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**WEST VIRGINIA EDUCATION  
EMPLOYEES GRIEVANCE BOARD**

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**JAYE NESBITT**

**v.**

**Docket No. 15-86-007**

**HANCOCK COUNTY BOARD OF EDUCATION**

**DECISION**

Jaye Nesbitt, grievant, alleges violation of W.Va. Code, 18A-4-16 and related law in that a job was posted which included a bus run she characterizes as extracurricular; and because the Hancock County Board of Education did not bid out the job as such, she was denied opportunity to the alleged extracurricular position. The grievance properly comes before this Board for a level four decision based on the record in accordance with the mutual consent of the parties.

Grievant is employed by the Hancock County school board as a bus operator and had fourteen years of experience when she filed this grievance. In the fall of 1984, an auxiliary run began operating to transport students from Weir High School to their homes at the conclusion of their after school activities at 5:15 p.m.. For the most part, their activities

commenced following the instructional day and they had not yet been home since arrival at school in the morning. Regularly assigned bus drivers were transporting the students on a rotating basis as needed. Demand grew for the run and, ultimately, the county posted bids for a position in which the 1.25 hour run was incorporated within a regular a.m. morning run and p.m. afternoon run of 5.75 hours thus totaling a seven hour contract of assigned duties.

Grievant, who had been instrumental in the establishment of the Weir High run as a newly created position, bid on the job as posted.<sup>1</sup> When grievant bid on the new position, she already held a 7.50 hour contract with the board. She had an a.m. morning and p.m. afternoon run for 5.75 hours and an early childhood auxiliary run for 1.75 hours. No other persons bid on the job and grievant was notified on November 29, 1984 that the bid was hers.

An evidentiary hearing was conducted by the Superintendent of Hancock County Schools on February 8, 1985. Grievant appeared with her WVEA representative and read a lengthy prepared statement into the record and numerous documents were submitted. She stated that during the November 29th meeting with the transportation director, Charles Pugh, she was asked to sign

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<sup>1</sup> According to the evidence, grievant approached the transportation director about establishing the run as an extracurricular assignment/position but no action was taken until she threatened to file a formal grievance.

a "Personnel Directive Notice". The directive would have terminated her present 7.50 hours contract thus eliminating her early childhood auxiliary run. A new contract had been prepared for the seven hour position with a salary adjustment reflecting the loss of one-half hour in wages per day. Grievant refused to sign the directive relinquishing her present contract and Mr. Pugh refused to let her sign the bid acknowledgement.

The pair met again the following day and grievant again refused to sign the directive or to withdraw her bid on the position. On that day, the Weir High run was assigned to a regular substitute bus operator, Larry Shane. Shane became a permanent substitute with a morning run as needed and the regular operator for the 5:15 p.m. Weir High Run and his 5.75 hour contract was not disturbed. Grievant was dissatisfied about the matter and concluded that Shane thereby was available to substitute for an auxiliary run or a p.m. afternoon vacancy or, alternatively, also had the opportunity to obtain outside employment during the day. Grievant also cited other aspects of Shanes's employment which she found objectionable.<sup>2</sup>

Grievant alleges the board's actions were violative of W.Va. Code, 18A-4-16 and, consequently, she has been denied employment and job advancement in violation of the seniority laws. She listed relief which included the award of an extra-

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<sup>2</sup> Grievant stated that Shane was given a key to the gate, was allowed to take his bus to his home between assignments and had worked extra-duty assignments that overlapped his 5:15 run for which he had not been docked time.

curricular contract for the Weir High Run for the period of September 4, 1984 to June 7, 1985 and back wages in the amount of \$3,600 with interest in addition to numerous other job related considerations to enhance her employment.<sup>3</sup>

Charles Pugh testified for the board. He stated that he had been instructed by the superintendent to post the Weir High Run as a component of a seven hour contract. Hancock County has established a salary schedule for bus operators on the basis of 5.75, 6, 6.50, 7, 7.50 or 8 hour contracts.

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<sup>3</sup> The entirety of grievant's written requests were as follows:

"Said bus operator shall:

Be able to opt, per diem, for replacement, if assigned to an irregular extra duty.

Be able to take their regularly assigned bus on the Auxillary (sic) run and to their residence between runs.

Be issued a gate key.

Be considered yearly as long as there is need for position unless mutually agreeing to terminate.

Be able to request bi-yearly update on value of contract.

Not apply said hour to over-time calculations."

Assignments include "regular" morning and afternoon runs (5.75) as well as various auxiliary runs which transport students to and from curricular sites and which add to and supplement the base 5.75 hour contract. He stated that no bus operators were awarded contracts in excess of eight hours.<sup>4</sup> Pugh testified that the Weir High run was terminated on March 1, 1985 due to lack of riders and subsequently the run operated as needed and was assigned to drivers on a rotating basis.

The school board contends that auxiliary runs are part of a bus operator's normally contracted work day and do not constitute an extracurricular assignment. The board maintains that the seven hour position with the Weir High run was properly posted; that grievant was offered the position; and that upon her refusal to accept the job as posted, Larry Shane was rightfully assigned to drive the run since there were no other applicants.

On or about May 20, 1986 grievant's WVEA representative, Tal Hutchins, submitted enumerated proposed finding of fact regarding the grievance to this board for consideration. Point six stated that the grievance concerned an "...apparent violation of the extra-duty assignment, W.Va. Code, 18A-4-16

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<sup>4</sup> His statement was challenged by grievant who charged that a certain contracted bus operator held another contract under a separate job classification and the total of the contracts exceeded eight hours. However, Pugh denied the charge and no evidence was produced to support her allegation.

and other related codes." The document concluded, "The essential question is whether the auxiliary Weir High run posted 11/2/84 was subject to West Virginia Code, 18A-4-16 as a separate extra-duty assignment." No other issues were presented or discussed, therefore, matters extraneous to the stated issue will be excluded, without prejudice to grievant, from consideration or judgement in the decision rendered herein.<sup>5</sup>

Turning then to the "essential question" of this grievance, W.Va. Code, 18A-4-16(1) defines extracurricular duties as, "...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." (emphasis added) Subsection (4) further provides

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<sup>5</sup> Other factors were considered in this determination: 1) A telephone conversation with Mr. Hutchins in late August, 1986 verified his intent to narrow the issues and to exclude extraneous matters; 2) Except for grievant's prepared statement at the evidentiary hearing, no issues other than the bus run were explored, expanded upon or considered in sufficient detail during the hearing; 3) The record does not contain adequate or clear evidence upon which to render a decision regarding all of grievant's complaints and requested relief; and, 4) Grievant may proceed with a separate grievance to address the numerous concerns merely outlined during the evidentiary hearing.

that the "employee's contract of employment shall be separate from the extracurricular assignment agreement...and shall not be conditioned upon the employee's acceptance or continuance of any extracurricular assignment proposed by the superintendent..." (emphasis added)

Thus in regard to this grievance, several factors must be initially considered; i.e., the purpose of the statute and what constitutes "regularly scheduled working hours" or the work day of any given board of education employee.

The purpose and intent of the statute was to protect board of education employees from being assigned on-going extracurricular duties beyond their normal and contractual work hours and without extra compensation. Further, separate contracts are provided in order that the prime employment is not threatened in the event the extra duty work is no longer needed or desired by either party.<sup>6</sup>

As for working hours, a board of education must structure its employees work time for effective and efficient operation of its schools. The scheduled hours of designated work performed under a contract of employment constitute an employee's regular working hours and all employees will not necessarily have the same working hours/work day. Some schools, for example, employ custodians around the clock in three eight hour shifts while other custodians in that school system may hold only

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<sup>6</sup> For treatment of this topic by the W.Va. Supreme Court, see Smith v. Logan Co. Bd. of Educ., 341 S.E.2d 685 (W.Va. 1985).

a five hour contract at any given time. Regular working hours for a board employee may thus include various segments of a twenty-four hour period, according to need. Of necessity, a school bus operator's working hours would encompass those various times when students are regularly transported to their curricular site for instruction and then returned home at the conclusion of their scholastic day. Therefore, regularly scheduled working hours for a school bus operator may not necessarily conform to those hours of teaching staff, other service personnel or even the administrative hours of a county transportation department.

There has been no showing that the Weir High Auxiliary run was subject to W.Va. Code, 18A-4-16 as a separate duty (extracurricular) assignment. Rather, the duty falls within the ambit of a bus operator's regular and normal function in Hancock County to transport students from a curricular site to home at the conclusion of the students scholastic day. Additionally, there has been no showing that the superintendent asked or assigned grievant to perform a duty without compensation and in addition to her regularly scheduled work hours. A seven hour position including the Weir High run was posted by the school board as is required by law. Grievant held a 7.50 hour contract and of her own volition bid on the seven hour position as posted and then refused the position when it was offered to her.

In addition to the above discussion the following findings and conclusions of law are incorporated herein.



## FINDINGS OF FACT

1. Grievant is employed by the Hancock County Board of Education as a bus operator and had fourteen years experience at the time this grievance was filed.

2. In the fall of 1984 an auxiliary run began operating from Weir High at 5:15 p.m. to transport students home at the conclusion of their scholastic day.

3. The run was assigned to bus operators for extra-duty compensation on a rotating basis until grievant insisted it be posted as an extracurricular vacancy.

4. On November 12, 1984 the board posted a job opening for a seven hour contracted position which incorporated a regular a.m., p.m. and the Weir High auxiliary run at 5:15 p.m.

5. Grievant bid on the position as posted, was notified that she won the bid but would not agree to relinquish her present contract for the position she bid upon.

6. As there were no other applicants for the position as posted, school officials assigned the run to a substitute bus operator and did not alter his contractual hours. The run declined and was discontinued March 1, 1985 and was again assigned, as needed, to drivers for extra-duty with compensation on a rotating basis.

7. The Hancock County Board of Education designates all bus transportation runs as a component of its bus operators'

function and regularly scheduled duties when the run involves ongoing and regular transport of students to and from an instructional site in the course of an uninterrupted scholastic day.

8. Following grievant's recitation of her written statement at the evidentiary hearing, grievant's representative focused upon the sole issue of the status of the Weir High run and other matters were not pursued during the proceedings, including final statements from the parties. Evidence, as presented, was inconclusive as to grievant's other concerns.

9. The grievance was formally modified by grievant through her WVEA representative who submitted proposals to this Board on May 20, 1986 which excluded all issues but whether the Weir High auxiliary run as posted November 2, 1984 was subject to school employment laws governing extracurricular assignments.

#### CONCLUSIONS OF LAW

1. Modifications of relief sought by a grievant may be granted by the level four hearing examiner. W.Va. Code, 18-29-2(k).

2. A board of education may define its employees workday, i.e., regularly scheduled work hours according to need by contract which total working time shall not exceed eight (8) hours.

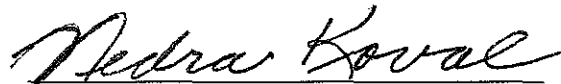
3. The provisions of W.Va. Code, 18A-4-16 protect school

employees from uncompensated work assignments in excess of their normally scheduled day's work.

4. A board of education may not assign or require its employees, including bus operators, to perform ongoing duties which occur on a regularly scheduled basis and which exceed the employee's regularly scheduled work hours without negotiating a separate contract of employment to provide the terms, conditions and compensation for said extracurricular duties. W.Va. Code, 18A-4-16 .

For all of the foregoing reasons this grievance, as it pertains to the issue of extracurricular assignments and grievant's request for an extracurricular contract for the Weir High run operating at various times during the 1984-85 academic year, is hereby denied.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Hancock County and such appeal must be filed within thirty (30) days of this decision. (Code, 18-29-7) Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the Court.



NEDRA KOVAL  
Hearing Examiner

Dated: 12/3/86