JOHN H. YEVUTA, et al.

v. Docket No. 94-52-191

WETZEL COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievants herein, eight teachers employed by Respondent Wetzel County Board of Education (WCBE), filed the following level four complaint:

Grievants were docked a day's pay or ordered to take a "no cause [personal leave] day" during an inclement weather day. Grievants were told by administration to use their own judgement in reporting to work. No penalty was mentioned before the fact.

The parties agreed that a decision could be based upon the record adduced at the April 12, 1994 level two hearing, and some supplementary materials.1

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1The grievance was denied at levels one and two on March 7 and May 4, 1994, respectively, and advanced to level four on June 2, 1994. The transcript/exhibits of the April 12, 1994 level two hearing was filed August 8, 1994. Thereafter, the parties agreed to a responsive briefing schedule, and WCBE filed its final response on September 19, 1994.

Based on the record as a whole, the following findings are made:

Findings of Fact

1. Generally, prior to the 1993-94 school year, WCBE's teachers were not required to report to their schools when classes were cancelled due to inclement weather.

2. During the second semester of the 1993-94 school year, but before February 8, 1994, WCBE was forced to close schools for a total of ten days as a result of severe, winter weather conditions.2

3. On February 8, 1994, an ice storm struck the Ohio Valley, including Wetzel County, and WCBE's Superintendent cancelled school for students. Teachers were instructed via telephone calls (a "phone tree") to report to school when they believed they could travel safely. Teachers who attended their schools participated in a faculty senate meeting.

4. Each of the grievants chose not to report to work on February 8, 1994.3

2It is not clear from the record whether teachers were required to report for work on any of the ten prior "snow" days. Grievants' level two appeal statement suggests that they were required to attend school on at least one day in January 1994 when classes were cancelled.

3The grievants are John H. Yevuta, Herman D. Winland, Regina Mason, Cary L. Parker, Alex L. Tunning, Craig A. Schneid, Nancy I. King and Karen Talbert.

5. During the level two hearing, seven of the eight grievants explained the personal circumstances which led them to believe it was unsafe to travel to work on February 8, 1994.4

6. Approximately 75 percent of the teachers in Grievants' school reported for work, but some did not arrive until noon or 1:00 p.m. School is over at 3:15 p.m.

7. By memorandum dated February 10, 1994, WCBE's Superin tendent issued a notice to "Principals" entitled "School Staff

Reporting to Work." The gist of the message was that, since school had already been canceled, "without the requirement that school personnel work," for ten days, a number in excess of that which could "reasonably be considered a 'trade off' for volun tary duties," all employees would be expected to report for work (within a grace period of two hours) for the remainder of the school year unless a higher authority declared a state of emergency. Gr. Ex., 9/19/94.

8. Approximately two weeks following February 8, 1994, Grievants were informed by the assistant principal at their

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4Grievant Yevuta stated he lived approximately two and a half miles from his school, but that his porch and automobile as well as the roads were ice covered. He said he devoted part of the day at home to doing school-related work. Grievant Winland said he lived ten miles away, over hilly terrain and bad roads, and that the cinder truck did not service the road near his home until about 2:00 p.m. Grievant Talbot testified that she lived on a hill about nineteen miles from the school and that even the mail truck failed to make it to her home on February 8, 1994. Grievant King said she lived on a ridge and steep hill in Tyler County, a thirty-minute drive on a good day. Grievant Parker said she car pools to school with others and that, on the morning in question, she called the State Police several times and was told the roads were glare ice.

school that they either had to use a "no cause" personal leave day or be docked for their absence on February 8.5

Grievants offer a number of reasons and theories to support their position in this dispute. They contend that WCBE has an

"unwritten" policy and practice that teachers do not have to report for work on snow days unless instructed to do so. According to Grievants, in the case of February 8, 1994, a grievance was triggered because of WCBE's "aggrieved application of unwritten policies or practices" as stated in the definition of a grievance found in W.Va. Code 18-29-2a.
Grievants urge that WCBE's instructing teachers to use their judgment as to safety and then "punishing" teachers who chose not to report for work because they felt it was never safe to travel was an arbitrary and capricious act. They also argue that they should have been paid for February 8, 1994, because WCBE offered them the option of reporting for work based on their personal judgment about whether they could travel to the work site safely, but failed to clearly inform them that not reporting to work would compel them to use a leave day or be docked. Grievants claim they should not be punished for the manner in which they followed the directives of February 8, 1994, and exercised their judgment about reporting to work. Finally, Grievants claim the ambiguity of the message on

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5All of the grievants elected to take a personal leave day except for Grievant Mason who had exhausted all her leave days and was therefore docked.
February 8, 1994, "seemed to be a veiled attempt not to accept responsibility for the teachers' safety." Gr. Brief at 3.
WCBE relies on W.Va. Code 18A-5-2, which states, in part, that "schools may be closed by proper authorities on account of. . .conditions of weather or any calamitous cause over which the board [of education] has no control." Lost instructional time

must be "counted as days of [paid] employment," but "county boards of education may provide appropriate alternate work schedules" for school personnel affected by school closings. WCBE argues that it had the specific authority under Code 18A-5-2 to require teachers to attend school on February 8, 1994, and that the directive for teachers on February 8 was clear and unambiguous. Therefore, WCBE claims, the only lawful way Grievants could be paid for February 8 was through the use of a personal or sick leave day.6 Finally WCBE argues that it has no legal authority to pay Grievants outside the laws of the State of West Virginia and that there is no authority for making payment to the teachers under the circumstances presented here. Following a careful consideration of the evidence of record, the applicable law, and the parties' respective argu ments, the undersigned makes the following conclusions of law:

6One Grievant claimed some people reported off sick leave on the morning of February 8, and that she had been given the same option. She said she declined to take sick leave because she was not sick.

Conclusions of Law

1. Teachers are entitled to be paid for their contractual employment term, including the following holidays: "Indepen dence Day, Labor Day, Veteran's Day, Thanksgiving Day, Christmas Day, New Year's Day, Martin Luther King's Birthday, Memorial Day, West Virginia Day, and any day on which a primary election, general election or special election is held throughout the state or school district and any day appointed and set apart by the president or the governor as a holiday of special observance

by the people of the state." W.Va. Code 18A-5-2.

2. WCBE's teachers hold 200-day contracts and are obli gated to appear and be present to teach and to attend other related duties at their respective school on designated working days. The only way teachers can be paid for not being present on any "teaching" day during their 200-day term is if they have declared and used a sick day due to illness, have utilized one of their three "no cause" personal leave days provided under W.Va. Code 18A-4-10, or have been specifically excused from attending school because schools have been closed for students and teachers due to weather or other emergencies pursuant to W.Va. Code 18A-5-2.

3. W.Va. Code 18A-5-2 specifically provides boards of education with the authority to establish "alternate work schedules for professional . . . personnel affected by the closing of any school or schools . . .."

4. WCBE's decision to cancel school for students on February 8, 1994 and require teachers to report to school for duties was not in conflict with Code 18A-5-2.

5. Grievants made a personal decision that it was unsafe to report to work on February 8, 1994; that the weather prevent ed them from reporting to work does not alter the fact that many other teachers did report to work on that day.

6. Under these circumstances, WCBE had no legal obliga tion to pay Grievants for non-attendance on a scheduled work day other than to allow them the option of using one of their "no cause" days, especially since no promises were made to the teachers that they would be paid if they decided not to report due to the road conditions.

For all of the foregoing reasons, the grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Wetzel 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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NEDRA KOVAL

Administrative Law Judge

Date: October 12, 1994