RONALD J. CORBIN, et al.,

Grievants,

v. **Docket No. 02-14-263**

HAMPSHIRE COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Grievants, (See footnote 1) bus operators employed by the Hampshire County Board of Education ("HCBOE"), initiated this proceeding on May 26, 2002, alleging they are assigned "extra duty" assignments without compensation. They seek compensation for these assignments. The grievance was denied at level one on June 4, 2002. A level two hearing was held on July 17, 2002, followed by a written denial of the grievance dated August 2, 2002. Level three consideration was waived, and Grievants appealed to level four on August 22, 2002. A hearing was held in the Grievance Board's office in Westover, West Virginia, on December 9, 2002. Grievants were represented by counsel, John E. Roush, and Respondent was represented by counsel, Kimberly S. Croyle. This matter became mature for consideration upon receipt of the parties' fact/law proposals on December 23, 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. 2. HCBOE has adopted a written policy which requires bus operators to drive students on field trips which occur during the school day without additional compensation, provided that the trip is not more than 50 miles one way. This policy has been in place for at least ten years.

3. The job description for bus operators employed by HCBOE requires that they drive on trips which occur between the hours of 9:00 a.m. and 3:00 p.m. at no charge on a rotating basis.

4. Grievants' regular bus routes, along with pre- and post-trip activities, require them to work approximately 3½-4 hours per day.

5. Grievants have been required to take “free” trips between their regular morning and afternoon runs during the 2001-2002 school year. Grievant Corbin was required to take two trips (on separate days) which lasted approximately six hours each. (See footnote 2) Grievant Hott was required to take one trip which lasted four hours.

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 argue that the “free trips” in question are extra-duty assignments, asdefined in W. Va. Code § 18A-4-8b, which provides that such assignments are “irregular jobs that occur periodically or occasionally,” and include such examples as “field trips, athletic events, proms, banquets and band festival trips.” In turn, W. Va. Code § 18A-4-8a provides that extra-duty assignments will be paid at an hourly rate based on the employee's salary and assigned according to seniority.

This Grievance Board has previously addressed the issue presented here on several occasions, and has 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.'” Cole v. Putnam County Bd. of Educ., Docket No. 00-40-331 (March 2, 2001) (citing cases). 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 which began at 9:45 a.m., and concluded at 2:00 p.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-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." Id.

However, it has been recognized that a bus operator who is required to work in excess of eight hours in one day due to the length of a mid-day field trip is entitled to timeand a half wages for the overtime hours worked. Cole, supra. Accordingly, Grievant Corbin is entitled to overtime pay for the two days during the 2001-2002 school year when field trips required him to work over eight hours.

The following conclusions of law support the decision reached.

Conclusions of Law

1. In a non-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.

2. Field trips which occur between an employee's morning and evening run are within the employee's regular work day and are not extra-duty assignments. Cole v. Putnam County Bd. of Educ., Docket No. 00-40-331 (March 2, 2001); Blankenship v. Mingo County Bd. of Educ., Docket No. 96-29-334 (April 22, 1997); 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. The field trips at issue were taken during Grievants' normal work day, and Grievants are not entitled to extra compensation for them.

4. Grievant Corbin is entitled to compensation for the time he worked beyond eight hours on two days he took field trips during the 2001-2002 school year.

Accordingly, this grievance is **GRANTED IN PART AND DENIED IN PART**. Respondent is Ordered to compensate Grievant for the hours he worked in excess of an eight-hour day on two occasions during the 2001-2002 school year.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the Circuit Court of Hampshire 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 Grievance Board. 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: January 22, 2003 _____

DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

Grievants are Ronald J. Corbin, Wanda L. Hott, Steve C. Haines, and Richard B. Kinnie. The level four appeal had erroneously included the name of Willis L. Bohrer and Sandra McCune as Grievants, but they withdrew participation prior to level four.

Footnote: 2

Apparently, Grievant Corbin was able to complete these trips between his regular runs, and he performed his morning and afternoon runs in addition to the time spent driving on the field trips.