JOANNE McCLAIN

v. **Docket No. 96-15-114**

HANCOCK COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant Joanne McClain, a bus operator employed by Respondent Hancock County Board of Education (HCBE), filed a grievance after her afternoon bus driving schedule was altered, effective November 29, 1995:

By making unnecessary changes to my run in the middle of the school year is in violation of WV Codes 18A-4-8a, 18A-4-8b. I am seeking to have the unnecessary changes removed.

Upon adverse lower-level decisions, Grievant appealed to level four and eventually requested a decision based on the record developed below. The parties were advised that all fact/law proposals and rebuttal had to be submitted by June 4, 1996, and the case became mature for decision on that day. (See footnote 1) There is little, if any, dispute about the underlying facts which gave rise to this grievance. Based on the record as a whole, the following findings of fact can be made.

Findings of Fact

1. Grievant, who holds a five and three-quarter hour contract, was assigned to Bus/Route (BR) No. 31 during the 1995-96 school year.

2. Judy Teller, another bus operator, was assigned to BR No. 6.

3. Both Grievant and Ms. Teller drive in the southern section of the county, generally known as the Weir High School driving district as opposed to the northern, Oak Glen High School district.

4. When the school year began, Grievant's driving route was comprised of three distinct runs serving three different schools, including Weir High School and Weir Middle School. However, her morning Weir High driving schedule included twenty-five

more students and four more pick-up stops, along Wylie Ridge Road, than her afternoon drop off schedule. Ms. Teller was scheduled to take the twenty-five Wylie Ridge students home in the afternoon.

5. By letter dated November 28, 1995, HCBE Transportation Supervisor Elbert Allison informed Grievant of the following: "Effective November 29, 1995, the following changes to your schedule will become effective: P.M. Run - Kings Creek to Wylie Ridge, making stops starting at Riverview to Turkeyfoot and return to Kings Creek via Turkeyfoot."

6. In effect, on November 29, 1995, Grievant was relieved of one scant portion of her Weir High School afternoon run, but she was additionally required to transport home those twenty-five students with the four stops along Wylie Ridge Road she picked up in the morning. This added approximately ten to fifteen minutes to her afternoon driving schedule before she had to report to Weir Middle School for more students. 6. Prior to her schedule change, Grievant arrived at Weir Middle School at about 3:10 p.m. T.9. After her schedule change, Grievant arrived at Weir Middle School with five minutes to spare, at about 3:25 p.m. (all buses depart Weir Middle School at 3:30 p.m.). T.12. The overall beginning and ending time of Grievant's afternoon driving schedule was not altered in any way as an effect of the driving change. See EXs 1, 2, and 4.

7. Ms. Teller was relieved of the afternoon Wylie Ridge Road stops and given Grievant's shorter Sun Valley stop.

8. The adjustments in Grievant's and Ms. Teller's afternoon driving schedules were made to give Ms. Teller enough time to transport one Weir High School student who had moved to the Oak Glen High School driving district (adding two and a half miles to Ms. Teller's driving schedule, T.18) and to arrive at her next school, Weir Middle School, on time.

9. After the adjustment to her schedule, Grievant could still complete her driving and all of her other bus operator duties within her contracted time.

9. Grievant had advance knowledge that her schedule would be changed, and expressed her displeasure to Mr. Allison. T.10, 16, 30. Thereafter, Mr. Allison never

secured Grievant's oral or written agreement to change her schedule.

Discussion

At the level two hearing, Grievant stated that, contrary to her grievance pleading, Code §18A-4-8b was not at issue. She, however, argued HCBE impermissibly changed her schedule after the beginning of the school year without her consent, in violation of Code §18A-4-8a. She raised an additional issue, without protest from HCBE, and alleged the change in her schedule amounted to a transfer for which she was not given the notice and hearing benefits of W.Va. Code §18A-2-7. When asked by her representative, Grievant stated the relief she wanted was to have her original schedulerestored for the sake of the twenty-five students who were now getting home fifteen minutes later than when they rode on Ms. Teller's bus.

HCBE denies wrongdoing in this matter. It argues that the "slight deviation" in Grievant's schedule did not extend her contracted hours, and was reasonable and necessary due to the changing composition of students in the area, changes which no other bus could accommodate.

Grievances which contend that a bus operator's route has been changed in violation of W.Va. Code §§18A-2-7 and 18A-4-8a, must be decided on a case-by-case, fact-specific basis. See Tolliver v. Mingo County Bd. of Educ., Docket No. 95-29-475 (May 31, 1996); Conner v. Barbour County Bd. of Educ., Docket Nos. 93-01-543/544 (Jan. 31, 1995). Grievant has failed to show a violation of W.Va. Code §18A-2-7. The statute states, in pertinent part:

The superintendent, subject only to the approval of the board, shall have the authority to assign, transfer, promote, demote or suspend school personnel and recommend their dismissal pursuant to provisions of this chapter. However, an employee shall be notified in writing by the superintendent on or before the first Monday in April if he is being considered for transfer or to be transferred. . . .

As noted in Tolliver, supra, a change within a bus operator's driving area or an alteration of the number of stops along her driving route does not constitute a transfer as contemplated by W.Va. Code §18A-2-7:

There is no statutory authority to support the proposition that bus operators are hired to drive specific routes or to make specific stops along those same routes. It is essential for the efficient operations of our schools that bus driving assignments be flexible to meet yearly, monthly or even daily changes in the student population's transportation needs.

Id. at 7.

In this case, although the change in Grievant's afternoon driving schedule in late November 1995 meant she additionally had to drop off twenty-five students at four stops along Wylie Ridge Road that she already picked up in the morning, she continued to begin and end her route at the same bus garage or work site as before, and she essentially servedthe same students as before. Thus, Grievant was not transferred pursuant to Code §18A-2-7.

It is also determined that Grievant failed to establish a violation of Code §18A-4-8a. The statute provides, in pertinent part, that:

No service worker 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.

As is readily seen, the statute imparts an important benefit to service workers, in that employers cannot arbitrarily alter work hours and/or schedules to avoid properly paying a worker when extra work is necessary or when work requirements dictate that another worker be hired.

Moreover, given the mandates of Code §18A-4-8a, a board of education may not assign additional driving to a bus operator after the start of a school year when it thereby extends the employee's work time "beyond that designated by the board," Terek v. Ohio County Board of Educ., Docket No. 35-87-294-3 (July 20, 1988), much less add a lengthy, completely new daily driving route, "supplemental" run, or extracurricular assignment, without extra compensation. Id. See also, Froats v. Hancock County Bd. of Educ., Docket Nos. 89-15-164/202 (Aug. 31, 1989); Mayle, et al. v. Barbour County Bd. of Educ., Docket No. 01-86-173-2 (Mar. 3, 1987).

However, a board of education may make minor alterations to a bus operator's driving schedule within the operator's contracted driving time after the beginning of the school

year to alleviate a bus "overloading situation" or for other good cause involving the transportation of its students. Conner v. Barbour County Bd. of Educ., Docket No. 94-01-1100 (Aug. 2, 1995). Here, HCBE was obligated to provide transportation for a student who had moved from one area to another. This necessitated a change in another operator's schedule. The other operator then could not meet her scheduled stops, and Grievant's schedule had to be adjusted. As a result, Grievant was merely required to drop off the students in the afternoon that she had already been scheduled to pick up in the morning. The change was necessary and it was minor. Moreover,Grievant's beginning and ending time for afternoon driving was not altered, and her work day was not extended beyond her contracted hours. Therefore, it is found that the slight alteration in Grievant's afternoon driving schedule in November 1995 did not violate Code §18A-4-8a.

In addition to the foregoing, the following conclusions of law are appropriate.

Conclusions of Law

1. Grievances which contend that a bus operator's route has been changed in violation of W.Va. Code §§18A-2-7 and 18A-4-8a, must be decided on a case-by-case, fact-specific basis. Tolliver v. Mingo County Bd. of Educ., Docket No. 95-29-475 (May 31, 1996); Conner v. Barbour County Bd. of Educ., Docket Nos. 93-01-543/544 (Jan. 31, 1995).

2. Grievant has failed to show a violation of W.Va. Code §18A-2-7, in that she failed to establish that the slight alteration of her afternoon driving schedule amounted to a transfer. See Tolliver, supra.

3. Grievant failed to establish by a preponderance of the evidence that the necessary, minor alteration to her afternoon bus driving schedule within her contracted driving hours violated W.Va. Code §18A-4-8a. Conner v. Barbour County Bd. of Educ., Docket Nos. 93-10-543/544 (Jan. 1, 1995). Accord Conner v. Barbour County Board of Educ., Docket No. 94-01-1100 (Aug. 2, 1995).

4. Grievant has failed to establish by a preponderance of the evidence she is legally entitled to the relief she seeks.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Hancock 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 appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate Court.

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NEDRA KOVAL

Administrative Law Judge

Date: June 27, 1996

Footnote: 1

The record consists of the grievance pleading, lower-level decisions and the transcript/exhibits of the January 29, 1996 level two hearing.