JOHN JEFFERIES,

Grievant,

v. **Docket No. 02-46-081**

TAYLOR COUNTY BOARD OF EDUCATION

Respondent.

D E C I S I O N

Grievant, John Jefferies, employed by the Taylor County Board of Education (TCBE) as a bus operator, filed a level one grievance on September 14, 2001, following the placement of a disciplinary letter in his personnel file by Superintendent Jane Reynolds. Grievant stated, “I feel I did not harass anyone. Also my right to Freedom of Speech was violated.” For relief, Grievant requested that the letter be removed from his personnel file. At level one, the Transportation Director responded that the relief requested exceeded his authority. The grievance was denied at level two, and Grievant elected to bypass consideration at level three, as is permitted by W. Va. Code § 18-29-4(c). Appeal was made to level four on March 28, 2002, and an evidentiary hearing was conducted on May 13, 2002. Grievant was represented by Jeffrey D. Cramer, Esq., of Berry, Kessler, Crutchfield & Taylor, and TCBE was represented by Basil R. Legg, Jr., Esq. The matter became mature for decision upon receipt of proposed findings of fact and conclusions of law filed by the parties on or before June 6, 2002.

The following facts are derived from the record developed at level two and level four.

Findings of Fact

1. Grievant has been employed by TCBE as a bus operator for approximately six years.

2. In Spring 2001, TCBE implemented a reduction in force, resulting in theelimination of three bus operator positions. Many, if not all, other bus operators were reassigned to new or revised runs.

3. As a result of his reconfigured run, Grievant filed a grievance on August 24, 2001, which he subsequently withdrew, after conceding his assignment was proper.

4. Another run, previously held by David Kelley, was reassigned to Bill Sayres for the 2001-2002 school year. Grievant believed this reassignment had been improperly completed, and contacted Mr. Kelley a number of times encouraging him to challenge the action.

5. Grievant offered to assist Mr. Kelley in challenging the transfer, which Grievant deemed improper based upon his reading of state law, and a conversation with the President of the West Virginia School Service Personnel Association.

6. Mr. Kelley in turn discussed the matter with Mr. Sayres, who finally met with Superintendent Jane Reynolds concerning the controversy. He asked her to make a decision, because the situation was causing a disruption in the Transportation Department.

7. Superintendent Reynolds issued Grievant a letter of reprimand dated August 19, 2001, in which she stated:

You are to immediately cease making statements to other bus operators that are harassing in nature and that falsely imply that you are in a position of authority to have knowledge of information that is related to the operations of the transportation department and the administrative plans that may affect specific bus routes and operators.

Your statements are causing a substantial disruption to the overall operations of the transportation department and the school system. Any further incidences of this nature will result in further disciplinary action up to and including possible suspension/termination.

A copy of this letter will be placed in your personnel file.

___8. Grievant was not given an opportunity to respond to the charges either before or after the letter was issued.

Discussion

In disciplinary matters, the employer bears the burden of proving the charges by a preponderance of the evidence. W. Va. Code §18-29-6; Hoover v. Lewis County Bd. of Educ., Docket No. 93-21-427 (Feb. 24, 1994); Landy v. Raleigh County Bd. of Educ., Docket No. 89-41-232 (Dec. 14, 1989). A preponderance of the evidence is defined as “evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black's Law Dictionary (6th ed. 1991), Leichliter v. W. Va. Dept. of Health and Human Res., Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, a party has not met its burden of proof. Id.

As stated in the letter of August 19, 2001, TCBE asserts that Grievant was engaging in actions which were disruptive to the Transportation Department. Grievant admits to calling Mr. Kelley

regarding the transfers, advising him that his transfer was contrary to law, and offering assistance if Mr. Kelley would file a grievance. However, Grievant denies that he was harassing Mr. Kelley, and questions whether TCBE has any authority in this matter since the calls occurred after work hours.

Both Mr. Kelley and Mr. Sayres testified that they did not consider Grievant's actions to constitute harassment. The testimony of all the bus operators establishes that a great deal of conversation regarding the changes in bus routes was taking place, but that would be expected after a reduction in force, which ultimately affected the runs of most of thedrivers. TCBE did not state with any specificity how Grievant's actions were disruptive to the Transportation Department. Finally, the matter was never discussed with Grievant, denying him any opportunity to state his side of the story before the discipline was imposed.

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

Conclusions of Law

1. In disciplinary matters, the employer bears the burden of proving the charges by a preponderance of the evidence. W. Va. Code §18-29-6; Hoover v. Lewis County Bd. of Educ., Docket No. 93-21-427 (Feb. 24, 1994); Landy v. Raleigh County Bd. of Educ., Docket No. 89-41-232 (Dec. 14, 1989).

2. TCBE has failed to prove that Grievant was engaging in actions which were disrupting the Transportation Department, or otherwise warranted a letter of reprimand being placed in his personnel file.

Accordingly, the grievance is **GRANTED,** and TCBE Ordered to remove the August 19, 2001, letter from Grievant's personnel file.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Taylor 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. However, the appealing party is required by W. Va. Code §29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

Date: June 27, 2002 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE