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SEP 12 1974

GEORGE PESKO

APPEAL TO THE CHANCELLOR OF HARRIET BAIZERMAN
A TEACHER AT P-9-K

Conference held on Thursday, May 2, 1974 in Room 504, Board of Education, 110 Livingston Street, Brooklyn, New York:
Irving Rosenbaum, Hearing Officer.

Present:

Ms. Harriet Baizerman	Appellant
Ms. Eve Cary	Attorney
Mr. Edward Barnes	U.F.T. Grievance Dept.
Mr. Winton H. Robins	Principal

Mr. Barnes attended on behalf of the United Federation of Teachers; was given the opportunity to state that organization's views; and stated that he would be present as an "observer."

Origin of the Appeal

Ms. Harriet Baizerman, a teacher assigned to P-9-K alleges that a letter of January 23, 1974 from the principal is inaccurate and unfair and she asks that it be removed from her file in the school in accordance with the provisions of Article IV F 20.5.

Ms. Baizerman further claims that in censuring her in the letter for placing a document in teachers' letter boxes, without obtaining approval, principal discriminated against her on the basis of her membership and participation in the activities of an employee organization in violation of Article II (Fair Practices); acted contrary to established policy and practice in violation of Article X A 2; and violated her Constitutional rights.

Facts of the Case - Basis of the Appeal

1. In the letter of January 23, 1974 the principal indicates that the use of teachers' letter boxes had been discussed previously with the grievant in the presence of a parent member of the Parent-Staff Liaison Committee, and that she had been informed that no teacher could place a communication in letter boxes without obtaining prior approval. He charges the grievant with having placed a circular prepared by the Teachers Action Caucus in the letter boxes in violation of Board By-Laws and his verbal direction. He informed her that the letter would be placed in her file as evidence of her willful disregard of the By-Laws and his instructions.

2. The circular distributed by grievant was critical of the policies and actions of the leadership of the U.F.T. and urged all union members to attend union meetings and to participate more actively in the activities of the Union. (See Attachment A).

3. At the Step 3 conference, the principal explained that on a previous occasion the grievant had neglected to secure his approval for the duplication of minutes of a meeting and he had at that time informed her that she had to have permission to have material duplicated and to distribute material via the letter boxes.

4. The teacher maintains that the letter is inaccurate inasmuch as the principal did not specifically spell out this policy at that meeting, but that the matter was left unresolved. In support of her contention she submits a letter from the parent present during this discussion on this point. The grievant also challenges the accuracy of the letter on the ground that she does not believe her action in placing a TAC circular in the teachers' letter boxes without permission to be violative of a Board By-Law. On the contrary, she argues that the principal's policy is violative of established policy and practices as set forth in General Circular No. 4, 1962-1963.

5. The grievant further alleges that the principal's action in requiring her to submit material disseminating views concerning the bargaining representative and the various options open to employees to him for approval before she could place them in teachers' letter boxes discriminates against her on the basis of her membership or participation in, or association with the activities of, any employee organization. As a member of the Teachers Action Caucus (which is a group of teachers within the U.F.T.), she believes that she has the same right of access to the teachers' letter boxes as is enjoyed by all teacher organizations, and therefore she did not have to obtain prior approval before placing a TAC communication in the letter boxes.

6. Finally, the grievant contends that in limiting the right of access to the letter boxes the principal has deprived her of a fundamental Constitutional right of free speech. She states that there have been several court decisions which establish that school officials may not prohibit the distribution of literature by teachers on school premises.

Relevant Considerations

1. On the basis of the evidence presented at the Step 3 hearing and the testimony of the grievant and the principal, it would appear that the grievant had been given prior warning not to place material in letter boxes without approval. The parent's letter makes it clear that the grievant had in a discussion with the principal insisted on her right to use the letter boxes without first obtaining prior approval. The letter is not inaccurate on that point. The grievant did in fact disregard the principal's instructions and to this extent his criticism of her actions is justified.

2. The evidence presented at Step 3 also indicates that representatives of the U.F.T. had access to teachers' letter boxes to distribute material without obtaining the prior approval of the principal. The principal's policy of prohibiting the grievant from placing the aforementioned communication from a critical group within the U.F.T. in teachers' letter boxes without his prior approval constitutes discrimination against her for participating in...the activities of any employee organization in violation of Article II of the Agreement, and had the effect of favoring one faction within the U.F.T. over another. By requiring such prior approval the principal is not allowing grievant to exercise the same right to participate in the activities of her union as are the supporters of the Union and its leadership.

This conclusion is in accord with the decision of the U.S. Supreme Court in N.L.R.B. v. Magnavox Co. which affirmed the right of employees to distribute literature during non-working time and in non-working areas on matters affecting the nature of their union representation and on options open to employees concerning such representation whether or not their views coincide with those of the recognized bargaining agent. As a representative of a critical group within the U.F.T., the grievant should be accorded the same right of access to teachers' letter boxes as that enjoyed by supporters or representatives of the U.F.T.

3. In view of the finding that the treatment of the grievant was discriminatory within the meaning of Article II, it would be unfair to retain the letter of January 23, 1974 in the grievant's file at the school.

Findings

1. The grievant's allegation that the letter of January 23, 1974 is unfair on the ground that the principal's policy violates Article II is sustained.
2. The principal is directed to remove the letter of January 23, 1974 from the grievant's file at the school.

Respectfully,

Irving Rosenbaum

IRVING ROSENBAUM
Hearing Officer

IT IS SO ORDERED:

Irving Anker

IRVING ANKER
CHANCELLOR

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3. In view of the finding that the treatment of the grievant was discriminatory within the meaning of Article II, it would be unfair to retain the letter of January 23, 1974 in the grievant's file at the school.