

CLARE C. STRICKLER, et al.

v. Docket No. 96-14-155

HAMPSHIRE COUNTY BOARD OF EDUCATION

DECISION

___Grievants, twenty-three professional employees of the Hampshire County Board of Education (Respondent), [\(See footnote 1\)](#) filed complaints at their respective schools in March 1996, alleging violations of Board Policy 4.1.8. and W.Va. Code §18A-5-2 when they were charged a full day of leave for February 16, 1996. Grievants' immediate supervisors lacked authority to resolve the matter at level one. The grievances were consolidated, and following an evidentiary hearing, the claim was denied at level two. The grievance was advanced to level four on April 19, 1996. After two continuances were granted for good cause, a level four hearing was conducted on July 19, 1996, and the matter became mature for decision with the filing of final post-hearing submissions on August 15, 1996.

The facts of this matter are not in dispute.

1. The 1995-96 calendar for Hampshire County Schools establishes that February 16, 1996, was designated as an instructional day, with a faculty senate meeting scheduled in the afternoon. On such days students are released at approximately 12:30 p.m.

2. Due to a snow storm in the early morning of February 16, 1996, the instructional portion of the day was cancelled; however, teachers were to report to work at 1:00 p.m. for a faculty senate meeting.

3. Notice of the change in schedule was broadcast by two local television stations and nine radio stations. Additionally, some schools employed a "telephone tree" in which notification was passed from one employee to another.

4. Grievants did not appear for the afternoon session. Some indicated that they intended to take either the whole, or half, day as sick or personal leave. Others testified that they were not advised

they were to attend the afternoon session.

5. Grievants were charged an entire day of leave time.

At the level four hearing Grievants initially raised a procedural issue, stating that they wished for this matter to be a class action, with relief granted to all employees affected by the Board's action. Opposing this request, the Board argued that any relief awarded should be limited to those Grievants who signed the grievance forms. W.Va. Code §18-29-2 provides:

[a] grievance may be filed by one or more employees on behalf of a class of similarly situated employees: Provided, That any similarly situated employee shall indicate in writing of his or her intent to join the class of similarly situated employees. Only one employee filing a grievance on behalf of similarly situated employees shall be required to participate in the level one hearing required in section four [§18-29-4] of this article.

In compliance with this provision, the level four decision shall apply only to those employees who signed grievance forms. However, since 220 of 248.5 employees reported to work, nearly everyone affected by the decision is included.

Grievants argue that the morning session should not be deducted from their leave because W.Va. Code §18A-5-2 provides that when schools are closed due to weather conditions, "the time lost by the closing . . . 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 Professional and service personnel shall receive pay the same as if school were in session." Numerous Grievants testified the radio and/or television reports did not advise that they were to attend the faculty senate meeting, and they understood school was closed the entire day. In any event, Grievants argue that the morning session was cancelled and they should not be required to use leave time for that portion of the day.

Alan Hott, Director of Finance, testified that due to the snow storm, it was determined that school could not begin at the regularly scheduled time, and that under usual circumstances a two-hour delay would have been implemented. Because a faculty senate meeting had been scheduled for the afternoon of February 16, 1996, requiring that the students be excused following lunch, a two-hour delay was not practical and school was simply cancelled that day for the students.

The Board argues that professional staff was provided with an alternative work schedule, and that February 16 was considered an instructional day for professional employees. Because W.Va. Code §18-5A-5 states "that any such designated day (faculty senate) shall constitute a full instructional

day,” Grievants were charged accordingly. (Emphasis and parens by the Board). Grievants' claim that media reports did not include a directive regarding the faculty senate meeting is discounted by the Board, which notes that the overwhelming number of professional staff were present for the meeting.

Because Grievants made a personal decision to not report to work, the Board argues that they could only be paid for the day through the use of personal or sick leave, or compensatory time. Finally, the Board asserts that the issue is moot regarding three Grievants who stated that they were not going to attend school on that day no matter what the circumstances, for nine Grievants who were ill or absent due to illness or a death in the family, and the Grievant who did not file a personal leave request form and was not charged leave time. [\(See footnote 2\)](#)

Grievants must prevail in this matter. It is clear from the record that professional personnel were neither directed, nor expected, to report to school prior to 1:00 p.m. on February 16, 1996. Mr. Hott's testimony establishes that the weather conditions would normally only require a two-hour delay, but because a faculty senate meeting was scheduled that afternoon, school was in fact closed during the morning session. The Board may not at this point declare the morning session as a two-hour delay for professional personnel and characterize February 16 as a full instructional day, thereby requiring that Grievants utilize a full day of leave. Any interpretation that a two-hour faculty senate meeting would constitute a full instructional day is not accepted. Certainly, if students attend the morning session and a faculty senate meeting is held during the afternoon, a full instructional day may be claimed, but not in this instance. Code §18A-5-2 provides that a board 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” including weather conditions. [\(See footnote 3\)](#) However, school was cancelled for students and employees the morning of February 16, 1996, and Grievants may only be required to take leave for the afternoon session of that date.

In addition to the foregoing facts and discussion it is appropriate to make the following formal conclusions of law.

Conclusions of Law

1. Schools may be closed on account of weather or other calamitous cause over which the board has no control. The time lost in these situations is counted as days of employment and as meeting a part of the requirements of the minimum term of instruction. On such days the board may provide

appropriate alternative work schedules for professional and service personnel; however, when employees are not required to report for work they shall receive pay the same as if school were in session. W.Va. Code §18A-5-2.

2. Grievants have proven by a preponderance of the evidence that they were required to use leave for half a day when school was cancelled to inclement weather conditions, in violation of W.Va. Code §18A-5-2.

Accordingly, the grievance is **GRANTED** and the Board Ordered to re-instate a half- day of leave time to those Grievants adversely affected.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Hampshire 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 intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate Court.

Date: August 30, 1996 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

[Footnote: 1](#)

In addition to Ms. Strickler, Grievants are Sandra Adrian, Deborah Alderton, Gerald Bisset, Margaret Broderick, Cynthia Corbin, Allen Davy, Kathi Welton-Davy, Linda Ford, Betty Kenney, Regina Kenney, Bruce Kibby, Candace Kibby, Alexis Kuhnel, Peggy LaFollette, Bjorn Larsen, John Painter, Sharon Still, Robert Synovec, Marcia Smith, Lenora Tawney, Dianne Trimmier, and Rita Watson. Josephine Lambert, a service personnel employee, was also listed on a grievance form; however, she did not appear at the level four hearing and WVEA Consultant Harvey Bane stated that he did not represent her. Because service employees were not required to report to work on February 16, 1996, Ms. Lambert would not have been charged annual leave as were the professional employees. Therefore, Ms. Lambert is dismissed from this proceeding.

[Footnote: 2](#)

Mr. Hott testified that Kathi Welton-Davy did not file a request for leave and was not charged.

[Footnote: 3](#)

Board Policy 4.1.8.4 addresses inclement weather and sets forth "Snow Plan B" which is a two hour delay. An Addendum to the Policy provides in part that "[o]n days when school is cancelled teachers may be given an alternate work schedule if it is safe for them to travel on roads."