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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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ROBERT TEREK

v.

Docket No. 35-87-294-3

OHIO COUNTY BOARD OF EDUCATION

D E C I S I O N

Robert Terek, grievant, is regularly employed by the Ohio County Board of Education as a bus operator. On November 16, 1987 he filed a level four grievance appeal alleging that the school board improperly changed his daily work schedule. The parties agreed the matter could be decided upon the record and transcript of the level two hearing and jointly submitted factual stipulations. It was decided that the board and grievant would file separate proposed conclusions of law through their respective counsel. Grievant's counsel submitted proposals March 23, 1988 and the board's counsel submitted his proposals July 13, 1988.

Prior to the 1987-88 school year, grievant's regular morning and afternoon runs as well as the half-hour bus clean-up duty granted all drivers totaled five hours and 40 minutes. On September 11, 1987 the transportation director added to grievant's schedule a supplemental run between grievant's morning and afternoon runs; grievant's work day now consists of six hours and 10 minutes. Grievant did not bid on the supplemental run (it was not posted as a driving vacancy).

Grievant argues the board may not alter his daily work schedule during the school year without his written consent as per W.Va. Code, 18A-4-8a. He asserts that W.Va. Code, 18A-4-8a is additionally applicable in this situation because the statute requires a board of education to pay full-time wages to every employee who works in excess of three and one-half hours per day and he was entitled to full-time wages even though his regular runs and working hours fell 20 minutes shy of the six hour board established work day. He further contends the board violated the notice and posting requirements for position vacancies as mandated by W.Va. Code, 18A-4-8b(b) when it assigned him the supplemental run vacancy. In support of his position grievant cites a Grievance Board decision, Moore v. Ohio County Board of Education, Docket No. 35-87-027-3. Moore determined that the Ohio County Board of Education was bound by the procedures it had established that supplemental runs were separately compensated driving assignments and could not be arbitrarily assigned to drivers to fill their schedules but rather must be offered to senior operators in the agreed upon manner entered into by the board and the operators.

Grievant claims he does not object to the board increasing his regular driving time to accommodate the six hour work day, but he objects to the arbitrary assignment of a supplemental run he did not bid upon which exceeds his work day by ten minutes even though he is compensated for the extra ten minutes of work.

The board's position is that it did not alter grievant's schedule as additional time was added to complete grievant's six hour work day. It maintains that the transportation director followed practice to provide all drivers a full six hour work day and was not therefore required to post the supplemental run vacancy. It cites County Policy 4141 (salary schedule) which provides in part:

Should the daily driving time be less than 5 and one-half hours for run(s) assigned two options are provided:

a) driver may elect, by written agreement, to adjust wages to the driving time plus 30 minutes for pre-service inspection, cleaning of bus, and refueling or

b) make up time at a later date equal to a minimum total work time of 6 hours per day.

The board urges that it has discretionary power to make reasonable work assignments as long as the employee is properly compensated.

The respondent's position in this matter is not supported by fact or law. The board presented no evidence that grievant agreed in writing to the salary or hourly adjustments set forth in Policy 4141. Moreover, grievant had been driving only his regular runs with shortfalls on the six hour day for several

years and he neither bid upon nor was assigned to drive supplemental runs in the past to fill his work day. Thus, the Director was not following past practice with respect to the grievant when he arbitrarily added driving time to grievant's daily schedule on September 11, 1987.

While the board has discretionary powers regarding personnel matters those powers are not without limits and it may not alter grievant's daily work schedule after the start of a school year or avoid other statutory requirements and regulations affecting its service employees.

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

FINDINGS OF FACT

1. Grievant herein is employed as a full-time bus operator and prior to the 1987-88 school year he had a five hour and 40 minute driving schedule consisting of a regular morning and afternoon run and a thirty-minute bus clean-up duty (all drivers have the clean-up duty).

2. The school board has determined that bus operators have a six hour work day although it currently employs operators who have work days exceeding six hours up to eight hour daily driving assignments. The expanded work days include supplemental runs for which the driver receives extra compensation.

3. The board offers several options via Policy 4141 when a driving schedule of regular runs and clean-up duty falls short of the six hour day but a driver must agree in writing to have his or her salary reduced or to accumulate hours owed to the board. Conversely, the board permits drivers to bid upon supplemental runs for extra compensation and when a driver with less than a six hour work schedule knowingly bids on a supplemental run, then all or part of those supplemental driving hours can be placed into the driver's regular workday and extra compensation only begins when the six hour work day is satisfied. See, Carroll v. Ohio Co. Bd. of Ed., Civil Action No. 82-C-730 and Stein v. Ohio Co. Bd. of Ed., Civil Action No. 84-C-223.

4. On September 11, 1987 the Transportation Director assigned grievant a supplemental run which added driving time to his schedule and resulted in a six hour and 10 minute work day. Grievant was compensated for the ten minutes beyond the six hour work day.

5. Grievant herein did not agree in writing to Policy 4141 adjustments and did not bid upon the vacant supplemental run which the Transportation Director added to his schedule.

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.

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 and extending an employee's work day beyond that designated by the board without the driver's written consent.

Accordingly, this grievance is **GRANTED** and the board is Ordered to restore grievant's previous schedule and not assign grievant a supplemental run unless he bids upon said extra work.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Ohio 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: July 20, 1988

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

NEDRA KOVAL
Hearing Examiner