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DAVID VICKERS

v.

Docket No. 22-87-217

LINCOLN COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant, David Vickers, is employed by the Lincoln County Board of Education as a school bus operator. His grievance alleged that the Board reduced his pay as a vocational education bus operator from \$280.00 per month to \$160.00 per month in violation of W.Va. Code, 18A-4-8. An evidentiary hearing was conducted before the Board on July 21, 1987 and the decision at that level was appealed to Level IV where an evidentiary hearing was conducted on October 30, 1987.¹

Grievant has been employed as a regular bus operator for ten (10) years and works out of the Hamlin area serving Hamlin High

¹ The grievance was submitted for decision on the transcript of the Level III hearing, hereinafter (T.__), and the additional testimony of the grievant and the Superintendent of Schools, Harold Smith.

High School, Hamlin Junior High School, and Hamlin Elementary School. (T.8) The Hamlin school attendance area is one of four in Lincoln County, i.e., Hamlin, Guyan Valley, Harts and Duval. (Employee's Exhibit No. 1) Grievant also has an extracurricular contract for transporting students from Hamlin High School to the Charles Yeager Career Center and a round trip to that vocational school required fifteen minutes. (T.18).

In April 1987 Mr. Vickers was notified pursuant to W.Va. Code, 18A-2-6 that his extra-duty contract would be terminated and a new one initiated to provide a more equitable pay scale for all the bus operators making such runs to the Career Center.² This action was apparently the result of a grievance filed by the operators on the Guyan Valley and Duval runs in the fall of 1986 complaining they received the same rate of pay as grievant (\$4.00 per run), whose run was one mile one way while their runs were eleven miles

² The parties referred to these contracts as supplemental, extra-duty and/or extracurricular. It is sufficient to simply note these runs and the corresponding rates of pay were considered by the Board and the drivers to be separate from regular bus operators contracts. There is no contention that any of the procedural or substantive rights afforded regular contracts are not applicable to these runs.

one way.³ Resolution of that grievance was deferred to allow the Board an opportunity to review the policy and method of payment for supplemental vocational bus runs.⁴ Subsequently, the Board adopted the new pay scale effective July 1, 1987 which took into account the amount of time and mileage involved in the runs to the Career Center. This new pay schedule provided that the drivers making the Harts run (one trip per day) and Hamlin runs (two or more trips per day) would be paid \$160.00 per month and the drivers making the Duval and Guyan Valley runs would be paid \$200.00 per month. All four were apparently considered new positions and were posted and grievant applied for and received the Hamlin run.

³ At grievant's hearing before the Board he suggested that pay for vocational school runs should remain intact but drivers in the Duval and Guyan Valley areas should have their pay increased to compensate them for the longer distances they drove.

⁴ At that time Board policy provided that drivers performing bus runs to the Career Center would be paid \$4.00 per trip for Hamlin, Duval and Guyan Valley and \$8.00 per trip for Harts.

The number of trips per day varied at each school: Harts High School (32 miles one way) was served once a day, Guyan Valley and Duval (11 miles one way) were served twice a day and Hamlin (1 mile one way) was served three to four times a day.

Although this new system is phrased in terms of monthly salaries, the drivers are not paid for days when school is closed because of snow or holidays and to this extent they are now being paid on a per diem basis making the same number of runs per day. Thus, the new rate of pay is more accurately stated as \$8.00 per day driven for Harts and Hamlin and \$10.00 per day driven for Duval and Guyan Valley.

Under this new system of compensation, grievant receives \$8.00 for three and one-half trips per day to the Career Center whereas he was previously paid \$14.00 for the same number of trips. It is his contention that this reduction in pay is a violation of W.Va. Code, 18A-4-8, which in pertinent part provides:

No service employee, without his written consent, may be reclassified by class title, nor may a service employee, without his written consent, be relegated to any condition of employment which would result in a reduction of his salary, rate of pay, compensation or benefits earned during the current fiscal year or which would result in a reduction of his salary, rate of pay, compensation or benefits for which he would qualify by continuing in the same job position and classification held during said fiscal year and subsequent years.

The Lincoln County Board of Education was faced with a situation in 1986 where the drivers making the longer runs were not being paid more for the extra mileage and its revision of policy was an attempt to make the rate of pay more equitable but it was bound

by this particular section of the West Virginia Code to see that any new system of compensation did not result in any loss of pay for the drivers involved. A county board of education in such circumstances must therefore increase the rate of compensation of certain employees when it identifies and decides to correct inequities in pay.

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

FINDINGS OF FACT

1. Grievant, David Vickers, is employed by the Lincoln County Board of Education as a bus operator assigned to the Hamlin area.

2. Prior to and during the 1986-87 school term grievant had an extra-duty contract with the Board wherein he would transport students in the Hamlin area to the Yeager Career Center at a rate of \$4.00 per round trip.

3. Prior to and during the 1986-87 school term the bus operators in the Duval and Guyan Valley areas had contracts to provide similar transportation from their respective areas to the Career Center at a rate of \$4.00 per round trip and a bus operator in the Harts area provided this service at a rate of \$8.00 per round trip.

4. In the spring of 1987 grievant was notified his extra-duty contract would be terminated and replaced with a new contract containing a different rate of pay.

5. Grievant requested and was granted a hearing before the Board in April 1986 at which time no decision was made on the implementation of the revised method of payment.

6. In June 1987 the Board voted to terminate grievant's extra-duty contract and replace it with one wherein he would continue making the same number of trips to the Yeager Career Center but his rate of pay would be \$8.00 for each day he made the trips.

7. The actions of the Lincoln County Board of Education resulted in a reduction of grievant's compensation under his extra-duty contract by approximately \$6.00 for each day he made the trips to the Yeager Career Center.

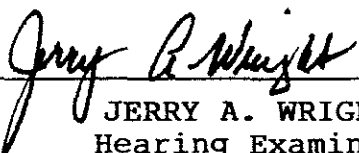
CONCLUSIONS OF LAW

1. W.Va. Code, 18A-4-8 prohibits a county board of education from relegating a service employee to any condition of employment which would result in a reduction of his salary, rate of pay, compensation or benefits without his written consent.

2. The actions taken by the Lincoln County Board of Education to terminate grievant's 1986-87 extra-duty contract and replace it with a new extra-duty contract reduced his rate of pay for the same services and were in violation of W.Va. Code, 18A-4-8.

Accordingly, the grievance is **GRANTED** and the Lincoln County Board of Education is hereby **ORDERED** to reinstate grievant to the terms of his former extra-duty contract and to further compensate him for any loss of wages due to the improper termination, less any appropriate set-off.

Either party may appeal this decision to the Circuit Court of Lincoln 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.



JERRY A. WRIGHT
Hearing Examiner

DATED: May 9, 1988