THOMAS L. SNODGRASS

v. Docket No. 94-52-190

WETZEL COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, employed as a teacher by Respondent Wetzel County Board of Education (WCBE), took a leave of absence for military training during Winter 1994. The question presented in this action is whether Grievant can claim cancelled school (snow) days and an official school holiday against the thirty-nine days he was absent and unavailable for work. WCBE maintains Grievant must be docked for any absent days exceeding the thirty permit ted by statute for military leave, regardless of intervening holidays or school cancellations. Conversely, Grievant claims he should receive the same benefits as his peers and seeks restoration of three personal leave days and reimbursement for six docked days.1

_____

1Grievant did not prevail at the lower grievance levels and sought a record decision at level four. The record consists of the pleadings, lower level decisions, and transcript of the April 12, 1994 level two hearing. The parties completed responsive briefing on September 23, 1994.

Findings of Fact

1. Grievant joined the United States Army Reserves and engaged in basic training in January 1993. According to Grievant, he was also required to follow up basic training with "initial active duty training" or "A.I.T." (AIT). The eight-week long AIT was to commence in January 1994. T.7.

2. On or about November 1, 1993, Grievant requested a leave of absence in order to complete his AIT at the beginning of the second semester of the 1993-94 school year. Apparently, he anticipated that he would receive thirty days' paid leave pursuant to W.Va. Code 15-1F-1 and that he would also have to take some unpaid days.

3. Initially, WCBE Superintendent Martha Dean expressed uncertainty as to whether Grievant should be granted any paid leave, but ultimately concluded that, under Code 15-1F-1, Grievant was entitled to thirty days' paid leave for military service.

4. Grievant was not available for work during the entire month of January (in all, twenty-one days, from January 3 through January 31) and all but the last working day in February 1994 (nineteen days, from February 1 through February 25) for a total of at least thirty-nine days.2 An official (paid) school holiday, Martin Luther King, Jr., (January 17, 1994) fell during

---

2The parties seem to be in total agreement that Grievant's absence spanned a total of thirty-nine days of WCBE's 200-day teachers' employment term. However, when counting the days on the calendar, it appears that Grievant was absent for a total of forty days.

that time. In addition, WCBE was forced to cancel classes for students and teachers for twelve days ("snow days") during that period due to severe, winter weather conditions.3

5. At some point in February 1994, Grievant advised Ms. Dean that he would be reporting back to work on February 28, 1994, and apparently requested that the school holiday and the

snow days be credited to him and counted against the remaining days he would be gone. Ms. Dean responded by letter dated February 17, 1994. She stated that a work contract is suspended during an approved leave of absence. She then informed Grievant that he had already been paid thirty days for the military leave and was not entitled to any other benefits or compensation during his leave of absence.4

3The dates when school was cancelled for students and employees was not made part of the record.

4Ms. Dean's belief that Grievant's contract had been suspended while on military leave was apparently founded upon this portion of W.Va. Code 18A-2-2a which states:
(a) Any teacher who is returning from an approved leave of absence that extended for a period of one year or less shall be reemployed by the county board with the right to be restored to the same assignment of position or duties held prior to the approved leave of absence. Such teacher shall retain all seniority, rights and privileges which had accrued at the time of the approved leave of absence, and shall have all rights and privileges generally accorded teachers at the time of the reemployment.
(b) An employee shall notify the county board at least ten working days prior to beginning a leave of ab sence.

During litigation of this grievance, WCBE did not cite this statute or otherwise rely on any "suspended" contract theory.

6. Grievant's February 28, 1994, paycheck revealed he had been docked four days' pay. WCBE also charged Grievant with all of his three paid "no cause" personal leave days. WCBE then docked Grievant two more days on his March 15, 1994 pay stub.

7. Grievant's testimony at the level two hearing that during the Easter break, he and other of WCBE's teachers "made up" two days of the instructional time lost to snow days was uncontradicted; therefore, it is accepted as true.

The heart and soul of this dispute is the parties' differ ing interpretations of what constitutes a work day for teachers, an issue somewhat complicated because teachers have a different working arrangement than other public employees who work on a year-round basis. A teacher's employment is generally based upon a 200-day contract or "employment term" which spans two separate years to accommodate the first and second semesters of a school year. Of those 200 days, at least 180 days, but no more than 185, must be designated as instructional days for teachers and students. See Code 18-5-15. In addition, teach ers are credited with fifteen leave days, twelve of which must be used exclusively for sickness-related causes while three others may be used as "no cause" personal leave days.

The subject of work days is touched upon by W.Va. Code 18A-5-2 which provides, in pertinent part, that:

Schools shall not be kept open . . . on the following days which are designated as legal school holidays, namely: Independence Day, Labor Day, Veterans 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. . .."
When any such holiday falls within the employment
term, it shall be considered as a day of the employ
ment term and the full-time school personnel shall
receive his or her pay for same.
* * *
Any school or schools may be closed by proper
authorities on account of . . . conditions of weather
or any other calamitous cause over which the board has
no control. Under any or all of the above provisions,
the time lost by the closing of schools is counted as
days of employment and as meeting a part of the
requirements of the minimum term of one hundred eighty
days of instruction. On such day or days, county
boards of education may provide appropriate alternate
work schedules for professional and service personnel
affected by the closing of any school or schools under
any or all of the above provisions. Professional and
service personnel shall receive pay the same as if
school were in session. Insofar as funds are avail
able or can be made available during the school year,
the board may extend the employment term for the
purpose of making up time that might affect the
instructional term.

Against that backdrop, W.Va. Code 15-1F-1 provides public
employees who are members of the national guard or a military
reserve unit a
leave of absence from their respective offices or
employments without loss of pay, status or efficiency
rating, on the days during which they shall be engaged

in drills, parades or other duty, during business hours ordered by proper authority, or for field training or active service of the state, for a maximum period of thirty working days in any one calendar year[.] . . . . The term "without loss of pay" means that the officer shall continue to receive his or her normal salary or compensation, notwithstanding the fact that such officer or employee may have received other compensation from federal or state sources during the same period.

Grievant's stance in this dispute is that, while his military leave of absence encompassed thirty-nine calendar work days, only twenty-seven work days, three days less than his statutory entitlement under W.Va. Code 15-1F-1, should be charged against him. Grievant argues that he should receive the benefit of the paid holiday which occurred during the military leave, Martin Luther King Day, and that, since his colleagues did not have to report for duties during the snow days which occurred during his leave, those days do not constitute "working days" as contemplated by W.Va. Code 15-1F-1.
WCBE contends that, in the absence of prevailing law to the contrary, W.Va. Code 15-1F-1 and 18A-5-2 must be read in pari materia and that a day considered an employment day for purposes of reducing a teacher's 200-day contractual employment term under 18A-5-2 must likewise be considered a working day under 15-1F-1 in calculating a teacher's leave entitlement. Accord ing to WCBE, each of the thirty-nine days Grievant was absent constituted a "day of [Grievant's] employment" as that term is defined in W.Va. Code 18A-5-2. It contends Grievant's thirty days of statutory leave expired on February 14, 1994 leaving

nine work days for which Grievant had to be docked, unless he used his three "no cause" days to reduce the number of docked days to six.

WCBE argues that Grievant cannot "receive a reduction" in his contractually committed days of service to WCBE and, at the same time, claim that such days do not constitute working days for purposes of calculating his thirty days of paid leave pursuant to Code 15-1F-1. WCBE urges that to hold otherwise would be to allow Grievant to effectively "double dip" from the State's educational resources, a result which could not have been intended by the Legislature in its enactment of W.Va. Code 15-1F-1.

Grievant must prevail in this dispute. Unquestionably, he is entitled to a thirty-day paid leave of absence pursuant to W.Va. Code 15-1F-1. Hanna v. Hancock County Bd. of Educ., Docket No. 89-15-700 (May 25, 1990). In addition, a public employer in West Virginia may not count off the military leave days of its employees on a calendar-day basis. Oliverio v. W.Va. Dept. of Human Srvcs., Docket No. 89-DHS-154 (April 26, 1990). Although WCBE did not include non-working weekend days in caculating Grievant's allowable thirty days of military leave, as was done by the employer to the employee/grievant in Oliverio, it did essentially follow a calendar-day format and charge a (week-day) paid holiday and additional week-day, non-working days against Grievant's leave time.

WCBE is correct that the paid holiday and non-working snow days in question were part of Grievant's 200 days of employment. Nonetheless, paid holidays and paid (non-working) snow days cannot be construed as work days as contemplated by 15-1F-1. This is because no "business hours" exist on those days since

teachers are not required to instruct students or otherwise report for duties. Moreover, regardless of whether Grievant was or was not available for duties on the twelve snow days in question, those particular days were also a part of every other teacher's contracted 200 days of employment. Those days cannot be charged against Grievant if they were not charged against any other teacher. Indeed, it appears that all teachers, including Grievant, were subsequently required to make up some of the instructional time lost to snow days during a later-scheduled school holiday.

In addition to the foregoing, the following conclusions of law are appropriate.

Conclusions of Law

1. "All officers and employees of the State, or subdivi sions . . . who shall be members of the national guard or any reserve unit . . . shall be entitled to leave of absence from their respective offices or employments without loss of pay, status or efficiency rating, on the days during which they shall be engaged in drills, parades or other duty, during business hours ordered by proper authority . . . for a maximum period of thirty working days in any one calendar year[.] . . . The term 'without loss of pay' means that the officer shall continue to receive his or her normal salary or compensation . . . ." W.Va. Code 15-1F-1.

2. Teachers are among the public employees who "must be allowed [thirty days] leave time with pay to participate in properly authorized military training or duty . . . ." Hanna v. Hancock County Bd. of Educ., Docket No. 89-15-700 (May 25, 1990).

3. "The thirty days of military leave provided for by

W.Va. Code 15-1F-1 shall be applied only to business hours or work days on which the employee is absent while fulfilling his military commitment." Oliverio v. W.Va. Dept. of Human Srvcs., Docket No. 89-DHS-154 (April 26, 1990).

4. Although WCBE's "snow days" and the Martin Luther King holiday which occurred during the period of January 3 through February 28, 1994 were "days of employment" for teaching staff pursuant to the teachers' 200-day contracts, said holiday and snow days were not work(ing) days for teachers since teachers were not required to report to school for instructional or other duties and were nonetheless paid. See Id.

Based on the above findings and conclusions, this grievance is GRANTED, and WCBE is Ordered to reimburse Grievant for the days he was docked and to restore his three personal leave days.

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.

_____

NEDRA KOVAL

Administrative Law Judge

Date: October 26, 1994