DONNA SIZEMORE and BOBBY LEMLEY,

Grievants,

v.

DOCKET NO. 98-30-428

MONONGALIA COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Grievants are employed as bus operators by the Monongalia County Board of Education (MCBOE). They contend that they were denied the opportunity to accept an extra-duty bus run on January 29, 1998, which was assigned contrary to MCBOE policy. The grievance was denied by Grievants' immediate supervisor on February 11, 1998. A level two hearing was held on a date not reflected in the record. After no written decision was received at level two, and level three consideration was bypassed, Grievants appealed to level four on October 28, 1998, with no objection from Respondent. (See footnote 1) A level four hearing was held in the Grievance Board's office in Morgantown, West Virginia, on December 7, 1998. Grievants were represented by John Roush, Esquire, and MCBOE was represented by Jacob Mullett, Assistant Superintendent. This matter became mature for consideration on January 13, 1999, the deadline for receipt of the parties' post-hearing arguments.

The following findings of fact are made from a preponderance of the evidence of record.

Findings of Fact

1.

Grievants are regularly employed as full-time bus operators for MCBOE.

2. Pursuant to the provisions of W. Va. Code § 18A-4-8b, an alternative procedure for assigning extra-duty bus runs was adopted by the bus operators and approved by MCBOE.

3. The extra-duty bus run policy provides that such assignments shall be made according to seniority on a rotating basis. Extra-duty assignments for each week are posted during the preceding week, so that drivers can express their interest in receiving the runs.

4. The extra-duty policy also provides that "[e]mergency situations involving last minute bookings or a driver's cancellation shall be handled by the supervisor." Emergencies are not otherwise defined within the policy.

5. A trip request for taking students to a choir competition on January 29, 1998, was approved by Assistant Superintendent Jacob Mullett on January 22, 1998. It was not forwarded to the transportation office until January 27, 1998.

6. Because the authorization was received only two days before the trip was scheduled, Transportation Supervisor Duane Prickett determined that the choir trip was an emergency situation within the extra-duty policy. January 27 was a Tuesday, and the trip was scheduled for Thursday, so the trip could not be posted for selection under the normal rotation procedure, which required that trips be posted during the preceding week.

7. When assigning extra-duty trips on an emergency basis, Mr. Prickett looks at the availability of the drivers, the disruption of established schedules, and whether thetrip will be financially advantageous to the driver. (See footnote 2)

8. After a driver is selected to fill an extra-duty run on an emergency basis, Mr. Prickett removes that driver from consideration the next time they are eligible for an extra- duty trip in the regular seniority rotation.

9. The choir trip was given to Polly Cool, who was removed from eligibility during the next regular rotation for extra-duty assignments.

10. On MCBOE's extra-duty rotation list, during the week of January 26-30, 1998, at least four other drivers were ahead of Grievant Sizemore, and at least ten drivers were ahead of Grievant Lemley.

11. The choir trip request stated that the trip would take approximately seven hours. After Ms. Cool had been selected and the trip had begun, Mr. Prickett discovered that the trip had been

extended by several more hours.

Discussion

As this grievance does not involve a disciplinary matter, Grievants must prove their claims 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. The assignment of extra-duty work is addressed by W. Va. Code § 18A-4-8b, which provides, in pertinent part:

> Notwithstanding any other provisions of this chapter to the contrary, decisions affecting such personnel with respect to extra-duty assignmentsshall be made in the following manner: An employee with the greatest length of service time in a particular category of employment shall be given priority in accepting such assignments, followed by other fellow employees on a rotating basis according to the length of their service time until all such employees have had an opportunity to perform similar assignments. The cycle then shall be repeated: **Provided, That an alternative procedure for making extra-duty assignments within a particular classification category of employment may be utilized if the alternative procedure is approved both by the county board of education and by an affirmative vote of two thirds of the employees within that classification category of employment.** For the purpose of this section, extra-duty assignments are defined as irregular jobs that occur periodically or occasionally such as, but not limited to, field trips, athletic events, proms, banquets and band festival trips.

(Emphasis added.) As set forth in the findings of fact above, the parties agree that MCBOE adopted an alternative procedure in accordance with this section. However, Grievants contend that the instant situation was not an “emergency” as contemplated by the policy, and that the normal seniority rotation should have been followed. In addition, Grievants allege that one of them should have been selected for the choir trip, instead of Ms. Cool, who was lower on the seniority list than both of them.

MCBOE contends that, because the transportation department had no knowledge of the January 29 trip until two days prior, it constituted an emergency, because the posting and selection for the week's extra-duty trips had already been accomplished. At the end of the prior week, in accordance with the policy, the extra-duty trips had been posted, and drivers who were interested had signed up for them. Therefore, Mr. Prickett selected the driver whose schedule would be the least disrupted by taking the choir trip, and who he believed would receive the most financial benefit from it.

MCBOE's extra-duty trip policy does not explain what constitutes an emergency situation, and it

leaves such determinations within the discretion of Mr. Prickett. Grievantshave not proven by a preponderance of the evidence that Mr. Prickett's decision that this situation was an emergency was unreasonable. The trip was to take place less than two days from the time the transportation office was notified of it. Moreover, all of the extra- duty assignments for the week had been made in accordance with the posting procedure. Therefore, the undersigned finds that it was appropriate for Mr. Prickett to treat this situation as an emergency under the policy.

Grievants also find fault with Mr. Prickett's selection procedure for assigning emergency extra-duty runs. Because the trip ultimately involved nineteen hours of extra- duty pay, it was quite a lucrative trip for any driver who received it. However, at the time the request was processed and the trip was assigned, it was scheduled to be a seven-hour trip. As Mr. Prickett testified, he did not know the trip had been extended until after Ms. Cool had left for Charleston on the morning of January 29. Accordingly, because Ms. Cool had no mid-day bus run on her regular schedule, he believed she would benefit more financially from the seven-hour trip than other drivers whose normal days involved seven or eight hours of compensated driving. Because the policy leaves such decisions completely within Mr. Prickett's discretion, and since his logic is quite reasonable, the selection of Ms. Cool is not found to be improper.

Moreover, Grievants have not demonstrated that either one of them would have been awarded the January 29 trip, even if the regular rotation procedure had been followed. Although Ms. Cool is lower on the seniority list than either Grievant, she had been the last person to select an extra-duty trip pursuant to the regular rotation. (See footnote 3) Thereare two more people who are less senior than Ms. Cool, who would have been the first in line for the next extra-duty trip. Then, Mr. Prickett would have gone to the top of the list to begin the rotation again. There are three people on the list who are more senior than Grievant Sizemore, and there are nine people more senior than Grievant Lemley. Therefore, under the normal rotation procedure, several other drivers would have been in line for the next trip before either Grievant.

MCBOE has properly followed its policy regarding the assignment of extra-duty bus trips. In addition, neither Grievant would have been entitled to the trip at issue here under the regular rotation procedure. MCBOE's extra-duty policy was properly adopted, pursuant to W. Va. Code § 18A-4-8b, and Ms. Cool was appropriately removed from the regular rotation after being assigned an emergency extra-duty bus run. See Justice v. Wayne County Bd. of Educ., Docket No. 98-50-252

(Sept. 29, 1998).

The following conclusions of law are appropriate in this case.

Conclusions of Law

1. In non-disciplinary matters, Grievants must prove their claims 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. Pursuant to W. Va. Code § 18A-4-8b, a board of education may adopt an alternative procedure for making extra-duty assignments, with approval by two-thirds of theemployees within the affected classification and the board. See Williamson v. Lincoln County Bd. of Educ., Docket No. 90-22-322 (Oct. 31, 1990).

3.

MCBOE properly followed its extra-duty bus run policy in this case.

4. The choir trip to Charleston on January 29 was appropriately treated as an emergency situation under MCBOE's extra-duty policy.

5. Neither Grievant was entitled to the extra-duty trip at issue, even under the normal seniority rotation procedure for assigning extra-duty trips.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the Circuit Court of Monongalia 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:

January 26, 1998 _____

DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

Despite numerous requests and directives, Respondent failed to provide the Grievance Board with a copy of the lower level record. The description of the events which took place at the lower levels was provided to the undersigned by the parties' representatives.

Footnote: 2

For example, if a driver has morning, midday and afternoon runs every day, so his or her normal work day is seven or eight hours, such a driver would receive no financial benefit from giving up the normal daily runs to take a four-hour extra-duty trip.

Footnote: 3

There was some confusion as to whether the next person on the list after Ms. Cool, K. Statler, had also selected a trip during the prior week. However, this does not alter theoutcome of this grievance.