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**DARRELL SKEENS, et al.**

**v.**

**Docket No. 44-88-006-1**

**ROANE COUNTY BOARD OF EDUCATION**

**D E C I S I O N**

Grievants, Darrell Skeens, Joe Starcher, James O'Dell, Ray Hayes, Cathy Murphy, Foster Fore, Paul Akenberger, Barry Pieffer, Gary Nichols, Roger Alvis, Netha Harold, David Marks, Kenneth Terrell and Ron Seabolt are bus operators employed by the Roane County Board of Education. They filed a grievance on September 30, 1987 alleging they were not being paid for certain runs to the Primary Center in Roane County while other drivers were being paid for similar runs, in violation of W.Va. Code, 18A-4-5b. A Level II hearing was held December 10, 1987 and, when no decision at that level was issued, grievants appealed to Level III, where the Board waived proceedings. Upon appeal to Level IV the parties indicated a decision could be made on the record developed at Level II and supplemental briefs.

The parties essentially agree on the facts of the case. At the beginning of the 1982-83 school year, bus drivers in the county were involved in a training program and administrators took the opportunity to discuss coverage of certain bus routes to and from the Primary Center. This Center is apparently a school which serves only first grade students in a particular area of the county. During the course of their discussion, the administrators explained that either all bus operators who picked up first grade students on their routes could individually transport them directly to the Center or all the students could be taken to Spencer Elementary School, where one driver would then transport them on to the Center. The latter plan would entail a rotation of fifteen (15) drivers with each making the run from Spencer Elementary to the Center approximately twenty-five (25) times a year.<sup>1</sup> The drivers concurred that it would not be logical for each to make the run and agreed to the rotation of the run without additional compensation. The drivers occasionally approached the administration during the following years

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<sup>1</sup>The students' evening return from the Center was accomplished through an arrangement with another driver who apparently lived in the area.

about payment for the run but were denied.<sup>2</sup> Most of those same drivers joined in the present grievance in which they contend that two other drivers in the county make similar runs to a different school which are compensated in violation of the uniformity in pay provisions contained in W.Va. Code, 18A-4-5b, which provides:

These county schedules shall be uniform throughout the county with regard to any training, classification, experience, years of employment, responsibility, duties, pupil participation, pupil enrollment, size of buildings, operation of equipment or other requirements. Further, uniformity shall apply to all salaries, rates of pay, benefits, increments or compensation for all persons regularly employed and performing like assignments and duties within the county...

It is not clear from the record just what relief grievants seek as the only reference thereto in the Level II transcript was the statement that "its money". (T.14) The Board contends the drivers' agreement with the rotation system in 1982 and their adherence to the plan in subsequent years precludes them from now objecting to its terms.

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<sup>2</sup>The record does not reveal why the drivers originally agreed that the run should be an uncompensated one.

The grievants do not present any legal argument that the imposition of the runs to the Primary Center in 1982 was in violation of any portions of the West Virginia Code concerning extra-duty or extracurricular assignments but merely assert those runs and those of the other two drivers are "like" assignments. Such cases entail a quantitative and sometimes qualitative analysis of the respective assignments of two or more employees. See Wray v. Mercer County Board of Education, Docket No. 27-87-285-4; Evans and Arrington v. Fayette County Board of Education, Docket No. 10-87-314-4; Bengey v. Summers County Board of Education, Docket No. 45-86-056. The production of evidence sufficient to facilitate the comparison is necessarily part of a grievant's burden to prove the allegations contained in a grievance by a preponderance of the evidence. The record in the present case is inadequate for such a comparison. There are only vague references in the Level II transcript to the type of runs the two bus drivers, Dayton McClung and Barbara Buckannon, were making each Friday.<sup>3</sup> The only person testifying about these particular runs was Mr. James Bailey, Director of Transportation, and his explanation provided little information on when or why the runs were made. (T.8) A finding that the grievants were performing

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<sup>3</sup>Both parties attempt to clarify this particular part of the grievance in their briefs but facts not developed in the record cannot be considered relevant or reliable evidence.

"like" assignments within the meaning of W.Va. Code, 18A-4-5b is not possible absent a sufficient record.

In addition to the foregoing, the following findings of fact and conclusions of law are made.

#### FINDINGS OF FACT

1. The grievants are bus operators employed by the Roane County Board of Education.

2. Prior to the beginning of the 1982-83 school term the grievants agreed to make runs from Spencer Elementary School to the Primary Center on a rotation basis without additional compensation.

3. From the beginning of the 1982-83 school term to the present, grievants have made the runs from Spencer Elementary to the Primary Center with each driver making said run approximately twenty-five (25) times a year.

#### CONCLUSIONS OF LAW

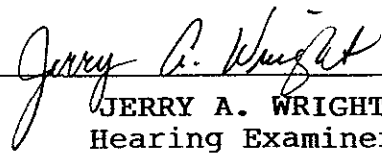
1. It is incumbent on a grievant seeking relief, pursuant to W.Va. Code, 18-29-1, et seq., to prove all of the allegations constituting the grievance by a preponderance of the evidence. Bulford v. Preston County Board of Education, Docket No. 39-87-203; Andrews v. Putnam County Board of Education, Docket No.

40-87-330-1; Kirk v. McDowell County Board of Education, Docket No. 03-87-178; Randolph v. Harrison County Board of Education, Docket No. 17-88-001-2.

2. The grievants failed to establish, by a preponderance of the evidence, that they and the bus operators, Dayton McClung and Barbara Buckannon, were performing like assignments and duties which would require the application of the uniformity in pay provisions of W.Va. Code, 18A-4-5b.

Accordingly, the grievance is **DENIED**.

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

  
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JERRY A. WRIGHT  
Hearing Examiner

Dated: October 26, 1988