JIMMIE SKEENS, ET AL.,

v. DOCKET NO. 94-22-544

LINCOLN COUNTY BOARD OF EDUCATION.

D E C I S I O N

Grievants, Jimmie Skeens, Gary Nelson, Gerald Huffman, Diane Adkins, Douglas Skeens, and Rex Toney, allege the Lincoln County Board of Education ("LCBOE") violated W. Va. Code §§18A-4-7, 18A-4-8a, 18A-4-10. (See footnote 1) Grievants state "violations in regard to payment of snow days, personal leave days, etc. for extracurricular bus trips for daily vocational runs under supplemental contracts." The relief sought is "compensation for loss of wages and benefits due." The parties agreed to submit the case on the record below and the case became mature on October 28, 1994 when the parties' findings of fact and conclusions of law were due. The parties elected not to submit these materials.

The record below is very sparse. It essentially consists of the Level II hearing and the Level II Decision.

Findings of Fact

The following Findings of Fact are derived from the record below:

1. Grievants are employed as bus operators for LCBOE.

2. All of the Grievants have daily a.m. and p.m. runs plus vocational runs under supplemental contracts.

3. The Grievants are not paid for these vocational runs if they do not make them because of snow days or absences due to personal leave. Grievants are paid for their normal runs when these type of absences occur.

4. Grievants signed continuing contracts of employment with LCBOE for their vocational runs which designates that they serve under "Salary Schedule #16." This contract states:

The parties to this contract mutually agree to the following terms and conditions:

1. This contract is not a continuing contract of employment, but the Employee shall not be removed from this assignment without shown reasons.

2. The parties to this contract hereby acknowledge that this assignment is entered into pursuant to the West Virginia Code 18A-4-16.

3. Duties of Place of Compensation and/or
Employee Assignment Other Consideration

Level II G. Ex. B.

5. "Salary Schedule #16 - Vocational Education" states:

> LEVEL I VOCATIONAL DRIVER. Supplemental pay $280.00 per month. Term: 180 days. Supplemental pay shall be reduced for days/partial days for which supplemental duties are not performed.

Level II G. Ex. A.

Discussion

This grievance grew out of a prior grievance, Skeens, et al. v. Lincoln County Board of Education, Docket No. 93-22-124 (Sept. 29, 1994). That grievance dealt with calculating the extra-duty rate of pay and held that "[t]he term 'total daily salary' should be calculated to include an employee's wage or salary earned throughout the entire day whether via the performance of a normal a.m. and p.m. assignment solely or by a combination of the performance of both a normal assignment and a 'supplemental assignment.'" Id. at 7-8.

Although unclear from the record the Grievants are apparently arguing that the holding in Skeens, supra, requires them to be compensated for snow and personal leave days because their vocational run salaries are considered part of their daily rate of pay for calculating their rate of pay for extra-duty assignments. Thus, it is a violation of W. Va. Code §§18A-4-8, 18A-4-8a, and 18A-4-10 not to grant the Grievants the benefits of receiving the vocational run pay on the days they do not perform these duties because of snow or personal leave.

Grievants cited a portion of W. Va. Code §18-4-8 which states:

> [i]n addition to the compensation provided for in section eight-a [§ 18-4-8a] of this article, for service personnel, each service employee shall, notwithstanding any provisions in this code to the contrary, be entitled to all service personnel employee rights, privileges and benefits provided under this or any other chapter of this code without regard to such employee's hours of employment or the methods or sources of compensation.

Since no legal argument accompanied this statutory reference, the relationship Grievants see between this code section and the Skeensdecision and payment for snow and personal days is unclear. Apparently the Grievants are attempting to bootstrap the Skeens decision to an unrelated code section to void their long-standing contracts.

The Respondent argues that LCBOE's failure to pay Grievants for vocational runs they do not perform violates no law and is proper in light of the signed, mutually agreed-upon contracts. Respondent states the extracurricular duty contracts meet the requirements of W. Va. Code §18A-4-6(2)(3)&(4) and are properly executed.

After a thorough review of this sparse record and the arguments of the parties, the undersigned finds that no violations of the above-cited code sections have been demonstrated. The contracts signed by the parties state that "supplemental pay shall be reduced for days/partial days for which supplemental duties [vocational runs] are not performed." Clearly, the finding that daily supplemental runs are to be utilized to calculate bus operators' daily rate of pay for extracurricular activities does not mandate pay for sick and snow days in the absence of a statutory violation, especially in the face of a mutually agreed-upon contract.

The above-stated Findings of Fact and discussion will be supplemented by the following Conclusions of Law:

Conclusions of Law

1. Grievants have the burden of proving the allegations of their grievance by a preponderance of the evidence. Williams v.Lincoln County Bd. of Educ., Docket No. 93-22-386 (Mar. 7, 1994).

2. Grievants have not demonstrated any statutory violations.

3. Grievants have not demonstrated that their supplemental vocational driver contracts are in violation of any statutory provision or regulation which would necessitate finding the terms of these

contracts to be null and void.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Lincoln 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.

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JANIS I. REYNOLDS

Administrative Law Judge

Dated: December 29, 1994

Footnote: 1 This code section which deals with personal leave was cited on the grievance form, but no further reference was made to it in the Level II hearing. What violation of this code section Grievants think occurred is unknown.