**DANA HAMBRICK and CAROLYN WEIS,**

**Grievants,**

**v. DOCKET NO. 94-27-293**

**MERCER COUNTY BOARD OF EDUCATION,**

**Respondent.**

**D E C I S I O N**

Grievants, two regular bus operators employed by Respondent Mercer County Board of Education, were placed on administrative transfer during the spring of 1994 for subsequent reassignment in the 1994-1995 school year. The reassignment of bus routes came as a result of Respondent's goal to eliminate three bus operator positions for the 1994-1995 school year.

Grievants allege their transfers violate W. Va. Code §§ 18A-2-7 and 18A-4-8b and seek reassignment to specific bus routes for the 1994-1995 school year. Grievants also allege a violation of the Respondent's past and current practice.

The grievances were filed individually at Level I on April 25, 1994. They were consolidated and a hearing was held at Level II on May 27, 1994. A level three decision was waived and hearing was held at Level IV on August 3, 1994, at which time this case became mature for decision.

I.

The underlying facts are not in dispute and can be summarized as follows:

1. Grievants are regular bus operators employed by Respondent.

2. By letter dated March 8, 1994, Grievants, along with all other bus operators employed by Respondent, were notified by Deborah Akers, the County Superintendent, that she was considering recommending they be transferred from their present runs and be subsequently reassigned for the 1994-1995 school term. The reason stated in the letter for the proposed action was the "need for realignment/reorganization of staff within the county" as a result of several school closings and

reconfigurations within the Mercer County school system.

3. Grievants requested a hearing before the Board pursuant to W. Va. Code § 18A-2-7. A hearing was held on March 28, 1994, wherein Grievants were present and represented by John Roush, West Virginia School Service Personnel Association.

4. The County Superintendent presented her recommendation to Respondent at its meeting on March 29, 1994, and it voted to approve the recommendation.

5. By letter dated March 31, 1994, Roger Daniels, Administrative Assistant/Director of Human Resources for Respondent, notified Grievants that they had been placed on transfer for subsequent assignment for the 1994-1995 school term. 6. William E. Hopkins, Director of Transportation for Respondent, was directed to reduce the number of bus drivers in the county by three positions for the 1994-1995 year due to declining enrollment. Mr. Hopkins looked at the Princeton area as the place to try to reduce drivers. This reduction would require him to revise bus run schedules.

7. Mr. Hopkins undertook to revise the bus schedules and "built" routes combining segments of previous routes, beginning with the elementary school runs and ending with junior/senior high school runs.

8. Mr. Hopkins completed his revisions and distributed a list to the drivers to show what revisions would be in effect for the next school term. Mr. Hopkins invited the drivers to submit alternative plans. No alternatives were suggested and drivers were subsequently assigned to the routes on the listing.

9. Mr. Hopkins determined that the drivers who had previously driven the elementary school portion of the rebuilt routes would be again offered those routes for the 1994-1995 school year. Those drivers were offered the routes and were asked to sign an agreement accepting the modifications to the routes.

10. Grievants were not assigned to the routes which they claim most closely resemble the routes they had driven in past years.

11. Two other bus operators, Loretta Austin and Patti McKinney, were assigned the routes the Grievants claim are "theirs".

12. Ms. Austin and Ms. McKinney are more senior than the Grievants, respectively.

13. Mr. Hopkins testified at Level II that he followed the same procedure in filling bus operator positions as he had in the past.

Grievants' request the undersigned to make a factual determination that the majority of the segments of the rebuilt routes in question were segments that Grievants drove in the past, and that, therefore, the routes "belong" to them.

II.

W. Va. Code § 18A-2-7 contains the procedural requirements which must be followed when a board of education undertakes the assignment, transfer, promotion, demotion, suspension, or dismissal of any school personnel. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer and promotion of school personnel. Nevertheless, this discretion must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious. Lucion v. McDowell County Bd. of Educ., ___ S.E.2d ___ (W. Va. 1994); Dillon v. Bd. of Educ. of County of Wyoming, 351 S.E.2d 58 (1986).

Respondent's stated justification for the transfers, i.e., the "realignment/reorganization of staff within the county", for economic reasons is not arbitrary and capricious. Indeed, unlike the cases cited by Grievants, Brown v. Logan County Bd. of Educ., Docket No. 90-23-177 (Oct. 30, 1990) and Lucas, et al. v. LincolnCounty Bd. of Educ., Docket No. 90-22-419 (May 20, 1991), Respondent's justification did not subsequently disappear, and the reduction of drivers by three was actually accomplished for the ensuing school term. Further, Respondent properly followed the procedures outlined in Code § 18A-2-7 in notifying Grievants and subsequently effectuating their transfers. Therefore, Grievants have failed to establish that Respondent violated W. Va. Code § 18A-2-7 by placing them on administrative transfer for the 1994-1995 school term.

III.

Grievants also allege a violation of W. Va. Code § 18A-4-8b, which governs seniority rights for school personnel. It is unclear from the record exactly what portion of this statute Grievants allege has been violated. The drivers who received the routes in question have more seniority than the Grievants, respectively, and therefore, even if the bus routes had been posted, and those two drivers had bid on the subject routes, Grievants would not have prevailed. Absent any other evidence, Grievants have failed to establish a violation of W. Va. Code § 18A-4-8b.

IV.

Finally, Grievants allege that the bus routes in question belong to them and ask the undersigned to make that factual determination. Grievants have conceded that the procedure that Mr. Hopkins used to build his bus runs for the 1994-1995 school term "is as logical method as any" and do not contest the way he builtthe runs. Rather, Grievants challenge the way Mr. Hopkins decided which runs would be offered to which drivers.

In building his runs, Mr. Hopkins took portions of runs from various routes and rearranged them in a manner which would eliminate three bus drivers. The elementary school runs were used as the building blocks upon which the remainder of the runs were built, ending with the junior/senior high school runs. Mr. Hopkins decided that the bus driver who had previously run the elementary portion of the runs would be offered those routes with the proposed modifications.

Grievants contend that Mr. Hopkins should have looked at the final result of the route, determined which driver had previously run the most segments of the route, and offered the route to that driver. Grievants' previous runs are reflected in significant part in the junior/senior high portions of the reconfigured runs. In the instant case, the drivers who were offered the routes, Ms. Austin and Ms. McKinney, had previously run the portions which make up the first, or elementary school, segments of the reconfigured routes.

The methodology used by Mr. Hopkins in reconfiguring bus routes to accommodate the decision by Respondent to reduce the bus drivers by three cannot be determined to be flawed, and indeed, is not contested by the Grievants. Grievants concede that there is no precedent which governs the outcome of this grievance, and this Board declines the invitation to become a "super" transportation director.

## Finding of Fact

The methodology used by Respondent or its representative in building bus routes to accommodate the reduction in force of three bus drivers, and assigning those routes to the drivers who previously held the first, or elementary school, portion of those runs is logical and not arbitrary and capricious.

## Conclusions of Law

1. It is incumbent upon the grievants to prove the allegations of their complaint by a preponderance of the evidence. Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988).

2. It is well established that a county board of education has broad discretion to transfer and assign school personnel under W. Va. Code § 18A-2-7. Lucas v. Lincoln County Bd. of Educ., Docket No. 90-22-419 (May 20, 1991).

3. Grievants did not establish that the reasons given for their transfers, the realignment and reconfiguration of staff within the county, and subsequent reduction in force of three drivers, were not made in good faith or were not otherwise valid. Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mercer 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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**MARY JO ALLEN**

**Administrative Law Judge**

**Dated: September 20, 1994**