harassment as "repeated or continual disturbance, irritation or annoyance of an employee which would be contrary to the demeanor expected by law, policy and profession," and reprisal as "retaliation of an employer or agent toward a grievant or any other participant in the grievance procedure either for an alleged injury itself or any lawful attempt to redress it."