JANET PORTER, ET AL.

v. Docket No. 93-15-493

HANCOCK COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievants Janet Porter, Patricia Grant, Nancy Harris, Sandra Stanley, Winona Scadden and Betty Cottrill are employed by Respondent Hancock County Board of Education (HCBE) as food service workers; all are assigned to various elementary schools with the exception of Ms. Stanley, who works in a middle school. They are all currently classified as Cook IIs and seek reclassi fication as Cook IIIs, one pay grade higher, retroactive to the beginning of the 1993-94 school year. They contend that the Cook III class more closely fits the actual duties they perform on a daily basis. (See footnote 1)

Facts - Background Grievants brought this action as the result of some changes in HCBE's food services program beginning with the 1993-94 school year. HCBE operates its food services program on a basic "satellite" model or system. Cook III personnel at the central kitchen allocate and distribute foodstuffs to individual schools, i.e., the satellites. Apparently, in the past, two methods of food preparation and distribution had been used. Breakfast and lunch items that had been completely premeasured, prepared and prepackaged were allocated and delivered to elemen tary schools. At those schools, Cook II personnel would simply heat and serve the individual meals and clean up later. These staffers also had to keep various daily records and prepare some monthly reports.

At the start of the 1993-94 school year, an alternative food distribution method, already in place for HCBE's middle and high schools, was initiated in the elementary schools as well. Under this system, the majority of the food for the schools is purchased by the central kitchen in a "bulk" packaged form, most of it frozen and already precooked. The central kitchen staff allocates the needed amount of bulk foods on a daily basis and transports it to each individual school. Actual cooking is minimal at both the central kitchen and the individual schools. Most meat servings are precooked and frozen; however, some items such as cookies, cakes, various sauces, ground beef and turkey are cooked at the central kitchen. T.12. Salads are also prepared in the central kitchen prior to transport to the elementary schools. T.33. Finally, central kitchen cooks mustoperate some slicing machines for cold cuts and similar goods.

Once the frozen and/or packaged food is delivered to the individual schools, precooked meat items such as hot dogs, sausage, hamburgers, etc., must be heated in the oven until they reach a designated temperature. Other foods, including "break fast" pizza, rolls, biscuits, and pancakes must be minimally warmed or reheated by the cooks, usually in the oven. "Steam tables" or warmers are used to keep food warm until ready for serving. In the case of a sandwich menu, the cooks must "assem ble" the "sub" with premeasured and presliced fillings. Cutting or slicing is usually necessary only when certain fresh fruit is served. T.11-20.

The elementary schools, which operate on a "serve" basis, receive vegetables such as peas and green beans already presea soned and prepared for warming. The junior high and middle schools, which operate on an "offer" basis, permit students some meal choices, thus canned vegetables are used to reduce waste. Cooks assigned to the high schools and middle schools must also cut and slice vegetables for salad bars offered in those schools. T.43. All items, including canned fruits and vegeta ble servings, must be measured exactly with designated ladles or dippers before serving. T.63.

In summary, according to Grievants' collective testimony, they generally heat or cook delivered breakfast and luncheon food according to a master instruction list; assemble, measure or separate all of the foodstuffs into individual serving portions; serve the prepared meals to students and staff; andclean the cooking utensils, kitchen and eating area afterwards.

While some slight variations occur with respect to the procedures utilized at the various schools, Grievants must also assess, log and report to the central kitchen on a daily basis the amount of breakfast and lunch food needed, received, con sumed and left over. The type and/or source of compensation for each meal, such as, free, reduced or paid in full, must also be recorded and reported to the central kitchen on a daily basis. This data is used to complete a monthly "form" or report which also must be submitted. In addition, Grievants must keep track of existing milk supplies and inform the central kitchen when napkins, various condiments and related supplies/staples are needed. (See footnote 2)

HCBE has developed a job description for both "Cook I/II" and "Cook III." These specifications set forth nearly identical desired minimum qualifications, requisite skills and examples of duties performed, as well as more specific "Characteristics of Position."

According to the specifications, a Cook I and II

Under immediate supervision, performs routine food service work in connection with preparing and packag ing food, operation of kitchen equipment and machines; cleaning of all kitchen equipment, machines and area; and performs related work as required.

Representative duties of Cook I and II are

Package lunches on hot and cold lines and prepare foodin bulk carts for transportation. Chops and slices meat, vegetables, fruit and cheese; bake cookies, cakes, muffins; make doughnuts and various types of desserts; mix batter, potatoes and other foods; operate and clean chopper, mixer, ovens hot line, cold line, and other kitchen equipment, appliance, and utensils; sweep and mop kitchen area; clean tables and chairs, wash trays, carts, pots, pans, utensils, and other food service equipment.

The "Characteristics" of the Cook III position are

Under general supervision, routinely prepares and cooks a variety of staple food in the central kitchen; and performs related work as required.

The Cook III

Chops and slices meat, vegetables, fruit and cheese; mixes meatloaf, batter, potatoes and other foods; cooks spaghetti, noodles, soups, sauces, gravy and pudding; peels and steams vegetables[;] makes sal ads[;] operates and cleans choppers, mixers, ovens and other kitchen equipment, appliances and utensils.

It appears that, according to HCBE's specifications, a Cook II should be working under immediate supervision while a Cook III should be operating under general supervision, one rather critical difference between the two jobs.

Food Service Supervisor Nancy Marzano testified as to her understanding of the differences between HCBE's Cook IIs and Cook IIIs. She said a Cook II warms food, deals with smaller equipment, sells meal tickets and handles "any type of paperwork involved in a school system." T.66. Ms. Marzano explained that Cook IIs who are placed in the schools must fill out daily "production" sheets or forms which are submitted to her. She said she uses that data to compile production "papers." T.67- 68.

Ms. Marzano explained further that a central kitchen Cook III works with larger equipment and utensils, uses food slicersand choppers, "deals" with production records and adjusts government-

supplied recipes when necessary. Ms. Marzano also noted that she and the Cook IIIs can retrieve past production records to assess current needs for a speciality meal such as a turkey dinner. T.67. Ms. Marzano said that while the central kitchen cooks must keep her apprised about specific kitchen matters such as the need for a new pot or rolling pin, she alone handles purchase orders, deals with vendors and prepares requi sitions.

One of the most important aspects of Ms. Marzano's testimo ny was her revelation about HCBE's adherence to national and state requirements in conjunction with its food services program. She stated the "National School Lunch Program requires every school that's under this program to fill out reports." The reports must cover total milk consumption and how many paid, free or reduced lunches are given. She said the "Child Nutri tion Program" furnishes forms which eventually must be filled out and completed by every school. She stressed that this data must be recorded within the schools and furnished to her on a daily basis so that she can compile the information for monthly submission to State officials in Charleston, West Virginia. T.70-71.

Equally important, the record establishes that Ms. Marzano herself apparently has very little day-to-day, supervisory contact with Grievants. However, she reports that she is required by "state law" to annually go to each school kitchen and spend approximately four to five hours for the purpose ofcompiling a "monitoring" report. T.75.

Discussion

At issue is where Grievants should be placed within §18A-4- 8's three "Cook" designations. The various cook titles found in W.Va. Code §18A-4-8 are as follows:

"Cook I" means 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 classi fication within that period of time.

"Cook III" means personnel employed to **prepare and serve meals, make reports, prepare requisitions for supplies, order equipment and repairs for a food service program of a school system**. [Emphasis added.]

Grievants argue that HCBE

seriously misinterprets the distinction between the classification titles of "Cook II" and "Cook III." It is

clear that employees in both the "Cook II" and "Cook III" classification titles may prepare and serve meals. Consequently, the fact that the central kitchen staff is more heavily involved in the actual cooking of food is irrelevant. The true distinction between the titles is that a "III" may be assigned record[-]keeping duties. Proper maintenance of the various records is a crucial part of the duties of grievants. It is arguable that their record[-]keeping duties [are] equal in importance [to] their serving and clean[ing] duties. It is clear that the record[-]keeping functions are not incidental crossover duties.

HCBE distinguishes the jobs performed by Cook IIIs at the central kitchen and by Grievants at the satellite schools. It argues that cooks at the central kitchen prepare and cook all of the food for the entire school system while cooks at the indi vidual schools merely warm, apportion and serve the food to the consumers in the school. In addition, HCBE maintains therecord-keeping duties Grievants perform are incidental to their food preparation duties as Cook IIs.

The law and the weight of the evidence favors Grievants in this case. Certainly, the food preparation work performed by Grievants Porter, Cottrill, Scadden, Harris and Grant under the "new" bulk distribution system in 1993-94 is decidedly more labor-intensive than in prior years when the delivered food was individually prepackaged and premeasured and needed only some brief oven warming. Both more time and greater attention are needed to correctly heat the specific foodstuffs to varying temperatures and to properly prepare, assemble, and allocate or measure the individual portions. More work is also required to clean the cooking pans and utensils and scrub the steam table, unnecessary tasks under the simpler old system. (See footnote 3)

However, this case turns on other factors. It is true that Grievants do not work in the central kitchen, a questionable requirement found in HCBE's Cook III specification and certainly not one found in the statutory definition of a Cook III. If this qualifying factor was intended for a Cook III, it would be clearly stated in Code §18A-4-8's definition of a Cook III. For example, the statute expressly states that a Secretary II is employed to work in a school while a Secretary III is employed to work in the board of education office or central office. (See footnote 4) Thus, simply because Grievants work in HCBE's schools rather than the central kitchen cannot disqualify them from being classified as Cook IIIs.

In addition, HCBE's specifications state that a Cook II works under "immediate" supervision while a Cook III works under "general" supervision. This record supports that Grievants do not perform their

duties under direct, on-site, immediate supervision, but rather work independently at their schools under general supervision. Finally, according to §18A-4-8, a Cook III may be required to make reports, while no duty of that nature is found in the Cook II description. In this case, Grievants' record-keeping work is not incidental to their food preparing and serving work and is not merely "crossover" work.

While Grievants Porter, Cottrill, Stanley, Scadden, Harris and Grant all agreed that their record-keeping duties and/or "paperwork" had not changed much from the previous school year, it cannot be assumed that Grievants had been properly classified in prior years under the "old" food distribution process. The reporting work they perform on a daily and monthly basis in their schools is a fundemental and necessary component of their jobs and critical to the success of the school system's overall food service program.

In addition to the foregoing, the following conclusions of law are made:

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

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-4-8 classification than that under which his position is categorized. Hatfield v. Mingo County Bd. of Educ., Docket No. 91-29-077 (Apr. 15, 1991).

3. "Because of similarities in the nature of certain jobs listed in Code §18A-4-8, two or more job definitions may encom pass the same duties. Proof that an employee performs such 'crossover' duties does not necessarily mandate that his posi tion be reclassified." Graham v. Nicholas County Bd. of Educ., Docket No. 93-34-224 (Jan. 6, 1994).

4. A Cook II must merely prepare and serve meals in a school, while a Cook III must prepare and serve food and also "make reports, prepare requisitions for supplies, order equip ment and repairs for a food service program of a school system." W.Va. Code §18A-4-8.

5. 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.

6. Grievants have established that they perform Cook IIIreporting duties within the food service

system such as logging daily receipts, compiling daily and monthly reports and report ing the need for more supplies at their schools.

Accordingly, the grievance is **GRANTED** to the extent that Respondent is Ordered to pay Grievants back wages as Cook IIIs for the 1993-94 school year as requested; thereafter, Respondent is required either to relieve Grievants of their record-keeping duties or to reclassify them.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Hancock 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: May 24, 1994

Footnote: 1 This case was appealed to level four on or about November 29, 1993, at which time Grievants requested a hearing. Later, the parties agreed that a decision could be based on the evidence adduced at the November 10, 1993 level two hearing. A copy of the transcript was submitted on January 26, 1994. Fact/law proposals were submitted by Grievants and HCBE on March 10 and March 23, 1994, respectively.

Footnote: 2 Some Grievants must count the money received from students, help deposit the money and even write to the parents of any school children who owe money. See T.10- 13. Other duties may include entering meal-related data into the school's computer. T.15.

Footnote: 3 Ms. Stanley already worked with the "bulk" foods system at her middle school. Thus, she noted no difference in the type or amount of her food preparation duties from prior years.

Footnote: 4 Under Code §18A-4-8, a (school) Secretary II may hold or be "elevated" to the higher-classed Secretary III rank, but any person who has "served in a position whichmeets the definition of 'Secretary II' or 'Secretary III'. . . for eight years" must be reclassified to Secretary III status.