CHRISTINE ZIRKLE, ET AL.

v. Docket No. 94-15-441

HANCOCK COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievants Christine Zirkle, Evelyn Brown, Betty Colvin, Linda Geisse, Richard Hixenbaugh, Joanne McClain, Pamela R. Smith, Judy Teller, Valerie Tibbs and Shirley Titus, bus operators employed by Respondent Hancock County Board of Education (HCBE), seek compensation pursuant to W.Va. Code 18A-4-8a and 18A-4-8b in conjunction with their attendance at a work-related seminar after working hours. HCBE claims the annual training is necessary for ongoing bus operator certification and that the obligation is upon the bus operators to maintain their eligibility to drive a school bus. The parties agreed to a record decision. Grievants filed fact/law proposals on February 7, 1995, and HCBE filed an abbreviated letter brief on February 14, 1995.

The underlying facts in this case are basically uncontested. Based on all matters of record, the following factual determinations are made.1

Findings of Fact

1. Grievants are scheduled to work five and three-quarter hours per day; their regular workday ends at approximately 4:30 p.m.

2. Bus operators must receive annual emergency health training in order to maintain their bus operator's certification.

3. In the past, HCBE offered the required classes during working hours as a service to its bus operators. According to

the uncontroverted testimony of HCBE's transportation director, the daytime classes were unsatisfactory due to classroom crowd ing and other factors.

4. More recently, HCBE scheduled the training classes in the evenings at no cost to the bus operators. During the 1994-95 school year, HCBE scheduled five evening classes (6:00 p.m. to 9:00 p.m.), beginning February 1994 through April 19, 1994.

5. Comparable training for a fee is available in the area.

6. Grievants apparently did not avail themselves of any of the four classes offered by HCBE prior to April 19, 1994, nor

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1A copy of the transcript of the July 11, 1994 level two transcript was transmitted to the undersigned on September 26, 1994.

did they obtain the training offered by other entities at their own expense.

7. Grievants were advised by the transportation director that, in order to continue driving, they had to either attend the April 19, 1994 training session or satisfy the training requirement by other means.

8. Grievants decided to attend the April 19, 1994 train ing session. One or more Grievants had to forego extra-duty driving in order to attend that evening training session.

Discussion

Grievants maintain that the issue of whether the training is required in order for them to qualify for their bus opera tors' licenses is "irrelevant to this grievance." According to

Grievants, the "only issue that needs to be dealt with is whether or not [HCBE] made it mandatory that . . . [they] attend the April 19, 1994 . . . training outside of their regularly scheduled work hours." Grievants contend that, because their attendance at the training session was mandatory, it should be construed as extra-duty work. They argue that they are there fore entitled to compensation at the statutory extra-duty rate. HCBE counters that Grievants have not established that they are entitled to extra-duty wages for their attendance at the April 19, 1994 training session. According to HCBE, while the training required of Grievants is compulsory, their attendance at any of the free evening training sessions it schedules is not mandatory. HCBE points out that bus operators have an obliga tion to keep their driving certifications current on their own time and at their own expense, and that it offers the free evening training sessions merely as a service to the bus opera tors.

Obviously, Grievants' attendance at the training session cannot be characterized as an extra-duty assignment. According to W.Va. Code 18A-4-8b, extra-duty assignments are "irregular jobs that occur periodically or occasionally such as, but not limited to, field trips, athletic events, proms, banquets and band festival trips." In addition, W.Va. Code 18A-4-8a pro vides that the

minimum hourly rate of pay for extra-duty assignments as defined in . . . [W.Va. Code 18A-4-8b] . . . shall be no less than one seventh of the employee's daily total salary for each hour the employee is involved in performing the assignment and paid entirely from local funds.

Grievants were not required to perform any job described in Code 18A-4-8b on April 19, 1994, or any other "extra-duty" assign ment as contemplated by the statute.

In fact, Grievants were not even required to attend the April 19, 1994 training session. Rather, Grievants were advised that the last free session offered by HCBE would occur on April 19. Grievants opted to attend that session rather than attend some other classes at their own expense. Administrative notice can be taken that many workers are required to attend continuing education classes in order to maintain their skills and their employment. See Mullins v. Div. of Highways, Docket No. 91-DOH-388 (October 11, 1991) (an employer may impose reasonable continuing education upon its employees).

Moreover, workers are commonly required not only to finance any qualifying or continuing education relative to their jobs, but also to obtain said training on their own time. In this case, Grievants failed to identify any law, policy or regulation which requires HCBE to provide job training or continuing education during the bus operators' working hours in order for the operators to maintain their eligibility to drive a school bus.

Finally, no past Grievance Board decisions support a finding that school boards must incur the costs, in the form of unproductive work hours, reimbursement or the like, of the qualifying minimal training or continuing education of any employee. See e.g., Dieffenbauch v. Wetzel County Bd. of Educ., Docket No. 52-86-123-2 (Aug. 25, 1987); Davis v. Mingo County Bd. of Educ., Docket No. 29-86-338-4 (Apr. 1, 1987).2

That HCBE provides free training, whether during the workday or not, for bus operators to qualify for their ongoing

school bus driving certification is commendable. However, Grievants have the option to pay for their own training, if they so desire.

2In Dieffenbauch, because the grievant had agreed to on-the-job training in an advanced classification title, he was not entitled to an immediate salary enhancement until he became fully qualified. Likewise, the board of education in Davis was not ordered to furnish minimal qualification training, rather the board was informed that it must place only properly subject-certified professionals in specific jobs.

In addition to the determinations contained in the forego ing findings and discussion, the following formal conclusions of law are made.

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. Grievants have failed to prove a violation of W.Va. Code 18A-4-8a and 18A-4-8b or any other law, regulation or policy relative to their attendance at a work-related seminar after working hours.

3. Grievants provided no evidence that HCBE is obligated to provide them with the required training during working hours or at any other time.

4. Grievants have failed to prove they were entitled to any compensation for their attendance at a training session on

April 19, 1994 under any theory of law.

Accordingly, 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: February 24, 1995