HOWARD R. CONNER,

Grievant,

v. DOCKET NO. 94-01-1100

BARBOUR COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Howard R. Conner, filed a grievance on September 29, 1994, alleging that "[M]y bus route was changed on 9/19/94 without my verbal or written permission in violation of WV Code 18A-4-8a. Remedy - extra pay for extra run." Following adverse decisions at the lower levels, Grievant appealed to Level IV on December 6, 1994. Hearing was conducted on June 14, 1995, and this case became mature for decision on July 20, 1995, the deadline for receipt of the parties' post-hearing submissions.

The facts are not in dispute and are summarized in the following findings of fact.

Findings of Fact

1. Grievant is employed as a bus operator by Respondent Barbour County Board of Education and was so employed during school years 1993-94 and 1994-95.

2. Grievant was responsible in school year 1993-94 for the "Chestnut Ridge" bus run and was assigned the same run for school year 1994-95.

3. In the beginning weeks of the 1994-95 school year, Director of Transportation Charles Zinn determined that there was an overload of students on a bus driven by Ron Skidmore.

4. Mr. Zinn reviewed alternatives to alleviate the overloading situation and discussed the matter with the Barbour County bus operators, including Grievant.

5. On September 19, 1994, Mr. Zinn incorporated changes to the bus routes of several drivers in an attempt to resolve the situation. Most of the bus operators affected by the changes consented,

except for Grievant.

6. Grievant had the lightest bus coming out of the high school in the afternoon, carrying 17 students on a 65-passenger bus. Mr. Zinn asked Grievant to agree to take some of the students off Ron Skidmore's bus. The change to Grievant's afternoon bus route added approximately 1.1 miles and 12 minutes total to Grievant's previous run. Grievant's morning bus route, the mirror image of the afternoon route (except for the change) remained the same.

7. About 3 hours of Grievant's workday is spent doing "pretrip" work on his bus, actual driving, and paperwork. Grievant is paid for a 7-1/2 hour workday.

8. Grievant did not agree verbally or in writing to the change in his bus route; however, he did transport the additionalstudents during the 1994-95 school year, and then filed this grievance.

Discussion

The issue in the instant case is whether the addition of 1.1 miles and 12 minutes total to Grievant's bus run after the beginning of the 1994-95 school year constitutes a change so significant as to require his written consent pursuant to W. Va. Code § 18A-4-8a. The undersigned finds that it does not.

W. Va. Code § 18A-4-8a states, in pertinent part:

> No service employee shall have his or her daily work schedule changed during the school year without such employee's written consent, and such employee's required daily work hours shall not be changed to prevent the payment of time and one-half wages or the employment of another employee.

This Code section has been interpreted by the Grievance Board to hold that "slight alterations of a bus operator's driving schedule during a school year may be necessary due to need; however, an arbitrary alteration, which adds time or distance to the operator's workday and which serves no useful purpose, constitutes an unlawful schedule change. . . ." Smith v. Lewis County Bd. of Educ., Docket No. 21-88-43-3 (Dec. 30, 1988). Further, "a county board of education must, at least between school terms, have freedom to make at least reasonable, small changes to a bus operator's daily work schedule, within the parameters of her contract, many of which cannot reasonably be effected until shortly before school starts for pupils in any given year." Froats v. Hancock County Bd. of Educ., Docket No. 89-15-414 (Dec. 18, 1989).

The record indicates that the bus route changes at issue were made for proper and rational reasons at the earliest practicable point in the new school year. The alteration in bus routes did not extend Grievant's workday beyond the parameters of his current contract. Thus, Respondent did not violate W. Va. Code § 18A-4-8a in making slight alterations to Grievant's bus route shortly after the beginning of the 1994-95 school year.

Conclusions of Law

1. Grievances contending that a bus operator's route has been changed in violation of W. Va. Code § 18A-4-8a, must be decided on a case-by-case, fact-specific basis. Conner v. Barbour County Bd. of Educ., Docket Nos. 93-01-543/544 (Jan. 31, 1995).

2. A county board of education must, at least between school terms, have freedom to make reasonable, small changes to a bus operator's daily work schedule, within the parameters of his/her contract, many of which cannot reasonably be effected until shortly before school starts for pupils in any given year. Froats v. Hancock County Bd. of Educ., Docket No. 89-15-414 (Dec. 18, 1989).

3. Where, as here, the alterations in a bus route are made shortly after the beginning of the school year in an attempt to resolve a bus overloading situation, the changes are minor, and the actual "daily work schedule" for which the employee is compensated has not been exceeded, such alterations do not violate W. Va. Code § 18A-4-8a. See Conner, supra.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Barbour 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 SWARTZ

Administrative Law Judge

Dated: August 2, 1995