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**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**

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DENNIS R. SWIGER

v.

Docket No. 09-88-092

DODDRIDGE COUNTY BOARD OF EDUCATION

D E C I S I O N

Dennis Swiger, grievant, is employed by the Doddridge County Board of Education as a bus operator. On June 1, 1988 he filed a grievance at level four appealing adverse decisions at the lower administrative levels. He alleged violations of W.Va. Code, 18A-4-5b, and W.Va. Code, 18A-4-8a when he was assigned to drive supplemental driving runs for which he received no extra compensation. As the superintendent issued a level two decision without conducting a hearing of record, the grievance was remanded to level two on June 7, 1988. The superintendent conducted a hearing June 10, 1988 and submitted findings of fact and conclusions of law to the grievant and the undersigned examiner by letter format dated June 27, 1988. No additional materials have been submitted by either grievant's West Virginia School Service Personnel Association counsel or the attorney retained by the board for the level two hearing.

Grievant's daily driving responsibilities take him out of Doddridge County to transport students to the United Career Center (Center) in Clarksburg, West Virginia, located in Harrison County. The Center is a tri-county vocational high school serving Harrison, Taylor and Doddridge counties. Grievant's duties begin when he sets forth to pick up students at the high school in Doddridge County at 11:20 a.m.; he transports them to the Center arriving at noon or shortly thereafter. The trip is then reversed when he picks up the students at the Center at 2:30 p.m. arriving back at the high school in Doddridge County at about 3:15 p.m. He stated that during the fall semester he complied with the request of the assistant director at the Center that he transport students from the Center to the United Hospital for three days a week but the Taylor County bus driver who was asked to assume that task in the spring semester received extra compensation from his county. Besides the hospital run, grievant states that he had occasionally transported Center students to Glaspell Lumber, Hartland and Salem Nursing Homes, the Truss factory in Grafton, a bridge-building site in Nutter Fort, Salem Printing and other sites. He filed a grievance this spring when officials at the Center asked him to regularly transport students back and forth several days a week from the Center to a hotel in Bridgeport to accommodate a new program in Hotel Management (T.3). The grievance was originally filed with Center officials, who did not respond (T.5).

Grievant objects to requests of Center officials that he make ongoing extra runs without clearing the requests with the Doddridge County Board of Education and contends that he should not have to make those kind of administrative decisions (T.7). He argues that his driving schedule is being altered without his permission in violation of W.Va. Code, 18A-4-8a. He further objects to the assignments because drivers from Harrison and Taylor counties receive extra compensation from their respective employers for the extra driving they perform for the Center and Doddridge County pays its regular drivers for certain extra driving runs but does not pay him for the extra driving he does in Harrison County.¹

Grievant stated that he did not mind driving an occasional field trip on a voluntary basis without pay with the students from the Center in a like manner as performed by the county's regular drivers in Doddridge County, but he envisions that he will have certain ongoing driving assignments three (3) days per week next year with the fall semester trips to United Hospital and the spring semester trips for Hotel Management. For relief he asks that he not be assigned the ongoing regular trips, or, alternatively, that he be compensated if he elects to perform the ongoing supplemental driving for the Center.

¹ Whatever Harrison and Taylor counties did or did not do with respect to extra compensation for their drivers serving the Center is not relevant to the issue herein as Doddridge County is only required to treat its own employees in a uniform manner with respect to work assignments, compensation and other benefits. W.Va. Code, 18A-4-5b.

Mr. Ora Ford, grievant's immediate supervisor, testified on behalf of the board. He is the Coordinator of Supportive Services and in that capacity serves as the transportation director, among other things. Mr. Ford recalled that prior to his assumption of the transportation director's role, the county had responded to State requirements that it establish work hours for all of its employees and it had instituted a seven-hour workday for bus operators.² He stated that he was "not sure" whether grievant's work schedule had been wrongfully altered or increased by virtue of the driving assignments grievant performed beyond the transport of the students to and from the Center (T.14). He said he counseled grievant initially that he (grievant) was in a unique driving situation at the Center and he only knew of rules and regulations that would cover the bus operators whose regular assignments were in-county (T.14).

Mr. Ford testified that he asks for volunteers to drive occasionally during the day to take students on a field trip or the like and if all refuse, they are not sent out (presumably a substitute driver would then be employed to transport the students). He said, however, compensation is provided if the

² The establishment of workday hours for bus operators primarily serves as a measuring stick to determine when a driver works overtime, i.e., beyond his daily or weekly work hours. As State law requires payment of one and one-half times an operator's wages for work performed in excess of 40 hours per week regardless of whether that work occurs as a result of an operator's regularly scheduled run or an accumulation of various supplemental or extra driving runs, the need exists to have an orderly manner in which to log driving hours beyond the stipulated workday.

bus goes out-of-county. If the driving is "extracurricular," a night basketball game for example, a rotation system is in place to offer the assignments to the drivers for extra compensation. If the trip overlaps with the operator's regular driving and a substitute is hired for the regular run, those overlapped hours are then deducted from the total driving hours of the extracurricular trip. He stated that there was only one situation in-county similar to grievant's situation where an ongoing run occurs between schools after the a.m. and p.m. regular runs of the drivers. Students from one school are transported about every two weeks at 1:30 p.m. to visit the library of another school and the drivers who served that area split up the driving. He did not indicate how many drivers were involved in sharing the library run, how many hours per month for each were involved or whether they received extra compensation for their work. It was his opinion that grievant had to drive in Harrison County whenever Center officials so indicated.

Although the board was represented by counsel at the level two hearing, its attorney made no opening or closing statements setting forth the board's legal position in this matter. Without citation to any legal authority the level two decision stated the following conclusion of law:

Since Doddridge County High School students attend United Career Center, programs offered there are extensions of the Doddridge County educational program and since these runs fall well within your working day and are a part of your normal driving responsibilities at United Career Center, we do not feel there has been a violation of policy in this situation.

The respondent's transportation director correctly states that grievant's driving situation is unique and, in fact, all bus operators are in a unique employment situation with their employers. No other service personnel other than classroom and bus aides are placed in a proximity to students as vital and responsible as are bus operators who must additionally meet State certification requirements for physical fitness to perform their driving duties. Traditionally, bus operators have a split assignment, i.e., they run students to school in the morning and return them home in the afternoon. Many are employed elsewhere in the intervening hours. See, Billick, Duvall and Hewitt v. Ohio County Board of Education, Docket Nos. 35-86-370, 371, 372-3. Moreover, bus drivers must begin their duties far earlier than the school day begins and, accordingly, end their driving duties long after the school day has ended. A given employee's workday and working hours contemplates a continuous span of time initiating and terminating the day's work, but reconciling the split hours of a bus operator's driving time with continuous hours of the stated workday may be impossible.

While W.Va. Code, 18A-4-8 provides that custodians whose daily work schedule is interrupted (split schedule) and who do not work a continuous period in one day shall receive additional compensation equal to one-eighth of their total salary, no similar provisions have been accorded bus drivers. However, W.Va. Code,

18A-4-8a does accommodate bus operators as it provides that any service employee whose employment hours exceed three and one-half hours per day is entitled to full-time wages. Bengey v. Summers County Board of Education, Docket No. 45-86-056; Terek v. Ohio County Board of Education, Docket No. 35-87-294-3. The respondent's assertion that hours or driving runs can be added at any time to a bus operator's established regular driving time to reach the required hours of the stated workday has no foundation in the statutory scheme of Chapters 18 and 18A of the W.Va. Code which regulates the compensation of school service employees. Terek v. Ohio County Board of Education, supra. Moreover, grievant prevails with his correctly-argued position that W.Va. Code, 18A-4-8a prohibits a board of education from changing a service employee's work schedule during the school year without the employee's written consent. May v. Grant County Board of Education, Docket No. 12-86-164-2; Coburn v. Kanawha County Board of Education, Docket No. 20-86-087.

As the county has proffered no policy or other documentation or evidence with respect to how its drivers may or may not be compensated for supplemental driving other than the assertion that drivers are paid for extra-duty work performed out-of-county during the instructional day, then grievant is entitled to extra compensation for his extra driving in Harrison County.

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

FINDINGS OF FACT

1. Grievant is employed as a bus operator for the Doddridge County Board of Education and his normally scheduled a.m. and p.m. regular run of transporting Doddridge County High School students to and from the multi-county vocational school, United Career Center (Center), takes him into Harrison County on a daily basis.

2. In the fall semester of the 1987-88 school year, Center officials asked that grievant assume a regular supplemental driving assignment transporting Center students three days a week to and from a hospital site in conjunction with the Center's vocational training mission. Grievant did not refuse but felt uncomfortable making the decision without formal clearance from his employer, the respondent board of education. He was not compensated for the extra driving.

3. Grievant filed a grievance against the Center in the spring semester when one of its officials gave another county's operator the hospital run and gave him a run for three days a week to a local hotel to accommodate a new course it offered. The other driver was provided extra wages from his employer county, but grievant received no extra compensation from the respondent board. Center officials did not process the grievance as the Center is not grievant's employer.

4. Occasionally exposing vocational students to various business operations and regularly transporting them to the site of yet other business enterprises for training is an integral part of the day-to-day activities of the Center in Harrison County.

5. Doddridge County bus operators generally respond affirmatively on a purely voluntary basis to occasional requests that they transport students for a field trip or other activity during the instructional day within Doddridge County for no extra compensation but are given the option to refuse. Grievant has assented to requests from Center officials in Harrison County that he occasionally transport Center students on a field trip to a certain nearby work or business site to view operations.

6. According to the respondent, only one other ongoing supplemental driving run similar to grievant's situation with the Center exists within Doddridge County. An unstated number of county operators share the responsibility for transporting students every two weeks from one school to another to visit a library and the run occurs between the drivers' a.m. and p.m. regular runs during the instructional day. The record does not reveal whether the library run bus operators receive extra compensation but the assignment does not appear to be onerous and certainly does not involve the frequency with which grievant's extra driving entails.

7. Respondent's bus operators are compensated for extra driving occurring between their regular a.m. and p.m. runs during the instructional day which takes them outside of Doddridge County. (T.15).

CONCLUSIONS OF LAW

1. W.Va. Code, 18A-4-8a provides that any service employee who is employed for more than three and one-half hours per day shall be paid full-time wages. Bengey v. Summers County Board of Education, Docket No. 45-86-056; Terek v. Ohio County Board of Education, Docket No. 35-87-294-3.

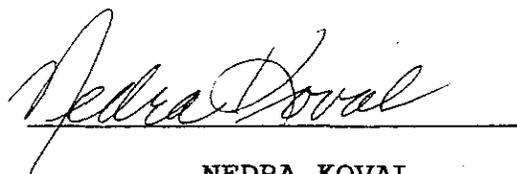
2. A school board may not alter a service employee's daily work schedule during the school year without his written consent. W.Va. Code, 18A-4-8a; May v. Grant County Board of Education, Docket No. 12-86-164-2; Coburn v. Kanawha County Board of Education, Docket No. 20-86-087.

3. Altering a daily work schedule would include adding driving time to a bus operator's duties. Terek v. Ohio County Board of Education, supra.

Accordingly, this grievance is **GRANTED** and the respondent is Ordered to allow grievant the option of refusing the extra ongoing driving requested of him by the United Career Center or accepting the supplemental work for extra compensation provided by the board.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Doddridge 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: August 31, 1988

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

NEDRA KOVAL
Hearing Examiner