VIVIAN MAYNOR, et al.

v. Docket No. 96-20-008

KANAWHA COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievants, thirty teachers employed by Respondent Kanawha County Board of Education (KCBE) and assigned to Elk Elementary Center (EEC), allege that KCBE's "practice of scheduling the time of their school day is discriminatory and constitutes a substantial detriment to or interference with effective classroom instruction and conditions of employment for the teachers." Although the December 13, 1995, level two decision was not entirely adverse to Grievants' interests, they nevertheless appealed to level four and requested a decision based on the record compiled at the November 29, 1995, level two evidentiary hearing. The case became mature for decision on February 22, 1996, upon receipt of Grievants' fact/law proposals. KCBE declined to submit level four proposals, electing instead to stand on the level two decision.

Based on all matters of record, the following findings of fact can be made. (See footnote 1)

Findings of Fact

1. Leonard J. Allen has been the principal at EEC since the 1992-93 school year. T.6.

2. EEC is a consolidated elementary school in KCBE's "Hoover attendance area." In addition to EEC and three other elementary schools, the Hoover area includes Hoover High School, Clendenin Middle School and Elk Middle School, all secondary schools. T.13-16.

3. George Beckett, KCBE's Director of Transportation, is responsible for scheduling school buses to transport students in the Hoover attendance area.

4. When EEC was set to open in 1992, a question arose whether to schedule the school buses so that the elementary school would have an early morning start and then schedule the buses for the secondary schools so they would have a late morning start, or vice-versa, since both groups of students could not be transported at the same time. T.14.

5. Parents of the students assigned to EEC voted overwhelmingly for a late morning start for their children, while students in the secondary schools opted for the early morning start. Thus, EEC

was designated for a late morning start, and the buses serving the Hoover area were scheduled accordingly. 6. To avoid congestion and confusion at EEC, Mr. Beckett staggers the arrival and departure of school buses at EEC rather than scheduling all of the buses to arrive and depart at the same time each day. T.17.

7. School buses begin to arrive at EEC in the morning at approximately 8:15 a.m., and students are sent to their classrooms at 8:30 a.m. T.9. Buses begin to depart in the afternoon at 3:30 p.m., and the last of the buses departs at approximately 3:45 to 3:50 p.m. (See footnote 2)

8. It is not clear from the record the precise time when EEC's teachers are required to report for duty in the morning or the precise time that teachers are permitted to leave the school in the afternoon. However, the instructional day at EEC officially begins at 8:45 a.m. and ends at 3:25 p.m.

9. The instructional day at EEC begins and ends later in the day than those of KCBE's other elementary schools.

10. On occasion, especially at the beginning of the school year, some of EEC's students appear to be tired at the end of the school day, and children have fallen asleep on the bus ride home. T.8.

11. Some of Grievant Elliott's kindergarten students become tired, hungry and "unfocused" in the afternoon. Therefore, when the kindergarten students' "elective" classes, such as music or swimming, are scheduled for the morning, instruction that has been deferred until afternoon is more difficult. Scheduling adjustments have helped. T.22-23. 12. Sharon Spencer has been an EEC kindergarten teacher for three years. (See footnote 3) Immediately before her assignment at EEC, she taught at an elementary school where the students departed shortly after 2:00 p.m. and the teachers at 3:00 p.m. (See footnote 4)

13. Several of Ms. Spencer's kindergarten students are on medication, and she has a disabled daughter who attends EEC's fifth grade as well. Some of Ms. Spencer's students have come to school tired and have fallen asleep, and she has had difficulty keeping her kindergarten students "on task" beginning in the early afternoon. (See footnote 5)

14. Frequently, parents arrive at EEC at 3:00 p.m. to pick up their children for doctor or dentist appointments. These requests, announced over the public address system in the classroom, are disruptive to classroom activities.

15. When inclement winter weather causes a two-hour delay for the start of school, EEC's

students do not arrive at school until shortly before it is time for lunch.

16. Because of bus scheduling conflicts, the students from EEC may have to depart from EEC so late that they arrive at a field trip after an event has already begun or they may have to leave before an event is over. At times, the students are rushed for lunch, or they might be forced to eat their lunch on the bus. 17. When an EEC teacher unexpectedly reports off in the morning, Mr. Allen occasionally has difficulty in securing a substitute teacher since schools that start earlier may have already called for substitutes.

18. EEC participates in a community education program, titled the "On Deck" program, under the direction of one of its teachers. Parents of students who participate in the program are permitted to bring their children, including first graders, to the school as early as 7:00 a.m., when EEC's doors are opened for the morning. Some of these students are tired when they report to their classrooms an hour and a half later.

19. Grievants Vanoy and Keener, who reported problems regarding students who participated in the On Deck program, did not voice any objections to the program itself, nor did they suggest that the program should start later in the morning than 7:00 a.m.

20. EEC is "on probation" for the 1995-96 school year because of unacceptably low standardized test results for two years in a row.

21. EEC's teachers must hurry to arrive on time at staff development meetings in their school starting at 4:00 p.m., and rush to attend or present off-site county-wide workshops starting at 5:00 p.m. Due to the time constraints, EEC's teachers occasionally have had to decline offers to be "presenters" at workshops across the county or out of the county.

24. EEC's teachers have not liked their work schedule since 1992. T.7.

25. There is no credible evidence of record that EEC's teachers have a longer work day than the teachers at other elementary schools in the school system.

Discussion

Grievants bear the burden of proving their claim in this matter. In support of their claim, Grievants apparently rely on the portion of W.Va. Code §18-29-2(a) which states that a grievable issue can be "any action, policy or practice [on the part of theemployer] constituting a substantial detriment to or interference with effective classroom instruction, job performance or the health and safety of students

or employees." While Grievants did not specifically cite W.Va. Code §18-29-2(m), they also claimed in their grievance pleading and at the level two hearing that their work schedule amounted to discriminatory treatment. As relief, Grievants ask that KCBE "rearrange the time of the school day to be more in line with the other schools in Kanawha County."

KCBE's position is that Grievants have not proven their case by a preponderance of the evidence. However, KCBE apparently recognized that the school day for students EEC is overly long. While the grievance was officially denied at level two, some relief was offered in the December 13, 1995, decision, as follows:

[T]he Office of Pupil Transportation is directed to review the bus schedules for the school to determine if any adjustments can be made that would reduce the length of time students are at the school. The results of the review shall be reported to the school principal. The Office of Pupil Transportation is further directed to work closely and cooperatively with the school to minimize, if possible, disruptions in field trip activities.

Based on the record before the undersigned, while it is abundantly clear that Grievants are unhappy with EEC's late morning starting time, it cannot be found that Grievants have substantiated their grievance allegations. (See footnote 6) However, it is clear from the record that at least some problems identified by EEC's teachers might be improved with some different management strategies.

For example, younger students could have the bulk of their academic classes scheduled for the morning, when they are more likely to stay "on task," and havetheir elective classes in the afternoon when they are more "unfocused." The On Deck program could start later than 7:00 a.m. Teachers could cover for one another near the end of the day on those occasions when they want to present a workshop, or perhaps Mr. Allen could cover a class. Messages for students' early dismissal could be delivered by hand rather than by using the intercom. Parents could be urged to make sure their children go to bed early enough to be adequately rested during school days. Of course, it may be that corrective measures will not entirely satisfy those Grievants who simply want to begin and end their work day earlier, for whatever reason.

It is noted that, along with her fact/law proposals, Grievants' union representative also submitted a document, the content of which is identified as the result of the union's "telephone survey" to determine the working hours at all of KCBE's elementary schools. While KCBE did not object to

Grievants' request for a decision based on the existing record, there was no agreement between the parties that Grievants could augment the record with any additional evidence. Thus, this survey is not properly in evidence and, therefore, has not been considered in reaching this decision.

In addition to the foregoing, the following formal findings of fact and conclusions of law are appropriate.

Conclusions of Law

1. In a non-disciplinary case, the grievants must prove all the allegations constituting the grievance by a preponderance of the evidence. Rupich v. Ohio County Bd. of Educ., Docket No. 89-35-719 (June 29, 1990); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988).

2. Insofar as Grievants have failed to present any expert testimony or valid studies in support of one teacher's opinion that EEC's school day is "developmentally inappropriate" for EEC's students; a scientifically proven cause andeffect link between the work hours at EEC and the low standardized test scores that resulted in EEC's being placed on probationary status; empirical evidence in support of a finding that EEC's work schedule has a material, adverse effect on the school's educational programs or any evidence that the work day at EEC has a negative impact on the health or safety of the students or teaching staff, Grievants have failed to prove a violation of W.Va. Code §18-29-2(a), as claimed.

3. Grievants have failed to prove that the work schedule established for EEC is arbitrary, capricious or discriminatory, since they have not shown that their work hours are longer than those at other elementary schools, nor have they alleged or shown that any EEC teacher is excepted from EEC's work schedule.

4. Grievants have failed to prove discrimination, as contemplated by W.Va. Code §18-29-2(m).

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha 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: March 7, 1996

Footnote: 1

In addition to lead grievant Vivian Maynor, the other named grievants are David Anderson, Janet Chevalier, Steve Clendenin, Cynthia Cummings, Sheryl Cunningham, Melody Dale, Linda Elliott, Linda Fowler, Brenda Gasper, Joan Hammonds, Connie Hays, Sally Jarvis, Kathy Johnson, Barbara Jones, Beverly Keener, Judy Mercer, Dianne Milam, Teresa O'Feish, Lydia Pierson, Ruth Reynolds, Cathy Securro, Marge Shoening, Samuel Stewart, Ruth Stigall, Violet Tuttle, Coleen Vannoy, Joyce Williams, Deborah Wilson and Sharma Yu. Grievants Elliott, Keener, Maynor and Vanoy appeared at the November 29, 1995, level two hearing.

Footnote: 2

Grievants never refuted Mr. Beckett's assertion that EEC could start earlier by either switching the secondary schools to a later starting time and EEC to an earlier time, an arrangement contrary to the wishes of EEC's students' parents, or by incurring great cost to the school system by placing additional school buses into service.

Footnote: 3

Although Ms. Spencer appeared and testified for Grievants at the level two hearing, her name was not among those of the listed grievants, thus, she is not a party in the case.

Footnote: 4

Mr. Beckett testified that, in 1993 or 1994, the school day for KCBE's schools, with the exception of EEC, was lengthened by ten to fifteen minutes, bringing the instructional day at EEC more in line with those of other schools. T.19. Thus, had Ms. Spencer remained at the former school, the length of her workday would have increased.

Footnote: 5

Ms. Spencer claimed EEC's schedule was contrary to family values because her own children are unable to participate in her church's choir, which meets at 3:30 p.m., apparently on one or more weekdays.

Footnote: 6

While there is no basis in fact or law to order an adjustment of EEC's late morning starting time, because relief has been offered at level two of the grievance procedure, it is assumed that KCBE has reviewed the bus routes and schedules in

the Hoover service area and, further, made all possible bus scheduling adjustments to reduce the length of time students are at EEC, and to minimize, to the extent possible, disruptions and inconveniences related to field trip activities.

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