**ROY E. COLE,**

**Grievant,**

**v v.**

**Docket No. 99-40-019**

**PUTNAM COUNTY BOARD OF EDUCATION,**

**Respondent.**

**D E C I S I O N**

Grievant, Roy E. Cole, employed by the Putnam County Board of Education (PCBE) as a bus operator, filed a level one grievance on September 28, 1998, in which he alleged a violation of W. Va. Code §18A-4-8b "in regard to the posting of a supplemental bus run transporting students to Putnam General Hospital. The Grievant contends a separate bus run has been created and a posting of the run is needed." If selected as the successful bidder for the position, Grievant requests backpay and all benefits due him.

The grievance was denied at levels one and two. Grievant elected to bypass consideration at level three, as is permitted by W. Va. Code §18-29-4(c), and advanced the matter to level four on January 20, 1999. The parties agreed that a decision could be made on the lower-level record, supplemented by proposed findings of fact and conclusions of law. The matter became mature for decision upon receipt of proposed findings of fact and conclusions of law filed by the parties on or before February 17, 1999. (See footnote 1)

The facts of this matter are undisputed and may be set forth as follows.

Findings of Fact

1. Grievant has been employed by the Putnam County Board of Education as a bus operator for twenty-nine years. 2. In addition to his regular run, Grievant holds a contract for a vocational run to transport students between Winfield High School and the vocational school in Eleanor. Grievant is compensated $144.00 per month for this assignment.

3. As part of the vocational run, Grievant is required to transport students enrolled in a nursing

class to Putnam General Hospital. This duty, performed four days a week, is shared by approximately seven drivers on a rotating basis.

4. Neither Grievant, nor any of the other drivers are additionally compensated for transporting the students between the vocational center and the hospital.

5. Grievant has been transporting the students to and from the hospital since 1973, and this service was part of the vocational run he bid on, and accepted, at that time.

Discussion

___Grievant argues that transporting the students from the vocational center to the hospital is similar to other mid-day trips, such as going to the power plant, for which bus drivers are paid. Because he characterizes the transportation to and from the hospital as an extra-duty assignment, Grievant argues that it is a position which must be posted and filled pursuant to the provisions of W. Va. Code §18A-4-8b. PCBE asserts that transportation of the nursing students has historically been a part of the vocational run, and was part of the assignment which Grievant bid on and received. It denies that transporting the students from the vocational school to the hospital is a separate run requiring posting.

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving each element of 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.

Grievant's only basis for his argument is that PCBE has paid supplemental salary to some drivers who engage in mid-day runs, and therefore, must compensate all similarly- situated employees uniformly. He cites Swisher, et al. v. Preston County Bd. of Educ., Docket No. 39-87-266-2 (April 29, 1988), in support of his claim. Although Swisher does require all similarly-situated employees be compensated uniformly, Grievant has failed to prove that he is similarly-situated to anyone receiving additional compensation. Mid-day trips to the power plant are extra-duty assignments, while transporting nursing students to the hospital is simply part of the vocational run. Grievant's own testimony was that none of the drivers who were assigned to the rotation were compensated. The purpose of W. Va. Code §18A-4-8b is to insure that employees performing similar work receive similar pay. That situation does not apply in this matter which more closely resembles the factual

pattern in Willett v. Mason County Bd. of Educ., Docket No. 95-26-468 (June 27, 1996), in which the grievant argued that transporting vocational students to work locations changed his route without his consent. It was held that transporting the vocational students to and from their places of employment was a part of the vocational run, and did not result in a change of the grievant's route or entitle him to additional compensation.

Substantially similar situations have been addressed by the Grievance Board in two additional decisions. In Blankenship v. Mingo County Bd. of Educ., Docket No. 96-29-334 (April 22, 1997), the grievant, who regularly performed only morning and evening runs, was required to transport students on a field trip to the Mingo County Court House and Williamson Daily News office. The assignment began at 9:45 a.m., and concluded at 2:00p.m. The grievant did not receive any additional compensation beyond her regular daily pay for performing the assignment. In Broughman v. Tyler County Bd. of Educ., Docket No. 94-48-068 (Jan. 20, 1995), aff'd, Circuit Court of Kanawha County, No. 95-AA-54 (Nov. 6, 1995), the board of education required bus operators to perform “on-call” driving during the regular work day without additional compensation. Decisions in these cases held that “W. Va. Code §§18A-48a and 18A-4-8b do not prohibit a county board of education from requiring bus operators to be assigned on a rotational basis for in-county bus trips during regular school hours without additional compensation.”

In addition to the foregoing findings of fact and discussion it is appropriate to make the following conclusions of law.

Conclusion of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving each element of 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. “W. Va. Code §§18A-4-8a and 18A-4-8b do not prohibit a county board of education from requiring bus operators to be assigned on a rotational basis for in-county bus trips during regular school hours without additional compensation.” Broughman v. Tyler County Bd. of Educ., Docket No. 94-48-068 (Jan. 20, 1995), aff'd, Circuit Court of Kanawha County, No. 95-AA-54 (Nov. 6, 1995).

3. When a county board of education has a long-standing practice requiring itsbus operators to

perform runs on a rotational basis, such work becomes part of the operators' work day, and not work for which additional compensation must be paid. See Blankenship supra.

4. Grievant has failed to demonstrate by a preponderance of the evidence any violation of W. Va. Code §18A-4-8b occurred relating to his vocational run.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Putnam 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.

Date: February 26, 1999 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

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*Footnote: 1*

*Grievant was represented by Susan Hubbard of WVEA, and PCBE was represented by John Grafton, Esq.*