LYNNE RYAN, et al.,

Grievants,

v. **Docket No. 02-MCHD-259**

MONONGALIA COUNTY HEALTH DEPARTMENT,

Respondent.

DECISION

Grievants (See footnote 1) are employed by the Women, Infants and Children ("WIC") program, a federal program administered by the Monongalia County Health Department ("MCHD"). They initiated this grievance on July 11, 2002, challenging MCHD's revised travel policy. They seek as relief to be compensated for time spent traveling to and from clinics, preferably by being allowed to complete travel within their normal working hours. The grievance was denied at level one on July 12, 2002, due to the immediate supervisor's lack of authority to grant relief. The grievance was again denied at level two on July 26, 2002. A level three hearing was held on August 12, 2002, and the grievance was denied at that level on August 16, 2002. Grievants appealed to level four on August 23, 2002. A hearing was held in the Grievance Board's office in Westover, West Virginia, on November 1, 2002. Grievants were represented by counsel, Robert M. Bastress, and Respondent was represented by Assistant Prosecuting Attorney Phillip M. Magro. This matter becamemature for consideration upon receipt of the parties' fact/law proposals on December 2, 2002.

The following findings of fact are made based upon a preponderance of the evidence of record.

Findings of Fact

1. Grievants are employed by the WIC program (See footnote 2) as nurses, breastfeeding counselors, nutritionists, and lab technicians. They provide services to eligible women and infants during pregnancy and early childhood, including nutrition counseling, administration of immunizations, and assistance with breastfeeding.

2. The WIC area for which Grievants are responsible includes Monongalia, Marion, Preston, Taylor, Harrison, and Doddridge counties, although their region is headquartered in Morgantown, Monongalia County, at the MCHD office.

3. Each Grievant works from a particular “home” office, usually the Morgantown office, on non-clinic days. However, at least one individual--Grievant Wadsworth--works in Marion County, where she lives. (See footnote 3) 4. Grievants have responsibility for working at off-site clinics in the various counties they serve on particular days each week. For example, Grievant Moorehead, a nurse, works Monday through Thursday at the Morgantown MCHD office, and administers immunizations at a clinic in Grafton every Friday.

5. Under MCHD's previous travel policy, WIC employees were allowed to complete travel to off-site clinics during their normal working hours of 8:30 to 4:30.

6. Prior to revision of the travel policy, WIC employees responsible for working at a clinic on a particular day would meet at the MCHD office in Morgantown, then ride to the clinic together in a WIC-provided vehicle. Often, time prior to departure was spent coordinating the day's clinic activities. Upon completion of their clinic duties, they would all return to the MCHD office and attend to office matters, such as telephone messages and mail, until the conclusion of their workday.

7. In the spring of 2002, MCHD revised its travel policy to read as follows:

> Normal Department office hours are 8:30 a.m. - 4:30 p.m. For the purposes of travel reimbursement, each employee of the Department who travels from home before his/her regular workday and returns to his/her home at the end of the day is engaged in ordinary home to work travel which is a normal incident of employment. This is true whether he or she works at a fixed location or at different job sites. Normal travel from home to work is not work time. If employees choose to use the Department's vehicle to obtain access to the job site, such travel time is normally non compensable.

8. Pursuant to the revised policy, only employees who must pick up supplies (such as vaccines) or confidential materials (such as patient charts) are compensated for traveling from the MCHD office to an off-site clinic, and they are allowed to complete their travel within the 8-hour workday. 9. Since revision of the policy, WIC employees who do not have to pick up necessary items at the MCHD office are required to arrive at the off-site clinic at 8:30 and stay at the clinic until 4:30, regardless of how far the commute from their home to the clinic may be.

Discussion

As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); Payne v. W. Va. Dep't of Energy, Docket No. ENGY-88-015 (Nov. 2, 1988). See W. Va. Code § 29-6A-6.

Grievants believe that MCHD's revised travel policy is unfair and discriminatory. Conversely, Respondent contends that its policy was revised to bring it into compliance with the Fair Labor Standards Act ("FLSA"), which does not define home-to-work travel as compensable "work time." (See footnote 4) The pertinent statute, 29 U.S.C. 254(a), provides that compensable time does not include time spent "walking, riding, or traveling to or from the actual place of performance of the principal activity or activities which such employee is employed to perform." In addition, 29 C.F.R. § 785.35 specifically states that

> [a]n employee who travels from home before his regular workday and returns to his home at the end of the workday is engaged in ordinary home to work
>
> travel which is a normal incident of employment. **This is true whether he works at a fixed location or at different job sites.** Normal travel from home to work is not overtime.

(Emphasis added).

Grievants do not dispute that normal commuting time is not compensable work time. Rather, they contend that, prior to the policy revision, their activities at the MCHD office prior to their departure and after their return from clinics were part of their "principal activities." Additionally, they believe that actually driving to off-site clinics should be considered a principal work activity.

In a previous Grievance Board decision, Baker v. W. Va. Dep't of Public Safety, Docket No. 96-DPS-120 (July 3, 1997), the grievants were successful in proving that they should be paid for traveling to and from their home office to administer driving tests at various state police detachments. However, the outcome of that decision was based upon the requirement that testing materials be secured at the employer's office. The grievants in that case were required to arrive at their local detachment to obtain the testing equipment and supplies before traveling to test sites, and then required to return the materials to the local detachment before driving home at the end of the day. Accordingly, it was held that "if an employee must report to a particular location to obtain the necessary tools before he can begin his principal activities at another location, the [travel time] is an

integral and indispensable part of those activities. See, Barrentine v. Arkansaw-Best Freight System, Inc., 750 F.2d 47 (8th Cir. 1984, (cert. denied, 471 U.S. 1054 (1985))."

This principle has been recognized in numerous federal court decisions. Generally, an employee is not at work until he or she reaches the work site. Dillon v. Northern StatesPower Co., 22 Wage & Hour Cas. (BNA) 1187 (8th Cir. 1976). However, as discussed above, if the employee is required to report to a specific location to pick up materials, equipment or other employees, or to receive instructions before traveling to the work site, compensable time starts at that location. See Herman v. Rich Kramer Construction, 1998 U.S. App. LEWIS 23329 (8th Cir. 1998); Baker v. GTE North Inc., 927 F. Supp. 1104, 3 Wage & Hour Cas. 2d (BNA) 527 (N.D. Ind. 1996). The key to the analysis regarding whether the travel is considered actual "work" is whether it benefits the employer, either partially or completely, in the ordinary course of the particular business. Dunlop v. City Elec. Inc., 527 F.2d 394 (5th Cir. 1976).

In the instant case, the WIC employees who are required to pick up supplies before traveling to a clinic are unquestionably entitled to compensation for that travel, which appears to be undisputed by Respondent. The other WIC employees' situations present a much closer call. Clearly, Respondent would contend that, although the activities previously engaged in by these employees at the office before and after clinics were of some benefit to their employer, they were not "required" by Respondent and were performed for the convenience of the employees; thus they would not constitute compensable work time. The undersigned agrees.

In Spencer v. Auditor of Public Accounts, 1990 U.S. Dist. LEXIS 1076, 29 Wage & Hour Cas. (BNA) 1101 (E.D. Ky. 1990), an auditor who was required to travel to various county offices claimed that he should be paid overtime compensation for occasions when his travel caused him to work in excess of 40 hours per week. As with MCHD employees, he was required to arrive at the remote locations by 8:00 a.m. and remain there until 4:00 p.m. The court held that the employee's travel time was not compensable. Noting that theDepartment of Labor, at 29 C.F.R. 785.38, also provides an exception to the home to work travel rule when the employee travels "as part of his principal activity, such as travel from job site to job site during the workday," which is considered work time, the court stated:

> In the case at bar, it appears that the plaintiff was not required to work at more than one location on any given day. This condition, along with the fact that the plaintiff was not required to report to a central location for instructions or equipment before departing to the remote location, arguably distinguishes this case from the exception

recognized by . . . the Department of Labor.

1990 U.S. Dist. LEXIS 1076 at 16.

Respondent has demonstrated no financial detriment it has realized as a result of Grievants' previous practice. While the application of the new policy to Grievants is unfortunate, and seemingly unnecessary, MCHD's travel policy is legally proper under the FLSA and as it is being applied to the WIC employees. Grievants' activities prior to departure and after their return from clinics, (See footnote 5) while somewhat useful to their employer, were not an “indispensable” part of their job activities, and they were clearly performed primarily for the employees' convenience, so that they could travel to clinics together during the workday. The FLSA clearly states that normal home-to-work travel is not compensablework time, even if employees travel to more than one job site, just as Grievants do. (See footnote 6) Unfortunately, Grievants' request for compensation for their travel time cannot be granted.

The following conclusions of law support the decision reached.

Conclusions of Law

1. In a non-disciplinary matter, Grievants have the burden of proving their grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); Payne v. W. Va. Dep't of Energy, Docket No. ENGY-88-015 (Nov. 2, 1988). See W. Va. Code § 29-6A-6.

2. The Fair Labor Standards Act does not consider normal home-to-work travel part of the employee's principal work activities, for which compensation must be provided. 29 U.S.C. 254(a).

3. If an employee is required to report to a specific location to pick up materials, equipment or other employees, or to receive instructions before traveling to the work site, compensable time starts at that location. See Herman v. Rich Kramer Construction, 1998 U.S. App. LEWIS 23329 (8th Cir. 1998); Baker v. GTE North Inc., 927 F. Supp. 1104, 3 Wage & Hour Cas. 2d (BNA) 527 (N.D. Ind. 1996).

4. Grievants who are not required to pick up necessary supplies or materials prior to traveling to a clinic are not entitled to compensation for their travel time.

Accordingly, this grievance is **DENIED**.

Any party or the West Virginia Division of Personnel may appeal this decision to the Circuit Court of Kanawha County or to the circuit court of the county in which the grievance occurred, and such appeal must be filed within thirty (30) days of receipt of this Decision. W. Va. Code § 29-6A-7 (1998). 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. However, the appealing party is required by W. Va. Code § 29A- 5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

Date: December 30, 2002 _____

DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

Grievants are Lynne Ryan, Mona Daud, Pat Cleavenger, Roberta Dorazio, Susan Foster, Keeli Morehead, Deborah Howard, Patricia Johnson, Linda King, Kathy Moore, Anna Belle Richards, Darla Retton, Susan Scritchfield, Margaret Sottile, Kirstie Wadsworth, and Brenda Weese.

Footnote: 2

There appears to be no dispute that Grievants are considered "employees" of MCHD for purposes of application of policies such as travel regulations.

Footnote: 3

Apparently, Grievant Wadsworth receives her compensation, benefits, etc., through the MCHD office in Morgantown, which administers the WIC program.

Footnote: 4

Of course, any employer who wishes to adopt a more liberal standard and provide for compensation for home-to-work travel may do so, by virtue of express agreement, practice, or custom. See Spencer, infra.

Footnote: 5

This conclusion, of course, does not apply to Grievants who are clearly required to report to the Morgantown office to pick up vaccine, charts, and other necessary materials before traveling to clinic sites.

Footnote: 6

A special one-day assignment, which is not part of an employee's normal work schedule, would be compensable if it

required travel that lengthened the employee's usual workday, minus his or her normal commuting time. See 29 C.F.R. § 785.37. The testimony at the level four hearing indicated that MCHD does compensate employees for travel time when they are sent to a clinic to which they are not normally assigned, such as to cover for another employee.