MIKE SKEENS,

Grievant,

v.

DOCKET NO. 98-22-443

LINCOLN COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Mike Skeens, filed the following grievance against his employer, the Lincoln County Board of Education ("Board") on September 16, 1998:

> Violation of WV Code 18A-2-7 - transferred without notice into a bus run that is significantly different from last year. (9/2/98).

Relief requested: To be put back on original run.

Grievant received no response at level one, and advanced his appeal to level two on September 16, 1998. A level two hearing was held on October 28 and 29, 1998, and a decision denying the grievance was rendered by the grievance evaluator, Charles S. McCann, on November 2, 1998. Level three was by-passed, and Grievant appealed to level four on November 6, 1998. A level four hearing was held on January 7, 1999, and this case became mature for decision on February 1, 1999, the deadline for the parties' proposed findings of fact and conclusions of law. Grievant was represented by Anita Mitter, West Virginia Education Association, and the Board was represented by James W. Gabehart, Esq.

SUMMARY OF EVIDENCE

Grievant's Exhibits

Ex. 1 -

Daily Operating Schedule for 1997-98 Morning Bus Run of Mike Skeens, Bus No. 887.

Ex. 2 -

Daily Operating Schedule for 1997-98 Afternoon Bus Run of Mike Skeens, Bus No. 887.

Ex. 3 -

Daily Operating Schedule for 1998-99 Morning Bus Run of Mike Skeens, Bus No. 970; Daily Operating Schedule for 1998-99 Afternoon Bus run of Mike Skeens, Bus No. 970; School Bus Schedule and Enrollment for 1998-99 for Mike Skeens, Bus No. 971;

Ex. 4 -

Daily Operating Schedule for 1997-98 Morning Bus Run of Willis Roy, Bus No. 901; Daily Operating Schedule for 1998-99 Morning Bus Run of Willis Roy, Bus No. 940.

Ex. 5 -

Daily Operating Schedule for 1998-99 Afternoon Bus Run of Mike Skeens, Bus No. 970 (same as Ex. 3).

Ex. 6 -

School Bus Schedule and Enrollment for 1998-99 for Willis Roy, Bus No. 940.

Ex. 7 -

School Bus Schedule and Enrollment for 1998-99 for Mike Skeens, Bus No. 971 (same as Ex. 3).

Ex. 8 -

Daily Operating Schedule for 1997-98 Afternoon Run of Willis Roy, Bus No. 901; Daily Operating Schedule for 1998-99 Afternoon Run of Willis Roy, Bus No. 940.

Ex. 9 -

Mileage Chart for Mike Skeens and Willis Roy, for 1997-98 and 1998-99 school years.

Board Exhibits

Ex. 1 -

Route No. 49 schedule for Willis Roy, Bus No. 940, Guyan Valley/Hamlin area.

Testimony

Grievant testified in his own behalf and presented the testimony of Willis Roy, Evelyn Cartwright, and Doug Skeens. The Board presented the testimony of Johnnie Adkins.

FINDINGS OF FACT

I find, by a preponderance of the evidence, the following facts:

1. Grievant has been employed by the Board as a bus operator for 21 years, with 8 or 9 of those years driving a special education run. 2. For the 1997-98 school year, Grievant's morning bus run consisted of starting at his home, proceeding to Branchland to pick up his aide, returning to near his home to pick up his first student, and then continuing on with the rest of the run. G. Ex. 1. The morning run was 2 hours 50 minutes and 65.4 miles. Grievant's evening run was 42.3 miles and 1 hour and 50 minutes. G. Ex. 2, 9.

3. Grievant did not receive a transfer notice in the Spring of 1998.

4. At the beginning of the 1998-99 school year, Grievant met with Transportation Director Johnnie Adkins, and another bus operator, Willis Roy, to discuss the special education bus runs.

5. Mr. Adkins gave Mr. Roy the bus run that Grievant drove during the 1997-98 school year, and gave Grievant Mr. Roy's previous bus run. Tr., p. 29.

6. The reason for the change was to eliminate mileage and to make more equal the amount of time the bus operators and aides had to spend on the road. Tr., p. 30.

7. Grievant's total time and distance was decreased 23.9 miles and 1 hour and 10 minutes. Mr. Roy's total time and distance was increased 21 miles and 38 minutes.

DISCUSSION

Grievant alleges the change in his bus run at the beginning of the 1998-99 school year violated the transfer provisions of W. Va. Code § 18A-2-7, which provides, in 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 or to be transferred.” Grievant further alleges a violation of W. Va. Code § 18A-4-8a,

which prohibits county boards of education from changing the work schedules of employees during the school year without theirconsent. Grievant received no transfer notice in the Spring of 1998, nor did he agree to the changes made to his bus run at the beginning of the 1998-99 school year.

The Board alleges the changes in the bus schedules were proper as a means of eliminating mileage and time for the two drivers. While the Board's rationale may be sound, it nonetheless violated the transfer provisions of Code § 18A-2-7 by not noticing Grievant of transfer in the Spring of 1998. This Grievance Board has held that slight alterations of a bus operator's driving schedule during a school year may be necessary due to need. Smith v. Lewis County Bd. of Educ., Docket No. 21-88-043-3 (Dec. 30, 1988). Such alterations are not per se violations of Code § 18A-4-8a; such alterations must be analyzed on a case by case basis. Roberts v. Lincoln County Bd. of Educ., Docket No. 92- 22-131 (Aug. 31, 1992). A county board of education must have freedom to make at least reasonable, small changes to a bus operator's daily work schedule within the parameters of his contract, many of which cannot reasonably be effected until shortly before school starts for pupils in any given year, at the earliest. Froats v. Hancock County Bd. of Educ., Docket No. 89-15-414 (Dec. 18, 1989).

In the instant case, it cannot be found that a decrease of 23.9 miles and 1 hour and 10 minutes to Grievant Skeen's bus route, and a complete change in his route, are “slight alterations” which would except him from the prohibition against change set forth in W. Va. Code § 18A-4-8a. Indeed, even Mr. Adkins, the Transportation Director, conceded there was a significant change in Grievant's 1998-99 bus run from the previous year. LII Tr., p. 36.

CONCLUSIONS OF LAW

1. In non-disciplinary matters, the grievant bears the burden of proving each element of a grievance by a preponderance of the evidence. W. Va. Code § 18-29-6; Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997).

2. W. Va. Code § 18A-2-7 provides, 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 or to be transferred.”

3. W. Va. Code § 18A-4-8a prohibits county boards of education from changing the work schedules of employees during the school year without their consent.

4. Slight alterations of a bus operator's driving schedule during a school year may be necessary due to need. Smith v. Lewis County Bd. of Educ., Docket No. 21-88- 043-3 (Dec. 30, 1988). Such alterations are not per se violations of Code § 18A-4-8a; such alterations must be analyzed on a case by case basis. Roberts v. Lincoln County Bd. of Educ., Docket No. 92-22-131 (Aug. 31, 1992). A county board of education must have freedom to make at least reasonable, small changes to a bus operator's daily work schedule within the parameters of his contract, many of which cannot reasonably be effected until shortly before school starts for pupils in any given year, at the earliest. Froats v. Hancock County Bd. of Educ., Docket No. 89-15-414 (Dec. 18, 1989).

5. Grievant has proven by a preponderance of the evidence that the Board violated W. Va. Code § 18A-4-8a when it decreased his bus run by 23.9 miles and 1 hour and 10 minutes, and completely changed his route.

Accordingly, this grievance is **GRANTED** and the Board is hereby **ORDERED** to reinstate Grievant to the bus run he held during the 1997-98 school year.

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.

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MARY JO SWARTZ

Administrative Law Judge

Dated: February 11, 1999