EDWARD WOOD

v. **Docket No. 94-41-522**

RALEIGH COUNTY BOARD OF EDUCATION

DECISION

The grievant, Edward Wood, is employed by the Raleigh County Board of Education (Board) as a bus operator assigned to the Liberty High School attendance area. He initiated this grievance at Level I June 29, 1994, alleging that the Board had improperly distributed extra-duty bus runs during the second semester of the 1993-94 school year. His supervisor denied the grievance at that level as did the evaluator at Level II following a hearing held July 20, 1994. The Board, at Level III, declined to address the matter and appeal to Level IV was made August 30, 1994. A hearing was held December 14, 1994, and the parties submitted proposed findings of fact and conclusions of law by January 18, 1995.

FACTS

There is little if any dispute over the facts of the case. The record developed at Levels II and IV supports the following findings.

1) Pursuant to W.Va. Code §18A-4-8b, (See footnote 1) the Board, with the consent of its bus operators, has adopted the following policy regarding the assignment of "extra-duty" bus trips:

> Drivers will be given the opportunity at the beginning of each school term to vote to have assignment by strict rotation county-wide or by high school attendance area.
>
> Drivers will also be given the opportunity to vote to give the director some latitude in assignment of buses and drivers according to needs related to bus size and bus availability during school hours; providing, that during the second semester trips will be assigned so that all drivers on the list will have had the opportunity for an equal number of hours within their assigned attendance area.

2) At the beginning of the 1993-94 school term, the Board's bus operators voted to have the

assignments made on the "strict rotation county-wide" basis referenced in the first paragraph of the policy during the first semester of the year and on the more flexible "assigned-attendance area" basis during the second semester. Under the policy, the first semester begins August 27 and ends January 13. The second semester runs from January 13 to June 30.

3) The Board's transportation administrators and bus operators have come to regard the above policy as requiring parity in extra-duty hours and not exact equality. A difference in yearly totals of ten to fifteen hours is considered substantial compliance.

4) The grievant drives a bus which is designed to transport children with special physical needs and he is designated a "special education" driver.

5) In addition to his regular morning and afternoon runs, the grievant makes special education "midday" extracurricular trips to Sylvia Elementary School and the Raleigh County Vocational Technical Center. (See footnote 2) He is paid, per separate contract, an additional $300.00 per month for these trips, regardless of whether inclement weather or changes in class schedules cause cancellations. In the event the grievant accepts an extra-dutyassignment during his regular run or extracurricular trip hours, a substitute is hired to fill in during those hours.

6) Assistant Transportation Director Lemuel Wills usually makes extra-duty assignments. Mr. Wills did not contact the grievant during the first semester on those occasions when he determined that a particular extra-duty trip would yield less pay than the grievant's extra-curricular assignment.

7) As of January 13, 1994, the last day of the first semester of the 1993-94 school year, the grievant had accrued 34.5 hours of extra-duty service. Bus operator Howard Richardson had accrued 67 hours.

8) As of June 1, 1994, Mr. Richardson had accrued a total of 108.5 extra-duty hours and the grievant had accrued 67.5 hours.

9) On or about June 2, 1994, Mr. Wills attempted to locate a driver for the "Amish Village" extra-duty trip, which was scheduled for June 3 and was to consume a total of 28 hours. Mr. Wills excluded Mr. Richardson from consideration because his total hours already exceeded that of most other operators. He also excluded the grievant because he had already accepted a 9.5 hour trip to Cass, West Virginia, which was scheduled for the same date. 10) After numerous calls to those operators eligible for the Amish Village trip, Mr. Wills was unable to find one who would accept it. He reluctantly contacted Mr. Richardson who agreed to make the trip.

11) Mr. Wills has adopted a practice of not changing drivers once an assignment has been made. The above policy does not address exchanges of assignments.

12) On or about June 14, 1994, the grievant approached Transportation Director Arnold Ryan and complained that his extra-duty hours were considerably lower than other drivers, including Mr. Richardson. According to the grievant, he also advised Mr. Ryan that he had accepted a summer grass mowing assignment with the Board which was to begin June 27, 1994. Mr. Ryan responded that he would attempt some equalization of hours prior to the end of the school year.

13) On or about June 23, 1994, Mr. Wills, who was unaware of the grievant's mowing job, called the grievant's home and left a message to the effect that a "4-H Camp" extra-duty trip would be available on June 27. Mr. Wills was told the grievant was on vacation.

14) On or about June 24, 1994, the grievant contacted the Board's bus garage and advised a secretary that because of his mowing responsibilities, he could not accept the assignment. The grievant did not ask and was not advised of the trip's length.

15) The 4-H trip was given to Fern Kincaid who accrued 36 extra-duty hours on the assignment.

16) As of June 30, 1994, Mr. Richardson had accrued 136 hours and the grievant had accrued 77 hours.

ARGUMENT

The grievant asserts that the Board violated the above-referenced policy by not "equalizing" his and Mr. Richardson's extra-duty hours. He does not take issue with Mr. Wills' decision not to offer him trips of such short duration that they would not entail greater compensation than that made under his extracurricular assignment contract. The grievant also does not seek exact parity in hours. He asserts that if Mr. Wills had made attempts at equalization earlier in the semester and had given him the June 3 Amish Village trip instead of the Cass trip, his and Mr. Richardson's totals would have been much closer. According to the grievant, his refusal to accept the 4-H trip offer was of no consequence since the offer was made late in the year; he was not advised of the number of hours involved; and, in any event, he was then obligated to perform the duties of his mowing assignment.

The Board asserts that the occurrence and length of extra-duty assignments are always speculative and that numerous variables can influence who receives a particular trip even when assignments are made on a strict county-wide seniority basis. The Board maintains Mr. Wills acted in

compliance with the policy and that any "inequality" between the grievant and Mr. Richardson was the result of the demands of his extracurricular assignment and his refusal to accept the 4-H trip.

CONCLUSIONS

___After a careful review of the parties' positions, the applicable policy and the foregoing findings of fact, the undersigned makes the following conclusions of law.

1) The import of the policy in issue is that the Director of Transportation has latitude during the second semester of a given school year to offer opportunities for extra-duty trips in order to correct the inequalities caused by adherence to the strict rotational method of assignments during the first semester. The policy does not guarantee actual parity but does require the Director of Transportation to make offers aimed at achieving such parity.

2) The grievant, by accepting the summer mowing job, excluded himself from any and all opportunities for extra-duty assignments arising on or after June 27, 1994. Had he not refused the offer of the June 27 4-H trip, he would have finished the 1993-94 year with a total of 113 hours instead of 77 hours.

3) The grievant has otherwise failed to show that Mr. Wills acted arbitrarily or engaged in favoritism in making offers of extra-duty trips or that he did not comply with the policy's intent that such offers be made with the aim of achieving parity among all bus operators. Rather, the record supports that the refusal of other bus operators to take the Amish Village trip; the grievant's refusal of the 4-H trip; his extracurricular assignment; and the general unpredictability of extra-duty assignments all contributedto the disparity in year end totals between Mr. Richardson and the grievant.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or the Circuit Court of Raleigh 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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JERRY A. WRIGHT

CHIEF ADMINISTRATIVE LAW JUDGE

Dated: May 19, 1995

Footnote: 1*The pertinent part of the statute provides,*

> *Notwithstanding any other provisions of this chapter to the contrary, decisions affecting such personnel with respect to extra-duty assignments shall be made in the following manner: An employee with the greatest length of service time in a particular category of employment shall be given priority in accepting such assignments, followed by other fellow employees on a rotating basis according to the length of their service time until all such employees have had an opportunity to perform similar assignments. The cycle then shall be repeated: Provided, That an alternative procedure for making extra-duty assignments within a particular classification category of employment may be utilized if the alternative procedure is approved both by the county board of education and by an affirmative vote of two thirds of the employees within that classification category of employment. For the purpose of this section, extra-duty assignments are defined as irregular jobs that occur periodically or occasionally such as, but not limited to, field trips, athletic events, proms, banquets and band festival trips.*

Footnote: 2*Extracurricular assignments are governed by W.Va. Code §18A-4-16.*