PAULINE PIERANTOZZI

v. **Docket No. 96-05-061**

BROOKE COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant Pauline Pierantozzi is employed by Respondent Brooke County Board of Education (BCBE) as a Cook II at Follansbee Middle School (FMS). She alleges that, due to the nature of her duties, she should be classified as a Cook III, and that BCBE's refusal to reclassify her is in violation of W.Va. Code §18A-4-8. Grievant seeks reclassification as a Cook III, with attendant back wages and seniority benefits, retroactive to the beginning of the 1995-96 school year. A level four hearing was conducted April 16, 1996, and the case becamemature for decision on May 21, 1996, the designated last day for the parties to submit post-hearing written argument and rebuttal. (See footnote 1)

Background

The facts in this case are virtually undisputed. BCBE's high school, Brooke High School (BHS), and its primary schools are equipped with full kitchens. BCBE's middle schools do not have fully equipped kitchens. The schools with full kitchens prepare food for the middle schools, which are characterized as satellite schools for meal preparation purposes. While some cooks at the schools with fully- equipped kitchens are classified as Cook III, no cooks assigned to a middle school are classified any higher than Cook II.

Grievant, currently classified as a Cook II, has worked at FMS for approximately fifteen years. During the 1995-96 school year, approximately 700 students attended FMS. Each day FMS receives its lunches for that day and its breakfast for the next day from BHS's kitchen. Presently, Grievant directs the work of two half-time cooks (three

and a half hours per day) who assist with serving breakfast and lunch at the school. One assistant works exclusively at lunchtime, whilethe other, who has a split schedule, works during breakfast and then later during lunch.

Grievant described her typical work day, which begins at 7:00 a.m. As soon as she reaches the school, she must copy the bank deposit statement from the previous day's food receipts. This must be submitted to the school's office. She then reports to the cafeteria downstairs to set up tables for breakfast.

Sometimes breakfast preparation involves merely setting out cold cereals and similar foods, while at other times a breakfast item needs oven warming. In any event, after the initial breakfast preparation, Grievant readies her paperwork for lunch and breakfast ticket sales. She must account for the numbers of paid, free, and reduced fare lunches and milk distribution. At about 7:50 a.m., Grievant gets the breakfast milk from the cooler, and makes sure everything is in order by the time her early morning assistant comes in at 8:00 a.m. to serve the breakfast. As the children approach the cafeteria for breakfast, Grievant remains in the hallway to sell the breakfast and lunch tickets, and to note on her report whether the tickets were paid, free or reduced.

After breakfast, Grievant's assistant cleans the breakfast tables and prepares to leave. While the breakfast tables are being cleaned,Grievant takes her lunch count to the office so that the order can be phoned into BHS. When Grievant returns to the cafeteria, she sweeps and mops the cafeteria and, when necessary, removes gum and other spills from the walls and floors. At times, if food has been warmed and there are pots and other items to be cleaned, the morning assistant will stay over for fifteen minutes. Grievant then completes her ticket sales paperwork. After that, she begins lunch preparation, setting out canned goods and milk, for example.

Thereafter, when Grievant has extra time, she cleans the cooler or one of the three storage cupboards. She also inventories her supplies to see if she needs to order condiments, paper products and other required items. Apparently, at least weekly,

Grievant also copies the food menu and delivers them to the school's teachers. She also decorates the cafeteria with items specially purchased by the principal.

At lunchtime, both of the half-time cooks report to assist with the three separate lunch servings. Lunches are delivered from BHS, in hot carts when appropriate. Grievant must ensure that the temperature of the hot food remains at the proper temperature. When lunch begins, Grievant takes the children's tickets for each lunch shift. Between servings, she helps her assistants set up for the next group if necessary. After lunch, Grievant counts the lunch money and prepares it for bank deposit. She also fills out a report and lunch count which must be sent to BHS. Following that, she ensures that the dining tables are taken down and stored before her afternoon helper leaves. After that, Grievant and the remaining assistant sweep and vacuum the floor and scrub the cafeteria. The second assistant leaves when this work is completed. Grievant then has about a half hour remaining, so she checks her coolers, completes all remaining paperwork or sets up some items for the next day's breakfast. On her way home from work, she stops at the bank to deposit the money collected for milk and the day's meals.

Discussion

Under W.Va. Code §18A-4-8, a Cook I is described as "personnel employed as a cook's helper." Cook II "means personnel employed to interpret menus, to prepare and serve meals in a food service program of a school and shall include personnel who have been employed as a 'Cook I' for a period of four years, if such personnel have not been elevated to this classification within that period of time." A Cook III is described as "personnel employed to prepare and serve meals, makereports, prepare requisitions for supplies, order equipment and repairs for a food service program of a school system."

BCBE has also developed a job description for the Cook I and II positions and a separate job description for the Cook III position. Importantly, the Cook I and II are required to "know how" to prepare foods, and are responsible for preparing and serving

foods and assisting other cooks in the kitchen and dining area when needed, among other things. On the other hand, the Cook III is required to "be proficient" in all areas of cooking and record keeping, and is responsible for maintaining inventories and daily counts and reports, producing food, and assigning tasks to other kitchen employees, as well as training new kitchen personnel.

It appears from the record that, in part, Grievant filed this grievance because of the increasing population at FMS and resultant extra work. Grievant claims that, on those occasions when she has to warm the students' breakfast, she must report to school ten minutes early in order to complete all of her work. According to Grievant, her assistant worker receives "comp" time for the days she stays over, while she (Grievant) never receives any extra compensation for the extra work she performs. In support of her claim that she should be classified as a Cook III rather than Cook II, Grievant relies on Porter, et al. v. Hancock County Bd. of Educ., Docket No. 95-15-493 (May 24, 1994). The grievants in Porter, who prevailed on their claim that they should be classified as Cook IIIs rather than Cook IIs, also served as cooks in schools where meals were delivered from a central kitchen and not prepared from "scratch." There, as here, the cooks were required to keep accurate records necessary for the school system's meal program at their schools. Porter is controlling in the instant situation, notwithstanding BCBE's argument that there are factual dissimilarities between this case and Porter.

BCBE compared the duties performed by Grievant herein to those of the grievants in Porter and found differences; however, they are differences without distinction. Simply put, while it is true that Grievant does not perform exactly the same duties as the cooks in Porter, the nature of her duties and responsibilities more closely match BCBE's description for a Cook III than for a Cook II. BCBE also cited a difference in its Cook III job description and that in Porter, relative to how Cook IIIs are supervised in the respective school systems. In Porter, a Cook II was to work under supervision while a Cook III was towork under general supervision. According to BCBE's job description,

both the Cook II and III "report" to the Director of Food Service or a school principal, or in the case of Cook III, to an "appropriate supervisor." This factual difference in Porter and the instant case is of little consequence. It would be logical for a Cook III in BHS's central kitchen to report to an in-house supervisor such as a Head Cook or Cafeteria Manager. However, as a worker providing Cook III services in a large satellite school, Grievant must direct and manage her helpers. Thus, this last difference cited by BCBE is not persuasive that Porter should not control here.

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

Findings of Fact

1. Grievant, classified as a Cook II, is responsible for serving breakfast and lunch at a middle school with approximately 700 students. Grievant's school does not have a fully-equipped kitchen.

2. The meals served at Grievant's school are, for the most part, pre-prepared, individual meals delivered from another school which is equipped with a full kitchen.

3. In her work capacity, Grievant directs the work of two part- time, assistant cooks who help serve meals at the school. Grievant also performs record-keeping tasks, such as such as logging various payment modes for meals, tallying lunch counts, counting and accounting for monies received, and inventorying and reporting the need for various supplies and beverages.

Conclusions of Law

1. Pursuant to W.Va. Code §§18A-2-5 and 18A-4-8, boards of education are required to classify service personnel according to the duties they perform.

2. In order to prevail in a misclassification grievance, an employee must establish, by a preponderance of the evidence, that her duties more closely match those of

another W.Va. Code §18A-4-8classification than that under which her position is categorized. Porter, et al. v. Hancock County Bd. of Educ., Docket No. 95-15-493 (May 24, 1994); Hatfield v. Mingo County Bd. of Educ., Docket No. 91-29-077 (Apr. 15, 1991).

3. Record-keeping tasks, such as filling out daily and monthly forms with the amounts of food consumed and types and methods of payment for the meals, are not incidental or crossover duties of a cook; rather, those duties are critical to the overall operation of the food service program of a school system and are reflective of the duties of a Cook III. Porter, supra.

4. Grievant has established that she performs Cook III reporting and record-keeping duties within the food service system, such as logging and tallying various payment modes for meals, lunch counts, monies received, and also inventorying and reporting the need for various supplies and beverages.

Accordingly, the grievance is **GRANTED**, but only to the extent that Respondent is Ordered to pay Grievant back wages as a Cook III for the 1995-96 school year as requested. Thereafter, Respondent isrequired to either relieve Grievant of her record-keeping and inventory duties or to reclassify her.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Brooke 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.

NEDRA KOVAL

Administrative Law Judge

Date: May 31, 1996

Footnote: 1

The lower-level record consists of the pleadings, adverse decisions, and transcript and exhibits of the January 31, 1996 level two hearing.