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**GERALDINE WASHINGTON, MICHAEL VOLPE,
CHARLES SZASZ, JANE GRADY, RAYMOND DUNLEAVY
and MARILYN REEVES McCORMICK**

v.

Docket No. 20-86-178-1

KANAWHA COUNTY BOARD OF EDUCATION

DECISION

Grievants are process specialists and school psychologists employed by the Kanawha County Board of Education. On January 27, 1986 school was cancelled due to inclement weather and grievants were recalled to their respective "home" offices instead of being permitted to remain at the school at which they were working or to go home.¹ Grievants contend this was a change of policy and filed a grievance; a level two hearing was conducted and the grievance was denied on March 20,

¹ The process specialists have assigned office space at South Charleston Junior High School and the school psychologists have assigned office space at the Central Office on Elizabeth Street in Charleston. The psychologists are required to report to the central office at the end of the school day and process specialists have the option of working in the school until 4:30 p.m. or returning to the office at South Charleston to their desk space.

1986. A level four hearing was conducted on August 21, 1986 at which hearing the grievances were consolidated.²

Grievant, Geraldine Washington, has been employed by the Kanawha County Board of Education for twenty two years and has been a process specialist for five years.³ As a process specialist she works as a team with a psychologist from psychological services and is assigned to nine schools in Kanawha County. She is not necessarily assigned to the same area or the same schools every year and the assignments for the teams are made up during the summer. The teams are scheduled into the schools twice a month and work there four days a week; they are scheduled into the office at South Charleston Junior High Unit II, Department of Exceptional Students, on Friday. (T.10).

² A request for a level four hearing was filed on April 24, 1986 and the board of education advised that the grievance could be decided on the record. At the request of the representative of the grievants, however, the hearing was continued until August 21 due to the absence of the lead grievant, Geraldine Washington. No evidence was taken at the hearing on August 21 but the grievants appeared and made a statement on the record; findings of fact and conclusions of law were filed on October 17 by the grievants.

³ Her duties involve the identification, screening and placement of children who have been identified as needing special education process, i.e., evaluating students and placing them in programs which are most appropriate for their needs. Grievant is not an administrator and has no supervisory duties but monitors the special ed programs; she works directly with the students. (T. 8,9).

On January 27, 1986 grievant Washington had completed her work at Edgewood Acres School and was in the office at South Charleston. The weather was worsening and schools had been dismissed early; she testified that there was a lot of confusion on this day because previously these employees had been permitted to go home when the schools were closed if they were at the closed school. On that day she was informed that the policy had been changed but she was not aware of the change; she contends that as a member of the employee's advisory committee she should have had input into the change of policy decision (T. 14, 16). On February 5, 1986 grievants received notice from Mrs. Homberg, Coordinator of the Exceptional Students Program, that at a meeting on February 3 it was decided that the employees would go to their desk space offices at 8:00 a.m. and then to their assigned schools; that if school was dismissed early they were to return to the office and work until 4:30 p.m.⁴

Grievant, Michael Volpe, is a school psychologist and nine tenths of his time is spent in the schools in Kanawha County. His school assignment had also been prepared in the summer of 1985 and was to the Cabin Creek area. On January 27, 1986 he was at Pratt Elementary School, approximately

⁴ Mrs. Washington stated that the employees' advisory committee had no input into the promulgation of this policy and were only advised of it after it occurred; that she had requested, but had not received, a copy of the new policy at the time of the level two hearing (T. 16). As far as she knew the previous policy about which she testified was unwritten. (T. 18).

twenty two miles from his office at the Central office in Charleston. For the five years that he had been employed by Kanawha County Schools it had been the practice that when the school was closed due to weather he was to complete whatever work was necessary at the school and leave. (T. 21). On January 27 after school at Pratt was cancelled, he called his office to advise that he would be leaving and was informed that he was to report to the Central Office. (T. 22). Upon inquiry he was advised that this was as a result of a new directive from Mr. Simmons. On February 4 he received a memo stating that the previous policy had been changed.⁵

Grievant, Charles Szasz, is also a school psychologist and was at Cedar Grove Community School on January 27, across the river from Mr. Volpe. During his eighteen year tenure he had not been aware of any policy other than that he went home when schools were dismissed; he had been given no information about the policy change.

⁵ Over objection he testified that he felt he had been placed in an unsafe situation by being required to return to the board office on hazardous roads.

The memo noted that psychologists must maintain their 8:00 a.m. to 4:30 p.m. work hours even when school opening times are delayed or dismissal times are early as a result of inclement weather. (Employer's Exhibit No. 1).

Grievant, Jane Grady, is a process specialist and was at High Lawn Elementary School in Cross Lanes on January 27. She telephoned the office to advise that she was going home and was instructed to return to the office, where she arrived at 4:10 p.m. (T. 32).⁶

Grievant, Raymond Dunleavy, is a school psychologist and on January 27 was at home recuperating from an operation. He returned to work on February 10 and on February 14 schools were closed early because of inclement weather and he was unaware of the change of policy. The principal of the school at which he was working told him to "take off" so he went home. He corrected some test papers at home and about 2:00 - 2:30 p.m. Mr. MacMillian telephoned, advising him of the change of practice. Grievant Dunleavy testified that he was unable to get to the office and lost a half day personal leave.

Grievant, Marilyn Reeves McCormick, is a process specialist and on January 27 was at Wallace Heights Elementary when classes were dismissed early. At approximately 3:00 p.m. she received

⁶ On cross-examination she testified that on February 17 Pat Homberg advised her by memo that in the event of early dismissals due to inclement weather the specialists could either remain at the school where they were working or report to the DES office. This appears to be a variation of an earlier undated memo admitted as Employees' Exhibit No. 2. (T. 35).

a call from her office instructing her to return to her office and work until 4:30. She inquired if there was a special meeting or other function at her office and, if not, she could best spend the remainder of her time at Wallace Heights doing paper work. The caller agreed that grievant could remain at the school but about twenty minutes later grievant received another call from Pat Homberg instructing her to return to the office. (T. 39).⁷ She returned to the office, arriving at approximately 4:15 p.m. (T. 41).

On behalf of the board of education Jack McClanahan, acting deputy superintendent of Kanawha County Schools, testified that sometime prior to January 27 Mr. Simmons, head of the Pupil Support Division, advised him that there was some confusion about working hours on snow days when school was dismissed early or started late; that the question was presented to the Superintendent's Cabinet and it was decided to explain it to the employee groups since the confusion appeared to be in only two divisions. He testified further that it was not characterized as a policy change because the employees were aware that their work hours were 8:00 to 4:30 and it was thus a clarification of the work hours.⁸ He stated that

⁷ She testified that when she inquired why she could not remain at the school until 4:30 as she had done in the past Pat Homberg told her to return to the office or "you will be docked a half day." (T. 40).

⁸ He said policy decisions were made by the board of education and that the Cabinet was not changing hours but was attempting to clarify some confusion. (T. 44).

there were a number of employees that remained on the job until 4:30 during inclement weather conditions and the grievants were not put into any undue safety hazard situation; that the reason schools are dismissed early or commenced late is for the health and safety of the children, not for the benefit of the employees. (T. 45, 49).

In addition to the foregoing factual account the following specific findings of fact are appropriate.

FINDINGS OF FACT

1. Grievants are process specialists and school psychologists employed by the Kanawha County Board of Education in the division of pupil support services.

2. Grievants work in teams and are assigned to various schools in Kanawha County but have desk space assigned to them at the central office in Charleston or at the department of exceptional students office in South Charleston. The work hours established for all of the grievants are from 8:00 a.m. to 4:30 p.m., Monday through Friday.

3. By some unknown means a practice evolved whereby a number of process specialists and school psychologists adjusted their work schedules to commence late and leave early when the schools at which they were working did so.

In the event of early closure these employees would go to their homes from the schools instead of returning to their respective offices to complete the work day.

4. There is a written policy of the board of education concerning the practice of starting schools late or closing schools early in periods of inclement weather and this policy is for the health and safety of the students. There is no written policy or practice, however, authorizing grievants to follow the practice established for the students.

5. On January 27, 1986 schools were dismissed early due to inclement weather and grievants were in various locations ranging from their assigned desk space at their home offices to various schools throughout the county. Those grievants working in the various schools were instructed to return to their respective offices instead of going home or remaining at the school.

6. On February 4, 1986 a memorandum was distributed to the psychologists that they must maintain their 8:00 a.m. to 4:30 p.m. work hours even when school opening times were delayed or dismissal times were early as a result of inclement weather.

7. Grievants contend that they were not informed of the change of "policy" prior to January 27, 1986 and that the changing thereof was arbitrary, capricious and illegal. They urge that the "new" policy is void for failure to notify grievants of the proposed change and that it amounted to a change of the terms of their employment. Finally, grievants assert that the change of practice requiring them to return to their respective offices was detrimental to their safety.

8. The board of education contends that there was not change of "policy" but that the directive was a clarification that the work hours for grievants was from 8:00 a.m. to 4:30 p.m., irrespective of school opening and closing time.

9. There was no showing that the elimination of the prior practice was arbitrary or capricious but it appears to have been an effort to enforce the work schedule of 8:00 a.m. to 4:30 p.m. Similarly, there was no showing that the directive exposed these grievants to any safety hazard not common to all employees who are required to work 8:00 a.m. to 4:30 p.m. on "snow" days or that the terms of their employment were changed. However, a long standing practice as is here involved should not have been changed without prior notice to the affected employees. This, however, does not void the new directive since none of the grievants except Raymond Dunleavy suffered any prejudice as a result of the change of practice.

CONCLUSIONS OF LAW

1. School officials are authorized to establish and enforce daily work hours of its employees but a change of a long standing practice should only be made after notice to the affected employees prior to its enforcement.

2. With the exception of grievant Raymond Dunleavy the grievants have not shown that the action of the school officials constituted a violation of Code, 18-29-2(a) or otherwise or that they were prejudiced thereby.

Accordingly, it is Ordered that the grievants have not shown that the action of the school officials adversely affected any rights of the grievants and the grievances are denied. However, in the grievance of Raymond Dunleavy, it is Ordered that the one half day assessed against him for failure to return to his office is void and should be restored.

Either party may appeal this decision to the Circuit Court of Kanawha County or County and such appeal must be filed within thirty days of receipt of this decision. (Code, 18-29-7). Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the Court.

A handwritten signature in cursive script, appearing to read "Leo Catsonis", is written over a horizontal line.

LEO CATSONIS

Chief Hearing Examiner

Dated: October 30, 1986