ROY COLE,

Grievant,

v. **Docket No. 00-40-331**

PUTNAM COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

This grievance was filed by Grievant, Roy Cole, against Respondent, Putnam County Board of Education ("PBOE"), on or about August 10, 2000. The statement of grievance reads:

> Violations of WV Code 18A-4-8a(7) and 18A-4-16 with regard to being required to make bus trips outside of the county during the day. Further violations of WV Code 18A-4-8b in regard to method of assigning extra-duty assignments.

As relief Grievant seeks "to be compensated for the additional trips he was required to take outside the county." (See footnote 1)

The following Findings of Fact necessary to the decision reached, are made based upon the evidence presented at Levels II and IV.

Findings of Fact

1. Grievant has been employed by the Putnam County Board of Education ("PBOE") as a regular bus operator for 30 years.

2. On May 4, 2000, PBOE posted four bus operator positions, serving the extended school year program and the Summer Student Academy during the summer of 2000, as needed. The job description in the posting reads as follows, "to deliver all services to identified, disabled students requiring an extended year program, including, but not limited to, transportation to and from field trips, therapy sessions, the extended year program, and summer student academy." The posting lists the location of the position as "county," and the work hours as 8:00 a.m. to 4:00 p.m.

3. The extended school year program is a five week summer program, serving students

ranging from preschool through high school age, who often are severely disabled, to help them maintain their skills. During the summer of 2000, it ran on Tuesdays, Wednesdays, and Thursdays, from June 27 through July 27.

4. The Summer Student Academy is a summer program for students who may need remediation, may have disabilities, may need to be accelerated, or may need enrichment type activities. During the summer of 2000, there were two sessions of this program, on Mondays and Fridays, from July 3 through 14, and from July 17 through 28, both sessions running from 9:00 a.m. to noon.

5. Field trips are part of the curriculum for the extended school year program and the Summer Student Academy. It has been the practice in Putnam County that bus operators employed for the summer in these programs transport the students on field trips as part of their job duties, and some field trips in the past have been out of county. An employee with the "Community Base Work Exploration Program" worked with high schoolstudents in the Summer Student Academy, and some of the field trips were community type activities; however, these field trips were part of the Summer Student Academy curriculum.

6. Grievant bid on one of the posted bus operator positions. He received one of the positions, and was assigned to Winfield Elementary School. Grievant signed a contract for the position which states it is entered into pursuant to W. Va. Code § 18A-4- 16. He was paid based upon an eight hour workday. (See footnote 2)

7. On Tuesdays, Wednesdays, and Thursdays, Grievant worked in the extended year program, June 27 through July 27, 2000. On those days he started his day at 6:30 a.m. He pre-tripped his bus, and left the bus garage at 6:50 a.m. He picked up students in Teays Valley, and dropped them off at Winfield Elementary School at 8:05 a.m. Grievant began his afternoon run at Winfield Elementary School at 2:20 p.m., and parked his bus for the day at 3:40 p.m. He was required to be available for field trips between his morning and afternoon runs. On those days he did not transport the students on a field trip he worked 2 hours and 55 minutes.

8. On Mondays and Fridays Grievant transported students enrolled in the Summer Academy Program, from July 3 through July 28, 2000.

9. Grievant transported students on field trips to places in Putnam County during the day throughout the summer of 2000. He did not work all the field trips. The bus operators employed for

the summer took turns making the trips.

10. On July 13, 2000, Grievant transported students to Yeager Airport, the Town Center Mall, and McDonald's in Kanawha County. He began the field trip at 9:00 a.m., and returned to Winfield Elementary School at 2:15 p.m. He worked 8 hours and 10 minutes that day. 11. On July 25, 2000, Grievant transported students to Sunrise Museum in Kanawha County, departing Winfield Elementary School at 9:00 a.m., and returning at noon. He worked 5 hours and 55 minutes that day.

12. On July 27, 2000, Grievant transported students to Charleston, departing Hurricane High School at 8:30 a.m., and returning at 12:30 p.m. He had to pre-trip and post-trip the bus used for this trip, although he did not indicate how long that took. He worked 6 hours and 55 minutes that day.

13. Grievant has worked as a bus operator for PBOE during the summer for 8 to 10 years. This was the first summer Grievant was required to transport students outside the county for a field trip.

Discussion

The burden of proof is upon Grievant to prove the elements of his grievance by a preponderance of the evidence. Conner v. Mingo County Bd. of Educ., Docket No. 95-29- 476 (Mar. 28, 1996). Grievant argued that out of county field trips were not part of his contract for the extended year program, and they should have been assigned according to W. Va. Code § 18A-4-8b, as extra-duty trips. He believed field trips during the school day which were totally within Putnam County were included in his job duties. Respondent argued field trips were part of the summer program, and part of Grievant's summer bus operator position, and it made no difference whether the field trips were to a point within the county or outside the county line, noting that some points in other counties would, of course, be closer to Winfield Elementary School than some points within Putnam County.

Grievant also argued that he is entitled to payment for those days on which he worked more than eight hours, due to the fact that a field trip extended his work day. Respondent agreed that Grievant should have been paid for hours he worked beyond eight hours, and is willing to pay him for this time; however, Grievant is seeking pay for theentire time spent on field trips which resulted in more than an eight hour day, not just the hours beyond eight.

Grievant cited a violation of W. Va. Code § 18A-4-16 in his statement of grievance That Code Section defines extracurricular assignments, and provides:

> (1) The assignment of teachers and service personnel to extracurricular assignments shall be made only by mutual agreement of the employee and the

> superintendent, or designated representative, subject to board approval. Extracurricular duties shall mean, but not be limited to, any activities that occur at times other than regularly scheduled working hours, which include the instructing, coaching, chaperoning, escorting, providing support services or caring for the needs of students, and which occur on a regularly scheduled basis: Provided, That all school service personnel assignments shall be considered extracurricular assignments, except such assignments as are considered either regular positions, as provided by section eight [§ 18A-4-8] of this article, or extra-duty assignments, as provided by section eight-b [§ 18A-4-8b] or this article.
>
> (2) The employee and the superintendent, or a designated representative, subject to board approval, shall mutually agree upon the maximum number of hours of extracurricular assignment in each school year for each extracurricular assignment.
>
> (3) The terms and conditions of the agreement between the employee and the board shall be in writing and signed by both parties.

It is unclear to the undersigned how Grievant alleges this Code Section has been violated. Grievant's summer contract does state that it is entered into pursuant to this provision. Regardless of whether the correct label was used for Grievant's summer employment, the fact is that the posting clearly stated field trips were part of the job. Grievant knew this going into the job, and he agreed to make field trips as a condition of his employment when he accepted the job. This statutory provision does emphasize the importance of clearly describing the assignment in the employment contract.

W. Va. Code § 18A-4-8b cited by Grievant defines extra-duty assignments, and outlines how they are to be distributed to employees:

> Notwithstanding any other provisions of this chapter to the contrary, decisions affecting service personnel with respect to extra-duty assignments shall 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 extra-duty assignments, followed by other fellowemployees 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 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.

This Grievance Board has previously determined that field trips which occur between an

employee's morning and evening run are within the employee's regular work day, and as such, these field trips are not “extra-duty assignments.” Broughman v. Tyler County Bd. of Educ., Docket No. 94-48-068 (Jan. 20, 1995). See also Blankenship v. Mingo County Bd. of Educ., Docket No. 96-29-334 (Apr. 22, 1997). All three of the field trips at issue occurred during the normal work day. None of these field trips falls within the definition of “extra-duty assignment” under the facts here. They were all part of the job on which Grievant bid. The fact that these trips crossed the county line makes no difference whatsoever. Grievant gave no reason why he could not drive a bus in Kanawha County just as easily as he could drive one in Putnam County. However, if Grievant were correct that these field trips were extra-duty assignments, he may not have received them anyway due to the statutory requirements for distributing such assignments among the bus operators.

PBOE argued that any hours Grievant worked in excess of eight hours in a day would be an extra-duty assignment. An assignment in its entirety is either an extra-duty assignment or it isn't. An field trip cannot cease to be part of the employee's job duties at some point during the trip and then be assigned to another employee as provided by W. Va. Code § 18A-4-8b, so that employee can complete the assignment.

Finally, W. Va. Code § 18A-4-8a(7), cited by Grievant, states as follows:

> No service employee may have his or her daily work schedule changed during the school year without the employee's written consent, and theemployee's required daily work hours may not be changed to prevent the payment of time and one-half wages or the employment of another employee.

This provision is applicable here only as it relates to the one trip which resulted in Grievant working more than the eight hours he agreed to work. PBOE has not attempted to prevent the payment of time and a half wages, and has already agreed to compensate Grievant for the time he worked any day beyond eight hours. He is entitled to compensation for the 10 minutes he worked beyond eight hours on July 13, 2000.

Grievant argued that because the posting listed the location of the position as “county,” trips outside the county were not part of the position as posted. Regardless of which of the cited Code Sections is applicable to this argument, it is rejected under the facts presented here. No one testified regarding what was meant by “location” as that term was used in the posting. Grievant was assigned to Winfield Elementary School, and it may well be that that was his “location.” The posting also says

the bus operator is “to deliver all services . . . including, but not limited to, transportation to and from field trips . . ..” Field trips to points in Kanawha County were part of the services which were to be provided to the students in the summer program, the same as field trips totally within Putnam County, and the posting made no distinction between the two.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. Grievant bears the burden of proving the elements of his grievance by a preponderance of the evidence. Conner v. Mingo County Bd. of Educ., Docket No. 95-29- 476 (Mar. 28, 1996).

2. Field trips which occur between an employee's morning and evening run are within the employee's regular work day, and as such, these field trips are not “extra-duty assignments.” Broughman v. Tyler County Bd. of Educ., Docket No. 94-48-068 (Jan. 20,1995). See also Blankenship v. Mingo County Bd. of Educ., Docket No. 96-29-334 (Apr. 22, 1997).

3. All three of the field trips at issue occurred during the normal work day. None of these field trips falls within the definition of “extra-duty assignment” under the facts here, and all three were part of his job duties.

4. Grievant has not demonstrated a distinction between field trips occurring between his morning and afternoon runs which were totally within the county, and field trips which crossed the county line into a neighboring county.

5. Grievant is entitled to compensation for the time he worked beyond eight hours on July 13, 2000.

Accordingly, this grievance is **GRANTED IN PART AND DENIED IN PART**. Respondent is **ORDERED** to compensate Grievant for the 10 minutes he worked in excess of an 8 hour day on July 13, 2000.

Any party may appeal this Decision to the Circuit Court of Putnam County or the Circuit Court of Kanawha 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 party to 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 Grievance Board with

the civil action number so that the record can be prepared and transmitted to the circuit court.

BRENDA L. GOULD

Administrative Law Judge

Dated: March 2, 2001

Footnote: 1

The grievance was denied at Level I on August 31, 2000. Grievant appealed to Level II on September 7, 2000, where a hearing was held on September 18, 2000. The grievance was granted in part and denied in part at Level II on October 11, 2000. Grievant appealed to Level IV on October 18, 2000, bypassing Level III. A Level IV hearing was held on December 7, 2000. Grievant was represented by Susan Hubbard, and Respondent was represented by John A. Grafton, Esquire. At the Level IV hearing, Grievant's representative clarified that the wrong grievance form (Putnam County number 20-3) had been submitted to Level IV, and a copy of the correct grievance form (Putnam County number 20-2) was supplied. The parties were agreeable to proceeding with a hearing on the grievance. This grievance became mature for decision on January 8, 2001, upon receipt of the last of the parties' written arguments.

Footnote: 2

Grievant's daily rate of pay for the summer is the subject of a separate grievance.