TINA EMRICK,

Grievant,

v. **DOCKET NO. 03-54-300**

WOOD COUNTY BOARD

OF EDUCATION,

Respondent.

DECISION

In a grievance filed on or about June 19, 2003, Tina Emrick (Grievant),a cafeteria manager at Fairplains Elementary School, claimed she had been harassed by Beverly Blough, Food Service Director for Wood County Board of Education (Respondent). As relief, she seeks to have Respondent 1) suspend Ms. Blough without pay until she completes an anger management class, 2) evaluate Ms. Blough's progress in her anger management classes every three months, and 3) to have Ms. Blough write a personal apology.

The grievance was denied at the lower levels, and a level four hearing was held at the Grievance Board's Charleston office on January 27, 2004. Grievant was represented by WVSSPA attorney John Roush, and Respondent was represented by counsel, Dean Furner of Spillman Thomas & Battle, PLLC. The matter became mature for decision on March 2, 2004, the deadline for submission of the parties' proposed findings of fact and conclusions of law. Based on a preponderance of the evidence adduced at the level four hearing and contained in the record developed below, I find the following facts have been proven.

FINDINGS OF FACT

1. Grievant is regularly employed by Respondent as a Cafeteria Manager at Fairplains Elementary School. Her immediate supervisor is her principal, Elizabeth Conrad.

2. Beverly Blough is employed by Respondent as the Director of Food Services. While she does not supervise Grievant directly, she is responsible for the food service program at Grievant's

school, as well as others, and they have frequent interaction.

3. At about 10:00 a.m. on May 30, 2003, while Grievant was at work, she received a phone call from her then-fiancé, who needed a ride to Children's Hospital in Columbus, Ohio, where his son had been taken by life flight.

4. Grievant called in a substitute and arranged to have a custodian cover for her in the serving line until the substitute arrived, (See footnote 1) then left school to go to the hospital.

5. On her way to Columbus, Grievant realized it was the last day of the month, and that her monthly report was due in the central office by the end of the day. When she arrived at the hospital, she called Ms. Blough to see if she could send someone to complete the report and send it in.

6. Grievant told Ms. Blough she was in Columbus at Children's Hospital with her stepson. (See footnote 2) Ms. Blough raised her voice and told her she should have already trained Linda Bunner, one of her cooks, to do the report, and that if Ms. Bunner were not trained by theend of the year, she would replace her with someone who was trained. This was the incident that Grievant characterized as harassment, precipitating this grievance.

7. In August, 2002, (See footnote 3) Grievant attended a meeting of Cafeteria Managers at Jefferson Elementary School. When she arrived at the meeting, a member of Ms. Blough's office staff told her she was "in trouble" because she had not yet completed her "pick sheet." (See footnote 4)

8. When Ms. Blough arrived, Grievant asked her if she could turn in the pick sheet later, and told her it had not been done because she had spent the morning training another cook. Ms. Blough said, "No, you cannot." in an abrupt manner. Grievant was embarrassed because other Cafeteria Managers and cooks witnessed the incident.

9. On April 10, 2003, Grievant was in another meeting with other cooks and managers. Grievant witnessed Ms. Blough yell at Teresa Winland, a cook and cafeteria manager at Edison Junior High School, about a missing bread receipt. Ms. Blough said, "How the hell am I supposed to pay the bill if I don't get the receipts?" Ms. Winland was humiliated, never having had anyone address her that way before in a professional setting. Ms. Blough did not directly address Grievant on this occasion.

DISCUSSION

This is a non-disciplinary grievance in which Grievant bears the burden of proof. Grievant's allegations must be proven by a preponderance of the evidence. *See*, W. Va.Code § 18-29-6, 156 W. Va. C. S. R. 1 § 4.21. Grievant avers she has been subjected to repeated harassment by Ms. Blough. W. Va. Code § 18-29-2(n) defines 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.” “Harassment has been found in cases in which a supervisor has constantly criticized an employee's work and created unreasonable performance expectations, to a degree where the employee cannot perform her duties without considerable difficulty. *See* Moreland v. Bd. of Trustees, Docket No. 96-BOT-462 (Aug. 29, 1997).” Pauley v. Lincoln County Bd. of Educ., Docket No. 98- 22-495 (Jan. 29, 1999). A single incident does not constitute harassment. *Id.*; Metz v. Wood County Bd. of Educ., Docket No. 97-54-463 (July 6, 1998).

Respondent contends Grievant has not met her burden or proving a pattern of harassment, has overreacted to Ms. Blough's attitude, and is requesting relief that is not available through the grievance process. Grievant requests both an apology from Ms. Blough and that Respondent initiate disciplinary action against her. The remedy of apology is not available from this Grievance Board. Hall v. W. Va. Div. of Corrections, Docket No. 89-CORR-687 (Oct. 19, 1990). Relief which entails an adverse personnel action against another employee is extraordinary, and is generally unavailable from the Education and State Employees Grievance Board. Collins v Dep't of Transp./Div. of Highways, Docket No. 02-DOH-206 (Sep. 20, 2002). The Grievance Board is without authority, statutory or otherwise, to order that disciplinary action be taken against another employee. Goff v. Dep't of Transp./Div. of Highways, Docket No. 03-DOH-048 (Apr. 7, 2003). Grievant did not seek to amend or change her relief sought at any level, and although her counsel contends in his proposed findings that Respondent "must be directed to take appropriate remedial steps to correct this problem and improve the working circumstances of Grievantto a tolerable level," he does not suggest how this may be done within the authority of the Grievance Board.

Even if the relief Grievant requests were available, she has not met her burden of proving Ms. Blough harassed her. While it is obvious a personality conflict exists and Ms. Blough may not always treat her coworkers with professional courtesy, it is noted that in each case, she was responding to a failure on the part of a colleague to carry out her duties, and it is understandable that she would be upset about it. The April 10, 2003, incident was not directed at Grievant, and she cannot claim it as

harassment. The other two incidents do not rise to the level of constant criticism that creates unreasonable performance expectations to a degree where Grievant cannot perform her duties without considerable difficulty.

The following Conclusions of Law support this decision:

CONCLUSIONS OF LAW

1. This is a non-disciplinary grievance in which Grievant bears the burden of proof. Grievant's allegations must be proven by a preponderance of the evidence. *See*, W. Va. Code § 18-29-6, 156 W. Va. C. S. R. 1 § 4.21. "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." Leichliter v. W. Va. Dep't of Health and Human Resources, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the party bearing the burden has not met its burden. Id.

2. The remedy of apology is not available from this Grievance Board. Hall v. W. Va. Div. of Corrections, Docket No. 89-CORR-687 (Oct. 19, 1990). *See* Carney v. W. Va. Div. of Rehabilitation Serv., Docket No. VR-88-055 (Mar. 28, 1990); Bentz v. W. Va. Div. of Vocational Rehabilitation Serv., Docket No. VR-88-057 (Mar. 28, 1989); Zban v.Cabell County Bd. of Educ.,Docket No. 06-87-010/011/012/021/033 (July 31, 1987). Accordingly, this relief will not be considered.

3. Relief which entails an adverse personnel action against another employee is extraordinary, and is generally unavailable from the Education and State Employees Grievance Board. Collins v Dep't of Transp./Div. of Highways, Docket No. 02-DOH-206 (Sep. 20, 2002); Jarrell v. Raleigh County Bd. of Educ., Docket No. 95-41-479 (July 8, 1996). The Grievance Board is without authority, statutory or otherwise, to order that disciplinary action be taken against another employee. Goff v. Dep't of Transp./Div. of Highways, Docket No. 03-DOH-048 (Apr. 7, 2003); Coster v. W. Va. Div. of Corrections, Docket No. 98-CORR-506 (Feb. 24, 1999); Daugherty v. Bd. of Directors, Docket No. 93- BOD-295 (Apr. 27, 1994). *See* Daggett v. Wood County Bd. of Educ., Docket No. 91-54- 497 (May 14, 1992).

4. “Harassment has been found in cases in which a supervisor has constantly criticized an employee's work and created unreasonable performance expectations, to a degree where the employee cannot perform her duties without considerable difficulty. *See* Moreland v. Bd. of Trustees, Docket No. 96-BOT-462 (Aug. 29, 1997).” Pauley v. Lincoln County Bd. of Educ., Docket No. 98-22-

495 (Jan. 29, 1999). A single incident does not constitute harassment. *Id.*; Metz v. Wood County Bd. of Educ., Docket No. 97-54-463 (July 6, 1998).

Based on the foregoing Findings of Fact and Conclusions of law, this grievance is hereby **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or to the Circuit Court of Wood County. Any 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 andState 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 Grievance Board with the civil action number so that the record can be prepared and transmitted to the circuit court.

Date: March 9, 2004 _____

M. Paul Marteney

Administrative Law Judge

Footnote: 1

Both her principal and her secretary were not at school that day.

Footnote: 2

The child was not Grievant's stepson, and did not become her stepson.

Footnote: 3

Respondent objected to Grievant's presentation of evidence of past incidents in which Grievant felt she had been subjected to Ms. Blough's harassment, as she did not file grievances over those cases at the time they occurred. This objection was overruled at level four, on the ground that Grievant had a burden of proving a pattern of harassment, since one instance will not sustain the charge.

Footnote: 4

A "pick sheet" is an order form for food and supplies which must be completed and turned in to Ms. Blough's office weekly.