IRA D. MAYLE, et al.,

Grievants,

v. **Docket No. 02-01-219**

BARBOUR COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Grievants (See footnote 1) , fifteen bus operators employed by Respondent Barbour County Board of Education ("BCBOE"), initiated this grievance on April 22, 2002, protesting their placement on the transfer list. The grievance was denied by Grievants' immediate supervisor on May 20, 2002. A level two hearing was held on May 29, 2002, followed by a written decision, denying the grievance, dated July 18, 2002. Level three consideration was bypassed, and Grievants appealed to level four on July 23, 2002. A level four hearing was held in the Grievance Board's office in Elkins, West Virginia, on September 13, 2002. Grievants were represented by William C. White, representative for the West Virginia Education Association, and Respondent was represented by counsel, Kimberly S. Croyle. This matter became mature for consideration upon receipt of the parties' fact/law proposals on October 7, 2002.

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

Findings of Fact

1. Grievants are regularly employed as bus operators by BCBOE.

2. Early in the spring semester of 2002, Glenn Sweet, Transportation Director, requested that all bus operators sign a document entitled "Mutual Agreement for Run Adjustments." This document stated that the bus operators would agree to changes in their present driving assignments for the upcoming 2002-2003 school year.

3. Mr. Sweet also advised the drivers, by memo attached to the agreement, that he only anticipated minor changes to be made in runs, except for two, to accommodate incoming new

students or changes in students' domiciles.

4. Other than the two specific runs mentioned (See footnote 2) , as of April of 2002, no specific facts were known which would have necessitated major changes in bus runs for the 2002- 2003 school year.

5. Most of the bus operators employed by BCBOE signed the agreement, and they were not placed on the transfer list for the upcoming school year. Grievants refused to sign the agreement, and were consequently notified that they would be placed on the transfer list.

6. None of the grievants had significant changes made to their bus runs for the 2002-2003 school year.

Discussion

As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their claims by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); 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.

Grievants contend that, because the administration did not know of any specific factors which would necessitate changes in their bus runs for the upcoming school year, it was prohibited from placing them on the transfer list. They rely, in large part, upon the newly amended version of W. Va. Code § 18A-2-7, which provides the superintendent with the authority to transfer personnel, subject to board approval, of which the employee must be notified in writing by the first Monday in April. However, in 2001, the statute was amended to add the following language: “Only those employees whose consideration for transfer or intended transfer is based upon **known or expected circumstances which will require the transfer of employees** shall be considered for transfer or intended for transfer and the notification shall be limited to only those employees.” (Emphasis added). Grievants believe that the language “known or expected circumstances” prohibits Respondent from making “blanket” transfer notifications such as the ones effectuated in this case. The undersigned agrees.

This Grievance Board has only had occasion to interpret the newly amended W. Va. Code § 18A-2-7 once, in the case of Crow/Wroblewski v. Wayne County Board of Education, Docket No. 01-50-

488 (Dec. 13, 2001). Although the administrative law judge found in that case that no violation of the statute had occurred, Conclusion of Law 8 is pertinent to the instant matter:

> The amended language contained in the third sentence of W. Va. Code § 18A-2-7 was designed to eliminate mass transfers using boilerplate language, and to require county boards to target and notify those employees who will actually be affected by changing circumstances.

Clearly, BCBOE's action of placing all bus operators on transfer who would not voluntarily agree to accept any change which might possibly be needed in the upcoming school year constitutes just such a “mass transfer” which the statute's language is designed to prevent. In addition, as Grievants have correctly noted, if only minor changes were anticipated, as Respondent has contended throughout this proceeding, transfers were not necessary. Apparently, Grievants' transfers were designed to avoid running afoul of the provisions of W. Va. Code § 18A-4-8a, which states that “[n]o service employee may have his or her daily work schedule changed during the school year without the employee's written consent[.]” However, as this Grievance Board has previously held, a county board of education is authorized to make reasonable, small changes to a bus operator's daily work schedule within the parameters of his contract, even after school has begun. Smith v. Lewis County Bd. of Educ., Docket No. 21-88-043-3 (Dec. 30, 1988); Froats v. Hancock County Bd. of Educ., Docket No. 9-15-414 (Dec. 18, 1989).

With regard to the current school year, it is not possible to grant the relief requested by Grievants, which was removal from the transfer list. Those transfers have already been voted upon and placed into effect, prior to the beginning of the school year. Moreover, there is no evidence that Grievants actually were subjected to any major changes in their runs as a result of their transfers. Nevertheless, Respondent is directed to cease its practice of placing bus operators on transfer when no known or expected circumstances require such transfers.

The following conclusions of law support the decision reached.

Conclusions of Law

1. In non-disciplinary matters, Grievants have the burden of proving their claims by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2000); 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. The portion of W. Va. Code § 18A-2-7 requiring that transfers be based upon "known or expected circumstances" was designed to eliminate mass transfers using boilerplate language, and to require county boards to target and notify those employees who will actually be affected by changing circumstances. Crow/Wroblewski v. Wayne County Board of Education, Docket No. 01-50-488 (Dec. 13, 2001).

3. Grievants' transfers in the spring of 2002 were not based upon known or expected changes in their bus runs for the upcoming school year, so their transfers were improper.

Accordingly, this grievance is **GRANTED**, and Respondent is directed to cease its practice of implementing "blanket" transfers not based upon specific circumstances.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the Circuit Court of Barbour 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. However, the appealing party is required by W. Va. Code § 29A-5-4(b) to serve a copy of the appeal petition upon the GrievanceBoard. 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.

Date: November 4, 2002 _____

DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

Grievants are Ira Mayle, Kenneth Carder, Carl Bolton, Rex Freeman, Ernest Fisher, Joe Freeman, Kenneth L. Carder, Sr., Peggy Moss, Rosetta Harshberger, Gregory Louk, Willis Freeman, Larry A. Moore, Rodger Anglin, Ronald Skidmore, and Marjorie George.

Footnote: 2

Apparently, these two runs did not belong to any of the grievants.