DOUG SKEENS,

Grievant,

v. **Docket No. 98-22-158**

LINCOLN COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Doug Skeens, filed this grievance alleging the Lincoln County Board of Education ("LCBOE") had violated W. Va. Code § 18A-4-8b "pertaining to the procedure in assigning extra-duty bus runs. Grievant was skipped on March 31, 1998." Relief sought was compensation for the missed run. This grievance was denied at Levels I and II, and Level III was bypassed pursuant to W. Va. Code § 18-29-4(c). Grievant appealed to Level IV, and a Level IV hearing was held on August 25, 1998. This case became mature for decision on September 16, 1998, after receiving the parties' proposed findings of fact and conclusions of law. (See footnote 1)

After a detailed review of the record in its entirety, the undersigned Administrative Law Judge makes the following Findings of Fact.

Findings of Fact

1. Grievant has been employed as a bus operator with LCBOE for approximately eight years, and works in the Harts area.

2. Grievant's regular morning bus run starts at 5:55 a.m. and ends at 8:45 a.m.

3. On March 31, 1998, a bus was needed to transport students from Harts High School to the Charles E. Yeager Career Center in Hamlin. This run was to leave before 8:30 a.m.

4. Pursuant to W. Va. Code § 18-4-8b LCBOE's bus operators are called out for extra-duty bus runs in a rotating order on a seniority basis.

5. LCBOE has a policy that states, "No special trip shall be allowed if it interferes with

the regular performance of the morning or evening bus run." LCBOE Policy 12-12.00 (b).

6. Grievant was not called to see if he wanted to make the extra-duty run.

7. The run was given to the bus operator on the rotation list after Grievant.

8. It has been the past practice to call the bus operator next on the rotational list and ask him if he wants to give up his morning or evening run to take an extra-duty run. If the bus operator wishes to do so, the Transportation Department attempts to find a substitute, and if they do, the bus operator is allowed to take the extra-duty trip.

9. If a bus operator misses his morning run to take the extra-duty trip, the amount he is paid for his morning run is subtracted from the amount he is paid for the extra-duty trip. 10. The extra-duty trip in question was three and one half hours. Grievant is paid for three hours for each morning run; thus, Grievant is seeking compensation for one half hour. (See footnote 2)

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.19 (1996); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code § 18-29-6.

W. Va. Code § 18A-4-8b states extra-duty runs are to be assigned by seniority on a rotational basis. Grievant was next in the rotation, and was not called and given an opportunity to either accept or reject the extra-duty run. Although LCBOE's policy states that extra-duty runs will not be allowed to interfere with regular runs, the testimony demonstrated that in reality this policy is not followed.

Given that Grievant was next on the list and was not called to see if he wanted to accept or reject the extra-duty assignment, the undersigned Administrative Law Judge finds that LCBOE did violate W. Va. Code § 18A-4-8b, and Grievant should be compensated for the one half hour difference between his regular run and the extra-duty run. (See footnote 3)

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.19 (1996); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code § 18-29-6.

2. Grievant has demonstrated that LCBOE violated W. Va. Code § 18A-4-8b when he was not called pursuant the rotational list and offered an extra-duty run.

Accordingly, this grievance is GRANTED, and LCBOE is ORDERED to pay Grievant for the one half hour difference in pay he would have received if he had completed the extra-duty run.

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.

JANIS I. REYNOLDS

Administrative Law Judge

Dated: September 30, 1998

Footnote: 1

Grievant was represented by Ms. Anita Mitter of the West Virginia Education Association, and Respondent was represented by Attorney Erwin Conrad.

Footnote: 2

Grievant did not know the length of the extra-duty run when he filed this grievance.

Footnote: 3

Grievant's representative wished to submit evidence that LCBOE had illegally changed Grievant's schedule,

and his new schedule had prevented him from receiving many extra-duty assignments. Respondent objected to the presentation of this evidence as not relevant to the grievance. After further discussion it was discovered that a Level IVdecision was issued by this Grievance Board on February 6, 1998, directing LCBOE to compensate Grievant, and to reinstate his bus route as it existed prior to the 1997-1998 school year. Runyon and Skeens v. Lincoln County Bd. of Educ., Docket No. 97-22-479 (Feb. 6, 1998). After this Decision was issued, a settlement agreement was reached by the parties. Grievant was compensated for his additional time spent driving the bus, and he agreed to continue driving the altered schedule the rest of the school year in return for continued additional compensation. Grievant's representative also wished to present evidence about why Grievant accepted this settlement. This testimony was not allowed. Additionally, although the undersigned Administrative Law Judge asked for a copy of this Settlement Agreement from the Representative, it was not provided.