



REPLY TO:
401 Davis Avenue
Suite 315
Elkins, WV 26241
Telephone: 636-1123

Members
James Paul Geary
Chairman
Orton A. Jones
David L. White

**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**
ARCH A. MOORE, JR.
Governor

Offices
240 Capitol Street
Suite 508
Charleston, WV 25301
Telephone: 348-3361

RICHARD MCDANIEL

v.

DOCKET NO. 02-87-318-2

BERKELEY COUNTY BOARD OF EDUCATION

DECISION

Grievant, Richard McDaniel, is employed by the Berkeley County Board of Education as a full-time bus operator. Mr. McDaniel filed a level one grievance on September 11, 1987 in which he alleged that he was not paid for curricular trips made in addition to his regular run. The grievance was denied following an evidentiary hearing held at level two and was appealed to level four on December 7, 1987. An evidentiary hearing was conducted on February 18, 1988 and proposed findings of fact and conclusions of law were submitted by March 2, 1988.

The grievant argues that he is contractually required to work only four hours a day and that other trips occurring at times during the school day but other than his regularly scheduled work hours are extracurricular assignments. He requests that he be compensated for a three hour assignment on September 11, 1987 when he transported students from Hedgesville to Tuscarora Elementary School to the library, that all bus operators be paid for all trips other than their regular morning and evening runs and that contracts be negotiated for all extracurricular assignments.

The board of education asserts that since 1975 all bus operators have received, in addition to that required by the State minimum pay schedule, a salary supplement of four hundred dollars as remuneration for mid-day runs. The responsibility for these runs which include kindergarten, vocational and curricular/educational field trips, is to be shared or rotated as equally as possible among the drivers. The board argues that the practice of assigning the mid-day runs is within county policy and statutory guidelines and does not warrant

extra compensation which is awarded to bus operators who provide services for extracurricular activities.¹

Documentation submitted by the grievant indicates that his normal number of hours to be worked per day is four or four and one-half.² However, it was established at the level two hearing that he works an average of six and one-half hours per day. According to the testimony of Transportation Director Michael Neal this figure is an average time computed from two weeks work as the grievant and others are required to drive a mid-day kindergarten run every other week. (T. Level II, pp. 11-13) Previously, drivers of similar mid-day runs were paid a per diem supplement. However, effective in 1975 the Berkeley County Board of Education adopted a policy

¹This policy was enacted to implement Senate Bill 121 (not identified) and was apparently unopposed and possibly agreed to by the bus operators.

²This documentation consisted of what was referred to as a "contract rider" but is titled simply "Employee Contract Status Listing" and provides general employment data, i.e., employment term, salary, normal number of hours per day, etc. (Grievant's Exhibit No. 3) The second document appears to be a page from the "Second Month Report" filed with the State Department of Education and shows a listing of service personnel, years of experience, employment term, hours per day, etc. (Grievant's Exhibit No. 4)

whereby all drivers were awarded a four hundred dollar annual increment which would serve as compensation for the mid-day runs. This practice is presently set forth in county Policy GBRCC which provides that the length of a bus operators work day will usually be four to five hours but shall not exceed eight hours; Policies EDDAB and IFCB which provide that bus operators shall not receive extra pay for educational or curriculum field trips during the school day (but shall be paid if the trip is scheduled for a day when school is not in session); Policies EDDAA and GCBAI provide that a bus operator shall receive supplemental pay for extracurricular transportation.

The practice of not awarding supplemental pay for mid-day runs was also supported by an interpretation of the State Superintendent of Schools (October 7, 1983) when the total hours worked do not exceed those of a normal work day as determined by the present practice of the individual county.

In addition to the foregoing it is appropriate to make the following specific findings of fact and conclusions of law.

Findings of Fact

1. The grievant is employed by the Berkeley County Board of Education as a bus operator. His duties consist of morning and evening runs, a mid-day kindergarten run every other week and irregular extra-duty runs for field trips, etc.

2. Prior to 1975 drivers were awarded additional compensation for mid-day runs. Effective 1975 each driver was awarded four hundred dollars annual increment and were to equitably share the responsibilities of mid-day runs.

3. The practice of not awarding additional salary for mid-day runs is set forth in county policies EDDAB and IFCB. Compensation for extracurricular runs is provided for in policies EDDAA and GCBAI.

4. Although board generated documents indicate that the grievant works four or four and one-half hours per day, testimony offered by the grievant at level two establishes that he works five and one-half hours in completing his morning and evening runs and that every other week he works seven hours and fifteen minutes which includes a mid-day kindergarten run.

5. The grievant's contract of employment does not specify the number of hours to be worked per day.

6. Berkeley County Board of Education Policy GBRCC states that the length of a bus operator's work day will usually be four to five hours but will vary, not to exceed eight hours.

7. The grievant has provided no statutory or other persuasive authority to substantiate his argument that the duties of a bus operator are to include only morning and evening runs.

Conclusions of Law

1. A county board of education may establish a regular eight hour work day for bus operators. Swisher, et al. v. Preston County Board of Education, Docket No. 39-87-266-2.

2. The State Superintendent of Schools has determined that when a county has established an eight hour work day for bus operators the drivers are not entitled to supplemental pay for any extra-duty assignments which occur within the normal work day and requires only the driving of a bus to and from a certain location. Interpretations of the State Superintendent of Schools are entitled to great weight unless

shown to be clearly erroneous. Smith v. Board of Education of the County of Logan, 341 S.E. 2d 685 (W.Va. 1985); Thompson v. Kanawha County Board of Education, Docket No. 20-86-366-1; Aftanas v. Brooke County Board of Education, Docket No. 05-87-295-3.

3. The grievant has failed to show the interpretation of the State Superinendent of Schools to be clearly erroneous or that the applicable policies of the board of education to be in statutory violation. It is incumbent upon the grievant to prove all of the allegations constituting the grievance by a preponderance of the evidence. Richards, et al. v. Hancock County Board of Education, Docket No. 15-86-170-2; Parsons v. Cabell County Board of Education, Docket No. 06-87-067-1.

Accordingly, the grievance is DENIED.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Berkeley County and such appeal must be filed within thirty (30) days of receipt of this decision. (W. Va. 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.

DATED

May 2, 1988

Sue Keller

SUE KELLER
HEARING EXAMINER