AUDRA STEPHENS and TERRY RAINES,

Grievants,

v. Docket No. 99-50-103

WAYNE COUNTY BOARD OF EDUCATION,

Respondent,

and

DANIEL WEBSTER,

Intervenor.

D E C I S I O N

Grievants, Audra Stephens and Terry Raines, filed this grievance alleging "[v]iolations of W. Va. Code §§ 18A-4-16, 18A-4-8b, 18A-2-7, 18A-2-8, and 18A-2-2 in regard to grievant's contract of employment for an extracurricular bus run. There is still a need for the vocational run." The relief sought was "to be reinstated to the run, compensated for back pay, plus interest."

This grievance was denied at all lower levels, and was appealed to Level IV on March 7, 1999. The parties agreed the case could be submitted on the record, and this grievance became mature for decision on April 23, 1999, after receipt of 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 from the record in its entirety.

Findings of Fact

1. Grievants and Intervenor are bus operators for the Wayne County Board of Education ("WCBOE" or "Board").

2. In prior years, Grievant Stephens had an extracurricular, vocational assignment to

transport high school students from Ceredo-Kenova High School via Vinson High School to the Northern Vocational School twice a day. She also made the return trips. Her extracurricular contract indicated her daily route was to and from these specific schools.

3. In prior years, Grievant Raines had an extracurricular, vocational assignment to transport high school students from Buffalo High School to the Northern Vocational School once a day. He also made the return trip. His extracurricular contract indicated his daily route was to and from these specific schools.

4. At the end of the 1997-1998 school year, Ceredo-Kenova High School, Vinson High School, and Buffalo High School were closed as high schools. The students from those schools now attend the new, consolidated Spring Valley High School. The Northern Vocational School also became a part of the Spring Valley High School complex, is no longer a separate entity, and no longer houses only vocational classes.

5. The former Northern Vocational School is across the road from the rest of the Spring Valley High School complex. These facilities are approximately one-half mile apart. Students are transported throughout the day from one building to another by "shuttle runs" which are timed to fit with the students' block schedule. Approximately eight, half mile runs are performed each day by two bus operators for a total of sixteen runs. At the time thisgrievance was filed, these "shuttle runs" were driven by substitute drivers as WCBOE had not yet decided what would be the best method of filling these positions. The question WCBOE had was whether the runs should be filled by two regular drivers or should they be filled as extracurricular assignments.

6. By the time this grievance reached Level IV, the positions in question had been posted and filled as extracurricular assignments.

7. Grievants' extracurricular contracts contain the following pertinent terms and conditions:

> **1. This is not a continuing contract nor is it a yearly renewable contract. It is an assignment of indefinite duration which is based solely upon the anticipated needs of the Wayne County School System for a bus operator to transport students to and from multilocations for curricular or educational purposes, other than the regular runs required of a bus operator in the pickup and delivery of students to and from school.**
>
> **2. The Employee specifically agrees that the Board may terminate this assignment at any time upon ten (10) days written notice in the event (1) that the need for the services to be provided by this extracurricular assignment no**

> **longer exists, in the opinion of both the Director of Transportation and the County Superintendent of Schools, or (2) that the funding for this position is no longer available. The Employee may give up this assignment upon five (5) days written notice to the Director of Transportation.**

Level III, Resp, Ex. H.

8. Grievants signed these contracts in April 1995.

9. Sometime in the Winter or early Spring of 1995, the representatives of the bus operators approached the Board about finding an alternative to reducing in force ("RIF") the extracurricular contracts of the bus operators every year. (See footnote 2) **WCBOE agreed notto RIF the bus operators, if they signed the above-contract giving the Board the right the to terminate extracurricular assignments with ten days' notice for the two reasons stated in their contract in Findings of Fact Number 7.**

10. It was this request that resulted in the new contracts signed by Grievants in April 1995. Grievants both indicated they wanted this change.

11. It appears the bus operators did not vote on this change, but the parties stipulated that this change occurred at the request of the bus operators and their representatives.

12. On or about September 3, 1998, Grievants received the following memo from the Transportation Director: "As per contract agreement, this notice is to inform you that your extracurricular assignment has been terminated due to lack of need for the extracurricular bus run."

Issues and Arguments

Grievants argue Respondent violated W. Va. Code §§ 18A-4-16, 18A-4-8b, 18A-2-7, 18A-2-8, and 18A-2-2 when it terminated their extracurricular assignments. (See footnote 3) **The main thrust of Grievants' argument is two-fold. First, they did not receive the notification required by W. Va. Code § 18A-2-7 prior to the termination of their extracurricular assignments, andsecond, there is no lack of need, as the students must still be taken from a high school, Spring Valley High School, to the Northern Vocational School. Grievants maintain they should still be completing these "vocational runs" as these runs are their former extracurricular assignments, and there is still a need to transport students.**

Intervenor argues the runs are newly created, and as such, should be posted and assigned pursuant to W. Va. Code § 18A-4-16. He alleges that although he does not have the most

seniority, and although he might not be available because of his regular run to complete all of the "shuttle runs", he should be allowed to bid on these extracurricular assignments. **(See footnote 4)**

Respondent argues the runs Grievants had before are no longer in existence, as the schools Grievants serviced have been closed. Respondent asserted the "shuttle runs" are newly created positions, and as such cannot be given to Grievants, but must be posted and filled according to W. Va. Code §§ 18A-4-8b and 18A-4-16. Respondent maintains it terminated Grievants' extracurricular assignments for lack of need pursuant to contract, and Grievants received the notice and compensation required by these contracts.

Discussion

As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their 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.

As the subject of notice and Grievants' extracurricular contracts are inextricably intertwined, these issues will be discussed in tandem.

W. Va. Code § 18A-2-7 states in pertinent part:

> **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 . . . . Any teacher or employee who desires to protest such a proposed transfer may request in writing a statement of the reason for the proposed transfer [and] . . . . [w]ithin ten days of the receipt of the statement of the reasons, the teacher or employee may make a written demand upon the superintendent for a hearing . . . .** **(See footnote 5)**

It is well settled that the procedural requirements of W. Va. Code § 18A-2-7,of notice and an opportunity to be heard, must be complied with in order for a county board of education to terminate an extracurricular contract. Smith v. Bd. of Educ., 176 W. Va. 65, 341 S.E.2d 685 (1985); Doss v. Mason County Bd. of Educ., Docket No. 96-26-108 (Sept. 30, 1996). However, the contract itself may specify other terms and conditions under which it may be terminated. Ramey v. Lincoln County Bd. of Educ., Docket No. 94-02-002 (June 3, 1994); Garvin v. Webster

County Bd. of Educ., Docket No. 92-51-407 (Jan. 7, 1993); Black v. Cabell County Bd. of Educ., Docket No. 92-06-114 (June 22, 1992); Lambert v. Logan County Bd. of Educ., Docket No. 91-23-199 (June 24, 1991).

Unlike Smith, this is not a case where a board undertook to review a contract at the end of the school year and determined it wanted to replace the current bus operator withanother bus operator, thus terminating the contract. Here, Grievants' supplemental contracts of employment, signed by all the appropriate parties, clearly specified Grievants' extracurricular assignments were to take students from Ceredo-Kenova High School, Vinson High School, and Buffalo High School to the Northern Vocational School.

Such specifics have been incorporated into a bus operator's extracurricular contract and have been upheld as appropriate by this Board. In Ramey, supra, the bus operator's contract specified the assignment "shall be 1992-1993 school year or as long as required by IEP." When, during the school year, the student in Ramey became too ill to be transported by bus, the extracurricular contract was no longer needed. Grievant Ramey's contract was terminated, and she was not paid for a run that was no longer necessary.

As stated by the administrative law judge in Ramey:

> **Grievant's contract was not canceled; it was merely enforced. The contract, by its own terms, would terminate if a certain condition subsequent occurred. That condition occurred, and the contract provided that the assignment was completed. General principles of contract law are not in conflict with the applicable statutes. When the subject matter of a contract entered into pursuant to W. Va. Code § 18A-4-16, or any other contract provided for by statute, ceases to exist and that cessation is expressly provided for in the terms of the contract, then the contract comes to an end by its own terms and is not subject to the procedural requirements of Code §§ 18A-2-6 and 18A-4-8a.**

Thus, when a mutually agreed to contract specifies the terms and conditions, the contract supercedes the notice and hearing requirements of W. Va. Code § 18A-4-7.

The next step is to review the notice and conditions of the contract to see if all conditions and requirements were met. Since Grievants did not allege any other contract violations, this case turns on the second condition listed in Grievant's contract, whetherthere was a “need” for the extracurricular contract. The outcome of this grievance hinges on the wording of the contracts.

This Grievance Board has issued several previous cases dealing with the specifics in this contract, and the definition of the term lack of need. Sturgill v. Wayne County Bd. of Educ., Docket No. 98-50-054 (April 30, 1998); Dyer v. Wayne County Bd. of Educ., Docket No. 97-50-519 (Mar. 18, 1998). In these cases the board of education decided to consolidate several runs into one after the start of the school year, but the same students still needed transportation to the same schools. In these instances, the Grievance Board found there was no lack of need, and since the terms of the contract did not apply, WCBOE had failed to give both grievants proper notice under W. Va. Code § 18A-4-7.

The purpose of Grievants' extracurricular assignments was for "a bus operator to transport students to and from multilocations for curricular or educational purposes . . . ." Level III, Resp. Ex. H. These locations were then identified in an addendum to the contract. Ceredo-Kenova High School, Vinson High School, and Buffalo High School no longer have students for Grievants to pick up and take to the vocational school. Thus, this case is similar to Ramey; Grievants' runs are no longer in existence, and there is no longer a need for these runs.

Grievants' argument that the new shuttle runs are in reality their old runs; and thus, they are entitled to them without going through the posting and selection process, is without merit. Grievants' runs were to three outlying high schools, quite a few miles apart, and for vocational students only. These runs no longer exist. It is understandable that Grievants would not want to have to go through the bidding process to obtain a newsupplemental run, but that is how W. Va. Code § 18A-4-8b requires service personnel positions to be filled. All things being equal, the employee with the most seniority receives the position, and this is what is mandated by the Code.

Grievants also allege a violation of W. Va. Code § 18A-4-16, which governs extracurricular assignments. That Code Section provides that (1) extracurricular assignments shall be made only by mutual agreement of the employee and the superintendent, or designated representative; (2) the employee and superintendent shall mutually agree upon the number of hours of the assignment; (3) the terms and conditions of the assignment shall be in writing; (4) the employee's regular contract of employment shall not be conditioned upon the employee's acceptance or continuation of an extracurricular assignment; and (5)

extracurricular assignments shall be filled in accordance with W. Va. Code § 18A-4-8b, unless an alternative procedure is approved by mutual agreement of the board and two thirds of the employees within a particular classification of employment.

Grievants and the Board agreed upon the extracurricular assignments, the terms of which were in writing. Grievants also agreed the change that resulted in their 1995 extracurricular contracts was beneficial to them and was what they had requested. No evidence was presented that Grievants' regular contracts of employment were conditioned upon their acceptance or continuation of the extracurricular assignments. There is no evidence the Board violated this Code Section; therefore, that claim is denied.

Conclusions of Law

1. The termination of an extracurricular contract requires "a county board of education . . . to abide by the same procedural strictures applicable to regular contracts . . . ." Lambert v. Logan County Bd. of Educ., Docket No. 91-23-199 (June 24, 1991).

2. The procedural requirements of W. Va. Code § 18A-2-7, of notice and an opportunity to be heard, must be complied with, in order for a county board of education to terminate an extracurricular contract. Smith v. Bd. of Educ., 176 W. Va. 65, 341 S.E.2d 685 (1985); Doss v. Mason County Bd. of Educ., Docket No. 96-26-108 (Sept. 30, 1996).

3. A county board of education is responsible for the issuance of properly worded contracts to its employees. W. Va. Code 18A-2-5.

4. A contract itself may specify terms and conditions under which it may be terminated. Ramey v. Lincoln County Bd. of Educ., Docket No. 94-02-002 (June 3, 1994); See Doss, supra.

5. Grievants' supplemental contracts expired under their own terms as contemplated by the parties, when there were no longer any students to transport from the schools identified in the contracts. See Ramey, supra.

6. Grievants have failed to meet their burden of proof and demonstrate WCBOE violated any statute, rule, regulation, or contract.

Accordingly, these grievances are DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of the Wayne County. Any 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 partyto such appeal, and should not be so named. However, the appealing party is required by W. Va. Code § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

JANIS I. REYNOLDS

Administrative Law Judge

Dated: May 28, 1999

Footnote: 1

Grievant was represented by Susan Hubbard from the West Virginia Education Association, Intervenor was represented by Attorney John Roush from the West Virginia School Service Personnel Association, and Respondent was represented by Attorney David Lycan. Due to a clerical oversight, Mr. Roush did not receive notice of the due date for proposed Findings of Fact and Conclusions of Law. When this error came to light, he was, of course, allowed to either request a hearing or to submit proposals at a time convenient to his schedule.

Footnote: 2

County boards often terminate all extracurricular contracts at the end of each school year, and once the number extracurricular assignments needed for the next schoolyear is determined, these runs are reposted in August. See Silva v. Boone County Bd. of Educ., Docket No. 96-03-527 (July 7, 1997).

Footnote: 3

It is unclear from the record as to several of the alleged violations. No specific violations of W. Va. Code §§ 18A-4-16 or 18A-4-8b were noted. Additionally, W. Va. Code § 18A-2-2 applies to teachers only, and W. Va. Code § 18A-2-8 applies to dismissals and suspensions, and Grievants were not dismissed or suspended from their positions as regular bus operators.

Footnote: 4

As these runs had been posted and filled by regular bus operators by the time this grievance reached Level IV, the relief sought by Intervenor is now moot. Additionally, no evidence was presented to demonstrate Intervenor received one of these positions, and that he might be entitled to receive back pay.

Footnote: 5

Refusal to renew an extracurricular contract is considered a transfer. Smith v. Bd. of Educ., 176 W. Va. 65,

341 S.E.2d 685, 689 (1985).