

**IN THE MATTER
OF JOHN FRESHWATER**

Mount Vernon City School
District Board of Education,

Employer

R. LEE SHEPHERD, REFEREE

vs.

REPORT

John Freshwater,

Employee

In June 2008, the Board of Education of the Mount Vernon City School District determined that it was necessary to initiate proceedings to consider the termination of the employment contract of John Freshwater. In furtherance of its decision, the Board passed an “Amended Resolution of Intent to Consider the Termination of the Teaching Contract(s) of John Freshwater”. Said document set forth the Board’s bases for consideration of termination “with full specification of the grounds for such consideration” (ORC 3119.16). This report shall review each of the specified grounds in the order in which they appear in the Amended Resolution.

I. SPECIFIED GROUND NO. 1 (a) and (b) (Tesla Coil)

The Board alleged that John Freshwater used a Tesla Coil to mark the shape of a cross into the arms of eighth grade students and, in so doing, acted in derogation of the operating instructions for the device. It was further alleged that at least one of the students to whom the

Tesla Coil was applied suffered red welts, blistering, swelling, and blanching in the area surrounding the application. The Board alleged the application of the Tesla Coil to have been “very painful” and to have created a mark which remained visible for three or four weeks (on the same student who allegedly suffered the hereinabove listed symptoms).

Due to the sensational and provocative nature of this specified ground, it and the facts and circumstances surrounding it became the focus of the curious, including those in the video, audio, and print media. Once sworn testimony was presented, it became obvious that speculation and imagination had pushed reality aside. There was a plausible explanation for how and why the Tesla Coil had been used by John Freshwater. Further, and more crucial to a review of the Amended Resolution, the use of the Tesla Coil by John Freshwater did not seem to be a proper subject for the Amended Resolution. By letter of January 22, 2008 as authorized by Principal William White (Board Exhibit 6 – Attachment 16) the Tesla Coil matter had been concluded. John Freshwater was instructed to cease and desist the use of the device “for purposes of shocking students”. No evidence was presented that John Freshwater used the Tesla Coil for any purpose thereafter. The issue and incident was dealt with by the administration. That case was closed.

II. SPECIFIED GROUND NO. 2 (a) – (g) (Failure to Adhere to Established Curriculum)

Initially, it must be noted that a wealth of evidence was presented to substantiate that John Freshwater was a successful eighth grade science teacher. Many, possibly most of his students seemed to enjoy his class and remember it fondly. On the average, Freshwater students performed at or above the state requirements and expectations for eighth grade science

students. The state test score results for his students often exceeded the state test score results of other eighth grade science teachers. On more than one occasion, John Freshwater was recognized by his peers for his outstanding teaching skills.

The Amended Resolution of the Board took exception to the fact that John Freshwater “taught additional subject areas that are not included in the eighth grade Academic Content Standards”. Had the additional subject areas been taught to the exclusion of the mandatory subject areas, this specified ground may have carried more weight. However, the evidence did not establish such. As has been pointed out hereinabove, John Freshwater’s students learned and tested well with regards to the mandatory subject areas.

Unfortunately, John Freshwater was not satisfied with the positive results of his teaching in terms of successful state test scores and the development of a love for the subject of science in the minds of his students. John Freshwater was determined to inject his personal religious beliefs into his plan and pattern of instruction of his students. In so doing, he exceeded the bounds of all of the pertinent Bylaws and/or Policies of the Mount Vernon City School District – “Religion In The Curriculum”; “Controversial Issues”; “Religious/Patriotic Ceremonies And Observances”; “Religious Expression In The District”; and “Academic Freedom Of Teachers”.

The District’s Bylaw/Policy regarding religion in the curriculum (2270 – Employee Exhibit #9) contains specific and detailed language (4th ¶) which appears to have been developed as and for teachers of the sciences – especially those teaching a general science course (as opposed to specific science courses e.g. chemistry or physics). That policy

specifies...”Students should receive **unbiased** (emphasis added) instruction in the schools, so they may privately accept or reject the knowledge thus gained, in accordance with their own religious tenets”. A great deal of evidence was presented, both as testimony and as exhibits, detailing John Freshwater’s biased instruction. Webster defines bias as a particular tendency or inclination that prevents impartial consideration of a question. John Freshwater’s bias grew from his fervent and deep seated Christian beliefs. Such beliefs and convictions, while admirable character traits in other settings, proved to be John Freshwater’s downfall as an eighth grade science teacher in a public school. Time after time after time he injected his beliefs as associated with his own religious tenets into his science instruction.

In 2003, John Freshwater petitioned the Board asking for the implementation of a new Board policy. His proposed policy was titled “Objective Origins Science Policy”. He advised the Board (through the proposal)...”much of the evidence that supports the Darwinian Evolution Theory which is taught in our public schools is controversial”. His proposed solution was the addition of a Board policy “that allows teachers/students to critically examine the evidence both for and against evolution”. John Freshwater’s proposal was rejected and his suggested policy was not adopted. Nonetheless, he undertook the instruction of these eighth graders as if the suggested policy had been implemented. Both overtly and covertly, John Freshwater began to instruct his eighth grade students in such a way that they were examining evidence both for and against evolution. The evidence for evolution was the material(s) contained within the science textbooks as approved and provided by the Board. The evidence against evolution was in the form of handouts (e.g. Board Exhibit 6 Attachment 10); motion

pictures (“Expelled – Ben Stein”); videos (“The Watchmaker”); as well as a shortcut method of citing passages in printed materials that could be questioned (students needed only say “here”).

Exacerbating this situation was the fact that the evidence against evolution was based, in large part, upon the Christian religious principals of Creationism and Intelligent Design. Thus, John Freshwater’s instruction, in these “against evolution” instances, ran afoul of the District’s Bylaw/Policy regarding “Religion In The Curriculum” (2270 – Employee Exhibit #9) – “Instructional activities shall not be permitted to advance or inhibit any particular religion”. Further, the District’s Bylaw/Policy regarding “Religious/Patriotic Ceremonies And Observances” was violated as pertains to that portion of said Bylaw/Policy which states “Decisions of the United States Supreme Court have made it clear that it is not the province of a public school to advance or inhibit religious beliefs or practices”.

On more than one occasion, John Freshwater was reminded by his superiors that he must abide by the Bylaws & Policies as they related to religion in the curriculum. His principal, Jeff Kuntz, attached a copy of “Religion In The Curriculum” to John Freshwater’s “Teacher Evaluation Summary Form” of January 2003 (Board Exhibit 16; Employee Exhibit 96).

Principal Kuntz testified that he had received complaints from other science staff members as well as from a parent regarding John Freshwater’s science instruction. Principal Kuntz investigated and determined that John Freshwater was not adhering to policy 2270 (“Religion In The Curriculum” TR3830). Consequently, Principal Kuntz attached a copy of

the policy to John Freshwater's "Teacher Evaluation Summary Form" (Board Exhibit 16). He testified that he didn't recall having ever attached a policy to an evaluation before or after this particular incident (TR3808). Principal Kuntz also made it perfectly clear that his act of attaching the policy to the evaluation was intended to point out a deficiency in John Freshwater's method of instruction (TR3812). Principal Kuntz perceived a problem... teaching in opposition to a Board Policy/Bylaw and took corrective action by meeting with John Freshwater face to face and by attaching the copy of the policy to the evaluation. It is doubtful there was any confusion or misunderstanding. Principal Kuntz "spoke with John about it and encouraged him to stay with the subject matter that was board-approved and related to his textbook (TR 3807). But this would not be the only time that John Freshwater's superior(s) had to communicate with him with reference to inappropriate science instruction.

Superintendent Jeff Maley testified about three occasions (during his superintendency) wherein he investigated and/or took action when John Freshwater made use of materials in his class "that may not be appropriate for science" (TR2243). One of the three incidents referred to by Superintendent Maley is detailed hereinabove (Principal Kuntz attaching the Policy/Bylaw to the evaluation). Another incident occurred prior to John Freshwater's 2003 "Objective Origins Science Policy" proposal. Superintendent Maley testified (in answer to the question "And what material was Mr. Kuntz directing John not to use any longer?")....it was material about intelligent design. A parent had come in with the material" (TR 2244). The third incident took place in the spring of 2006. Again, a parent complained that John Freshwater was including non textbook anti-evolution materials in his course of instruction for

eighth grade science (Board Exhibit 6; Attachment 10). Both the complaining parent and a committee of John Freshwater's educational staff peers associated the materials with inappropriate sources i.e. All about God Ministries and several Intelligent Design websites. Once again, this time by direct communication from the Superintendent, John Freshwater was admonished for having made use of inappropriate materials in the teaching of eighth grade science.

Perhaps the most egregious example of John Freshwater's "failure to adhere to established curriculum" took place in the fall of 2006. This particular incident was witnessed by Jim Stockdale. Mr. Stockdale was then employed by the Mount Vernon Board of Education as a substitute teacher. On that fall day in 2006, he was substituting for Carrie Mahon (the inclusion teacher for John Freshwater's eighth grade science class). Mr. Stockdale had taught special education for more than thirty years. His experience had made him aware of prejudice toward students who were different and led him to be sensitive to such prejudice.

Mr. Stockdale testified that he "was more than surprised. I was - I was in a state of disbelief" (TR 4154) when John Freshwater told his 13 and 14 year old public school students that the Bible states that homosexuality is a sin, so anyone who chooses to be a homosexual is a sinner. Mr. Stockdale described how Mr. Freshwater attempted to relate this comment to the subject of science by advising his students that science and scientists can be wrong - as when they (the scientists) declare that there is a genetic predisposition to homosexuality. Thus, in one incident, witnessed by an experienced and seasoned educator, John Freshwater not only injected his subjective, biased, Christian religion based, non-scientific opinion into the

instruction of eighth grade science students but also gave those students reason to doubt the accuracy and or veracity of scientists, science textbooks, and/or science in general.

III. SPECIFIED GROUND NO. 3 (Fellowship of Christian Athletes)

Although there is evidence that John Freshwater was provided a copy of the guidelines for the conduct of Fellowship of Christian Athletes on more than one occasion (TR 497; TR 3827), John Freshwater did not follow the guidelines implicitly. The testimony of Father Mark Hammond (TR 6066) indicated that John Freshwater had asked him (Father Hammond) to speak at the FCA. The testimony of Ruth Frady (TR 5194) indicated that John Freshwater moved from the back of the room toward a prayer circle which had formed to pray for Pastor Zirkle. She further testified that John Freshwater instituted a “concluding prayer” in order to get the students moving toward their next class. Ruth Frady testified that the concluding prayer, though innocuous, ended with an “amen”. The testimony of former Assistant Principal Brad Ritchey (TR 5945) indicated that John Freshwater admitted to having “put my hands up” during the prayer for Pastor Zirkle. The testimony of Principal White (TR 503) indicated that John Freshwater admitted that he (John Freshwater) “probably did pray for him to be feeling better and well....”.

Each of these acts by John Freshwater represented violations of the mandates as contained within the FCA Handbook For Public Schools (Board Exhibit 10; Employee Exhibit 1). At page 9 it is clearly stated that the clubs must be voluntary and student initiated. Further employees or agents of the school are to be present at religious meetings only in a nonparticipatory capacity. At page 16 it is clearly stated that as a faculty sponsor, the teacher

is still acting in his official capacity as a school employee and, therefore, cannot participate in religious speech with students. There is ample evidence that John Freshwater knew or should have known of these mandates and restrictions and that he knowingly or recklessly violated them.

IV. SPECIFIED GROUD NO. 4 (Disobedience of Orders)

By the spring of 2008, there was an atmosphere of tension within the Mount Vernon School District. Specifically, this tension pervaded the middle school and the board offices. Legal counsel had been retained by the parents of a John Freshwater's eighth grade science student. Allegations were made that John Freshwater had caused physical harm to students and that he was in violation of the First Amendment of the United States Constitution (commonly referred to as the Establishment Clause). The administration of the Middle School in conjunction with the Superintendent began an investigation into the allegations. After investigating, the administrators began implementing a plan of corrective action in hopes of forestalling legal action against the Mount Vernon Schools.

The initial focus of the corrective plan concerned the room in which John Freshwater instructed his eighth grade science students. The administration had concerns with the manner in which the room was decorated – the materials attached to the door windows, cupboards, walls, and bulletin boards. There were also concerns with items which were in plain view to the students both as they entered the room and as observed from their assigned seats. The materials with which the administrators were concerned included handwritten Bible verses, videos, posters, and a Living Bible.

The Middle School Principal, William White, was assigned the task of implementing the plan of corrective action. Beginning on April 7, 2008 he had several contacts with John Freshwater both in person and in writing. Principal White testified that “there were several meetings and several conversations in April” (TR 506). He further testified that multiple contacts with John Freshwater became necessary “because the things that I had asked to happen on April 7th were not attended to” (TR 507). Granted, there may have been some confusion about the instructions, orders, and directives which Mr. White gave John Freshwater. However, it is abundantly clear that what may have begun as confusion soon transformed into defiance.

Between April 7th and April 16, 2008, Mr. White clarified and reiterated the directives. Finally, he was forced to set a deadline for compliance – April 16, 2008. Two days prior (April 14, 2008), Mr. White and John Freshwater had a discussion about whether his disobedience would constitute insubordination. He (Freshwater) was told that it would be (TR 513). Nevertheless, John Freshwater decided to comply only in part. To make matters worse he (Freshwater) also decided to add another element to the controversy. He checked out religious texts from the school library and added them to the array on his classroom desk. John Freshwater’s explanation for this act included the phrases “it was a curiosity” and “it’s my inspiration” (TR 447). These explanations seem questionable. The act appears to have been one of defiance, disregard, and resistance.

When Mr. White returned to John Freshwater’s classroom on April 16, 2008 to see if his directives had been followed, he discovered that they had not been. His testimony recounts

his observations “Almost everything had been removed, but there was still the Colin Powell poster....out of the school library he had checked out the Bible and had a book called Jesus of Nazareth” (TR 513 & 514). John Freshwater admitted that he had not removed the Colin Powell poster. He explained...”with that poster, that’s a patriotic poster of our Commander and Chief”....”and I don’t recall being told to remove it” (TR 444).

V. CONCLUSION

Initially, I must note that none of the references to any federal court case(s) involving the Mount Vernon City School District or John Freshwater (pending or since settled or dismissed) whether in the transcript, as an exhibit, or as a part of a brief were in any way influential in the drafting of this Report. I have considered any such references to have been immaterial to my task.

Secondly, the debate concerning the level of proof required in this matter need not be argued further. After a thorough review of the evidence as presented to me, I am satisfied and do so determine this matter by either and both a preponderance of the evidence and clear and convincing evidence.

Thirdly, as concerns the applicability of the pre or post 2009 version of Ohio Revised Code § 3316.19, my determination rests upon the standards established for termination in either of those versions. Each version permits termination for “good and just cause”. The Ohio Supreme Court provided some clarification of the phrase “good and just cause” in it’s 1968 case Hale v. Board of Education 13 Ohio St. 2d 92. Therein, the Court notes that the

conduct of the teacher in question must constitute a “fairly serious matter” in order to cross the threshold of “good and just cause”.

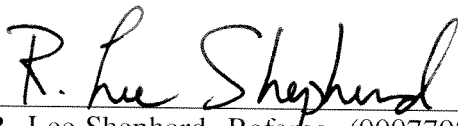
John Freshwater’s conduct as set forth hereinabove represents a “fairly serious matter” and is, therefore, a valid basis for his termination in accordance with ORC 3319.16 based upon “good and just cause”. It is not herein determined whether any one of the bases/grounds for consideration of termination would be sufficient in and of itself. However, the multiple incidents which gave rise to the numerous and various bases/grounds more than suffice in support of termination.

“Families entrust public schools with the education of their children, but condition their trust on the understanding that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family. Students in such institutions are impressionable, and their attendance is involuntary.” Edwards v. Aguillard 482 U.S. 578 (1968) (at pg. 584)

John Freshwater was given ample opportunity to alter or adjust his content and style of teaching so as to avoid running headlong into the Establishment Clause and the Policy/Bylaws of the Mount Vernon Board of Education. Instead, he persisted in his attempts to make eighth grade science what he thought it should be – an examination of accepted scientific curriculum with the discerning eye of Christian doctrine. John Freshwater ignored the concept of *in loco parentis* and, instead, used his classroom as a means of sowing the seeds of doubt and confusion in the minds of impressionable students as they searched for meaning in the subject of science.

John Freshwater purposely used his classroom to advance his Christian religious views knowing full well or ignoring the fact that those views might conflict with the private beliefs of

his students. John Freshwater refused and/or failed to employ objectivity in his instruction of a variety of science subjects and, in so doing, endorsed a particular religious doctrine. By this course of conduct John Freshwater repeatedly violated the Establishment Clause. Without question, the repeated violation of the Constitution of The United States is a “fairly serious matter” and is, therefore, a valid basis for termination of John Freshwater’s contract(s). Further, he repeatedly acted in defiance of direct instructions and orders of the administrators – his superiors. These defiant acts are also a “fairly serious matter” and, therefore, a valid basis for termination of John Freshwater’s contract (s). My recommendation to the Board of Education of the Mount Vernon City School District is that the Board terminate John Freshwater’s contract(s) for “good and just cause”.



R. Lee Shepherd, Referee (0007798)