EARLEAN JONES, et al

v. Docket No. 94-15-110

HANCOCK COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievants are employed by Respondent Hancock County Board of Education (HCBE) as food service workers; most of them report directly to and work within HCBE's central kitchen. On or about March 29, 1994 they advanced a level-four complaint and request ed a record decision. Grievants seek one hour's pay based on the fact that they reported for work on a wintery day only to discover that school had been cancelled for staff and students and their services not needed. HCBE's practice, Grievants claim, was to pay workers if school was cancelled after they reported for duty. (See footnote 1)

Besides Earlean Jones, grievants who are cooks are Margaret Bracaglia, Sandy Yoby, and Starry Milosicevic. Grievants DebraThomas and Marshall Conley are food service (delivery) truck drivers. Grievant Donald Allen is an inventory supervisor. All but Mr. Conley appeared at the level two hearing.

On Tuesday, February 8, 1994, following notice of a two- hour delay due to inclement weather, school was ultimately declared closed. By evening, the forecast of more unusually cold, icy and hazardous weather conditions prompted HCBE to again declare a two-hour delay for the beginning of classes the following day, Wednesday, February 9. Grievants, who regularly report to work by 6:00 a.m., not only on normal work days but also on days in which a delay of the opening of school due to bad weather conditions has been officially declared, were con tacted by their supervisor, Food Services Director Nancy Marzano, and told to report to work on February 9 at 7:00 a.m.

All of the cooks and Mr. Allen testified that on February 9, 1994, they had departed from home prior to 7:00 a.m. and had at least reached the central kitchen parking lot before they learned that the school delay had been upgraded to a cancella tion. Mr. Allen testified that he left home around 6:40 a.m. and arrived at work at about 7:06 or 7:07, just a few minutes after Ms. Marzano's arrival at approximately 7:05 a.m. Accord ing to Mr. Allen, Ms. Marzano was on the telephone just then receiving an advisory that school was cancelled. Ms. Jones emphasized that the reason she left for work at all that morning was because a local television station was still reporting a two-hour delay

and because Ms. Marzano had told the cooks to report to work unless they heard contrary information via atelephone "calling tree." T.21-23.

Ms. Jones also related the circumstances under which HCBE had previously paid "overtime" to cooks when school was can celled after they reported for work. She gave as an example that during the past few weeks when school delays had been called, the cooks reported for duties at their normal 6:00 a.m. starting time, but school was not cancelled until 9:30 a.m. She then stated, "We [were] paid for the hours that we were there." T.20. She agreed with her union counsel that the reason she was only seeking one hour instead of two in this action was because she had been directed to report at 7:00 a.m. rather than 6:00 a.m. on February 9, the day in issue.

The question of the 7:00 a.m. starting time was also answered. The prior day, February 8, the cooks reported for work at 6:00 a.m., as usual, even though school had been delayed for two hours. Not knowing school would be ultimately can celled, they got some foods prepared, allocated and loaded for transport onto some type of storage carts. When the call came through that school was cancelled for that day, the cooks simply rolled the loaded carts into the freezer for the next day's use. Later that day, after a determination was made to announce a two-hour delay for February 9, a decision was also made that the cooks did not need to report until one hour after their normal starting time because some of the food had already been prepared for delivery.

Finally, Ms. Thomas testified about the food service drivers' situation. According to her, she must first report tothe transportation office to get a delivery truck before she reports to the central kitchen for loading. She said she and Mr. Conley had both arrived at the transportation office at about 7:00 a.m. and heard a radio report at that time that school was cancelled. She said she called the kitchen to speak with Ms. Marzano to get confirmation that school was closed. She said food service truck drivers had always gotten the same payment for call-offs as the kitchen personnel.

Grievants' legal position in this matter is not quite clear. They basically rely on the "past practice" theory. Grievants also seem to rely on the fact that they expended time for their jobs on February 9, 1994, unlike other school employ ees who were not affected by the late-breaking cancellation because they had no need or requirement to report to work as early as the food service staff. Grievants believe, under those circumstances, they should be paid one hour for their efforts to report to work. HCBE claims it made a diligent attempt to inform all employees of the cancellation of school. It main tains that its employees are not compensated for travel time.

In short, Grievants cannot prevail because they have failed factually and legally to support their claim for one hour's extra wages for February 9, 1994. (See footnote 2) The circumstances by which Grievants had been compensated in the past did not occur on February 9. In the past, Grievants reported for work, actually performed some duties and were compensated for the time theyremained on the job prior to the subsequent cancellation of school. That is not what occurred on February 9, 1994. On that day, Grievants reported for work and then simply turned around and returned home due to the intervening cancellation of school. Grievants did not perform any duties and were able to immediate ly return to their homes. (See footnote 3)

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

Findings of Fact

1. On the evening of February 8, 1994, HCBE called a two hour delay of classes for the next day, February 9, due to inclement weather.

2. Because of the two-hour delay, Grievants were told to report to work at 7:00 a.m. on February 9, 1994.

3. Shortly before 7:00 a.m., announcements were made via local radio and television broadcasting stations that the two- hour delay had been upgraded to a cancellation.

4. By the time the announcements were made, Grievants had already departed from home to get to their work site.

5. After Grievants reported to their work site, they were told of the cancellation; they were then free to return home.

6. While HCBE has compensated food service workers for the time those workers performed duties prior to a school cancellation, HCBE has not established any practice or policy ofcompensating workers for travel time to work, under any circum stances.

Conclusions of Law

1. It is incumbent upon a grievant to 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. In this action, Grievants failed to prove a violation of any laws, policies or regulations under which they work.

3. Grievants failed to establish that they were entitled to one hour's wages for reporting to work

on February 9, 1994, when they were not required to stay and perform duties on that day.

Therefore, the grievance is **DENIED**.

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 27, 1994

Footnote: 1 The record consists of the lower level pleadings and adverse decisions as well as the transcript of the March 2, 1994 level two hearing. When the transcript was filed on April 12, 1994, the parties did not suggest a briefing schedule or otherwise indicate whether they intended to file briefs. Thereafter, the parties were given until May 27, 1994 to file fact/law proposals, if desired. Neither submitted any materials by the designated time.

Footnote: 2 Grievants never alleged their pay was docked for the cancelled day, and it is presumed that they had, indeed, received their wages for that day.

Footnote: 3 Grievants' efforts to report for work on Wednesday, February 9, 1994 are commendable. As matters turned out, HCBE had to cancel school for the entire remainder of the week.