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**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**
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ORVIL A. SMITH

v.

Docket No. 21-88-043-3

LEWIS COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, Orvil Smith, is employed by the Lewis County Board of Education as a school bus operator. On November 4, 1987 he filed a level one grievance in which he alleged a violation of W.Va. Code §18A-4-8a when school officials made an adjustment to his driving schedule after the beginning of the school year. Grievant did not prevail at levels one, two or three and a level four appeal was filed March 7, 1988; grievant requested that the decision be rendered on the basis of the record developed below. As a considerable period of time had transpired and the record had not been forwarded to the hearing examiner, a level four hearing was scheduled for September 8, 1988. The parties requested that the hearing be cancelled and again asked that the decision be rendered based on the record. Grievant's counsel submitted proposed findings

of fact and conclusions of law on September 19, the record was forwarded September 28, and the board's counsel filed his proposals and brief October 19, 1988.¹

Grievant has been a bus operator for approximately eighteen years. During the past several years his driving schedule required the transport of students to Roanoke Elementary School in the morning and home from Roanoke School in the afternoon. In addition, he drove an extra-duty morning run and a shuttle run four days a week for which he received extra compensation. He testified that prior to the 1987-88 school year his driving duties were accomplished within an 8-hour day.

During the 1986-87 school year, grievant's regular driving assignment took him from Three Lick Road to Roanoke School. He would then set out from Roanoke School to Wolf Pen Road, about eleven miles, to pick up several students (3 stops) and return to Roanoke School. This entire route was reversed in the afternoon. The total daily bus mileage for the second part of his route was 44 miles and it required 40 minutes driving time.

¹ Level two and level three hearings were conducted December 21, 1987 and February 22, 1988, respectively. Various portions of the level three transcript contain lines which indicate the omission of testimony and argument, but it is not known who prepared the transcript or why the deletions occur. The hearing examiner can only presume that the parties are satisfied as to the accuracy of the transcripts.

At the conclusion of the 1986-87 school year, grievant and the other bus operators were placed on administrative transfer. By letter dated July 21, 1987, the school superintendent, Dr. Joseph Mace, reassigned grievant for the 1987-88 school year to the position he held at the close of the 1986-87 school year.

When the 1987-88 school year began, the transportation director, Paul Derico, informed grievant that the second part of the Roanoke School route would be dropped, i.e., the twice-daily Roanoke School-Wolf Pen run. Grievant testified, "[h]e told me that it was wasting time and gasoline - I was only picking up three kids - most days." (T.13, 12/21/88). Grievant's original work schedule for the 1987-88 school term reflected the deletion of the Roanoke School-Wolf Pen run. (Gr. Ex. A, 12/21/87).

Grievant stated that after several weeks Mr. Derico asked him to resume a portion of the eliminated second part of his 1986-87 route. The proposed schedule adjustment required that grievant again depart Roanoke School and travel about 5.5 miles to Goose Pen Road, situated approximately mid-way between the school and Wolf Pen Road, to pick up 15-18 students destined for Roanoke School. Those students arrived at the Goose Pen

site in another bus and were to transfer to grievant's bus. Grievant stated that he would not agree to the schedule change but, in October 1987, Mr. Derico ordered him to comply. Grievant said he must wait at Goose Pen from 15 to 30 minutes for the bus to arrive with the transfer passengers.

Mr. Derico tells the story somewhat differently. He testified that, during an August 1987 organizational meeting, he informed grievant that he would be "temporarily relieved" of the second part of his regular route until "we looked at the enrollment figures on bus #44, which is driven by Bill McClain." (T.28, 12/21/87). Mr. Derico testified that, after several weeks into the 1987-88 school year, he discussed with grievant the possibility that the bus route would have to be extended into a portion of last year's extra run from Roanoke School and back. Mr. Derico stated that at first he did not require grievant to assume the Roanoke School-Goose Pen run because grievant had threatened to file a grievance and so he, (Mr. Derico), approached the board of education about the problem with the overload.

Mr. McClain gave his version of the schedule adjustments. Mr. McClain testified that his regular bus run requires that he pick up about 80 passengers in the Jennings Run Road area, from kindergarten through senior high school age, on his 77-passenger bus. He commences to the forks of Jennings Run with this

load where the older students transfer from his bus to two other buses; 60 of the younger and smaller students remain on his bus. For many years Mr. McClain then would receive 15-18 elementary students from one of the buses he met at Jennings Run and transport them to Roanoke School, passing Goose Pen Road on the way.

McClain voiced concern to the transportation director about the overload that occurred before he got to the forks at Jennings Run to transfer the older students onto the other buses. Mr. McClain stated that as a result of his complaint about the overload, he then was relieved of picking up the 15-18 students at the Jennings Run stopover. Instead, the driver of their bus now stops at the Goose Pen Road site, where the students board grievant's bus for their transport to Roanoke School, and their driver no longer transports them to the forks at Jennings Run where they used to board McClain's bus. Mr. McClain stated that the schedule alteration did not relieve his overload but added 10 minutes to his driving time. McClain asserted that he still drives by Goose Pen Road, but with only a 60-passenger load, and, if the 15-18 students grievant now picks up were still being transferred to him at Jennings Run after the larger students departed his bus, he would be just up to capacity. He was willing to resume the original schedule with respect to the 15-18 students needing transport to Roanoke School. (See, T.16-18, 12/21/87).

During cross-examination, Mr. Derico admitted that the overloading on Mr. McClain's bus route was rectified, in part, after the school year began when McClain's 71-passenger bus was replaced with a 77-passenger bus. Mr. Derico also admitted that if an overload existed, it existed in Mr. McClain's bus somewhere in the Jennings Run area of his run before the older students transferred to another bus. He also admitted that he was aware that Mr. McClain was willing to transport the students now picked up by grievant at Goose Pen Run and that McClain did not feel it was an overload on his bus to transport that particular group of students to Roanoke School. Mr. Derico testified that both he and the superintendent were aware of these matters and that on October 26, 1987, they had presented the information to the board of education, but the board is the policy making group and it makes the final decisions.²

Grievant argues that the driving schedule given to him at the onset of the 1987-88 school year, which retained the Three Lick Road/Roanoke School run but which eliminated the Roanoke School/Wolf Pen Road run, was unlawfully altered in October 1987 when a run from Roanoke School to Goose Pen Road was added to his schedule without his permission or consent.

² Much of the testimony regarding the various bus runs and the student population on the runs was very confusing as was the testimony about various proposals submitted to the board. Additionally, there was no documentation made part of the record with respect to any of these matters that were presented to the board nor any conclusive statements about what the board determined to do. The evidence suggests that grievant's original 1987-88 driving schedule, eliminating the Wolf Pen run, and the October 1987 adjustment, adding the Goose Pen run, were made entirely on the authority of Mr. Derico.

He contends that the addition of the second run to his driving schedule does not eliminate the passenger overage on Bill McClain's bus but, instead, adds 22 miles per day as well as up to one hour's additional time for him to complete his own route. He stated that the extra time involved, in which he sits idle at Goose Pen and waits for the bus to arrive with students, extends his workday unnecessarily, and often beyond an 8-hour day.

The respondent board contends that grievant was contractually obligated to perform the entire driving assignment he had in 1986-87 again in 1987-88, that is, drive a run from Three Lick Road to Roanoke School and thence from Roanoke School to Wolf Pen Road and back to Roanoke. It urges that the alteration of grievant's contractual obligation which required that he drive only a portion of the second part of his route, from Roanoke to Goose Pen Road, actually reduced his driving time by miles and by time.

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

FINDINGS OF FACT

1. Grievant is employed by the respondent board of education as a full-time bus operator and has been so employed for the past eighteen years.

2. During the 1986-87 school year, grievant was assigned to a morning bus run from Three Lick Road to Roanoke Elementary School, thence from Roanoke School to Wolf Pen Road and back to Roanoke School. This two-part driving route essentially was reversed to return children home in the afternoon. Unrebutted testimony established that the 40-minute, 44-mile daily run to pick up just a few students at three stops on the Wolf Pen Road run was a waste of gasoline and time.

3. In the spring of the 1986-87 school year, grievant was placed on an administrative transfer. On July 21, 1987, grievant received a letter from the school superintendent, Dr. Joseph Mace, which stated that the board had approved his return to the position he held at the close of the 1986-87 school year. Additionally, the superintendent wrote:

This action was taken with the understanding that re-adjustments of bus schedules were made or could be made, as needed, to better serve the students of Lewis County for the 1987-88 school year.

4. When the 1987-88 school year began, the transportation director, Paul Derico, who had been on the job for approximately five months, notified grievant that the second part of his bus run, i.e., the Roanoke School-Wolf Pen run, was to be eliminated. Grievant's original 1987-88 work schedule reflected the elimination of the Wolf Pen run.

5. The reinstatement of grievant to the entirety of his 1986-87 driving schedule/route was effectuated via the superintendent's July 21, 1987 letter; however, that assignment was altered at the beginning of the 1987-88 school year when grievant agreed to drop the second part of his route, the Roanoke School-Wolf Pen run, and to drive only the Three Lick Run-Roanoke School portion of the route.

6. In October 1987, Mr. Derico ordered grievant to resume a portion of the run he held in 1986-87. After completing the first part of the route, grievant again was to depart from Roanoke School but only to Goose Pen Road, approximately half the distance, 5.5. miles along the road he formerly traveled on the Wolf Pen run. At Goose Pen Road, grievant would generally wait from 15 to 30 minutes for an incoming bus. Approximately 15-18 students would transfer from the incoming bus to grievant's waiting bus, for transport back to Roanoke School. Ostensibly, this schedule change was effected to alleviate overcrowding on Bill McClain's bus.

7. Mr. McClain's overcrowded bus condition existed in the Jennings Run area when he had older students aboard. After the older students' departed McClain's bus at the forks of Jennings Run, only 60 students remained. The 77-passenger bus given to McClain in October could accommodate the 15-18 "Goose Pen transfer students" who needed transport to Roanoke School.

8. Mr. Derico did not eliminate the overcrowding on Mr. McClain's bus when he ordered grievant to assume the Roanoke School-Goose Pen run to pick up the students who were formerly transferred to and transported by McClain's bus.

9. The schedule changes ordered by Mr. Derico added time to Mr. McClain's and grievant's workday and did not "better serve the students" or the bus operators involved.

CONCLUSIONS OF LAW

1. No service employee shall have his daily work schedule changed during the school year without his written consent. W.Va. Code, §18A-4-8a; Terek v. Ohio County Board of Education, Docket No. 35-87-294-3 (July 20, 1988).

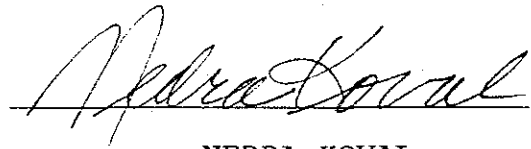
2. Grievant's daily work schedule was established at the onset of the 1987-88 school year when he agreed to drop a portion of his 1986-87 driving route and he did not agree in October 1987 to resume part of the eliminated run.

3. Slight alterations of a bus operator's driving schedule during a school year may be necessary due to need; however, an arbitrary alteration, which adds time or distance to the operator's workday and which serves no useful purpose, constitutes an unlawful schedule change as contemplated by W.Va. Code §18A-4-8a.

Accordingly, this grievance is **GRANTED** and the school board is Ordered to restore the original driving schedule given to grievant by the transportation director at the beginning of the 1987-88 school year.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Lewis 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 Hearing Examiners is a party to such appeal, and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate court.

DATED: December 30, 1988

A handwritten signature in cursive script, reading "Nedra Koval", written over a horizontal line.

NEDRA KOVAL
Hearing Examiner