



**Members**  
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**WEST VIRGINIA EDUCATION AND  
STATE EMPLOYEES GRIEVANCE BOARD**  
**GASTON CAPERTON**  
Governor

**Offices**  
240 Capitol Street  
Suite 515  
Charleston, WV 25301  
Telephone 348-3361

BARBARA BAILEY, ALICE DOWNEY and BECKY GORDON

v. Docket Nos. 89-20-217/218/219

KANAWHA COUNTY BOARD OF EDUCATION

DECISION

Grievants are three of the nine aides employed by Respondent Kanawha County Board of Education at its St. Albans bus terminal during school year 1988-89. Charging "unfair distribution of make-up time," they initiated this grievance at Level I on December 14, 1988.<sup>1</sup> After denials there and at Level II<sup>2</sup> and W.Va. Code §18-29-4(c) waiver at Level III, on May 25, 1989, they advanced their cause to

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<sup>1</sup> A fourth aide who was a co-grievant at the lower levels has not pursued her claim at Level IV.

This grievance was prompted by schedule revisions effected December 8, 1988. Grievants have not averred violation of W.Va. Code §18A-4-8a and none is apparent. See T. 40 (Respondent's aides work under a flex-time system). At any rate, any potential claim thereunder is deemed waived.

<sup>2</sup> The Level II hearing was conducted February 6 and April 21, 1989; the undersigned is not advised of the reason for the gap between the meeting's two days. The extensive transcript and its attendant exhibits are part of the record at Level IV.

Level IV decision on the record.<sup>3</sup> The only relief Grievants seek is alteration of their schedules and adoption of a different method for issuing certain work assignments.<sup>4</sup>

Grievants, through their counsel John Everett Roush, propose the following as findings of fact:

Each aide at the terminal had been assigned a morning and afternoon bus route. Since these assigned routes do not use up all the work time which is required by. . .[Respondent], various other assignments are given to the aides to make up the difference.

. . . Although the [G]rievants have not grieved the amount of time each aide is required to work, the nature of the assignments has resulted in an undue advantage being shown certain employees.

. . . Sandy Basham makes up time by preparing the gas sheets. She may perform this particular duty at any time she desires. Mary Young is assigned cleaning duties at the terminal, although testimony indicates she made up some of this time doing [Terminal Supervisor] Syble Anderson's hair in the morning. Whatever the actual work, it may be performed before or after her morning run.

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<sup>3</sup> Level IV hearing was set first for July 3, then July 21, prior to the parties' agreement that the case could be disposed of based upon the record below.

Grievants submitted their proposed findings of fact and conclusions of law well before the agreed-to August 31 deadline. Respondent has failed to provide any such proposals and has therefore waived submission of same.

<sup>4</sup> It is assumed that Grievants are still employed and that their 1989-90 schedules are identical or strikingly similar to those they had at the time this matter was filed at Level IV. If either assumption is incorrect, this matter may be moot and this Decision thus advisory and invalid. See Adkins v. Lincoln Co. Bd. of Educ., Docket No. 89-22-323 (Aug. 21, 1989). The record reveals that certain particulars of Grievants' assignments were amended during the lower-level administrative processing of this case.

In short, she is not required to report for duty in the mid-day and may utilize that time as she sees fit. Cathy Hilbert is assigned the duty of reports and the parts utilized by the mechanics at the garage. Once again, she may perform this duty at times convenient to her.

. . . In contrast to the situation enjoyed by the above three aides, the grievants have been assigned mid-day runs as make-up time. At the time the grievance was filed, Barbara Bailey had been assigned two mid-day assignments whereas the three above named individuals had none. Alice Downey and Becky Gordon were assigned four mid-day assignments. On the days [G]rievants were assigned mid-day runs they are required to report at a specific time during the middle of the block of time between their morning and afternoon runs. This arrangement severely restricts the use that can be made of their off-the-clock time by breaking it into smaller unusable units.

Grievants argue that Respondent's actions constitute "favoritism" of aides Basham, Young and Hilbert. That term is defined as "unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of another or other employees." Code §18-29-2(o). Respondent concedes that differences exist among the St. Albans terminal's aides in the nature of their make-up assignments, but states that none of them work the full eight hours per day<sup>5</sup> for which they are paid. Respondent further contends that every effort was made to equalize, to

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<sup>5</sup> "Kanawha County Schools['] bus monitor aides are required to work eight hours per day, including a thirty-minute duty free lunch period and two fifteen-minute breaks." Level II Decision, ¶2.

the extent possible, each aide's actual duty time; that certain aides had proven themselves competent at given tasks, such as maintaining gasoline usage logs, and that such perhaps did not lend themselves to being shared;<sup>6</sup> and that Grievants have in no way been afforded disfavored consideration. Respondent readily admits that the efficiency of the service, not the convenience of its employees, was the primary focus of its actions.<sup>7</sup>

Kanawha County Schools Exhibit #1 reveals that Grievants each have less duty time than any of Ms. Basham, Ms. Young or Ms. Hilbert.<sup>8</sup> Also, since Grievant Gordon, in addition to a midday kindergarten run, acts as custodian two hours per week, she, like Ms. Young, who cleans two-and-one-half hours per week, apparently can perform these duties

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<sup>6</sup> Aides Basham, Hilbert and Young have all been performing the same make-up time assignments since prior to Ms. Anderson's assumption of the terminal's supervision. T. 45-46.

<sup>7</sup> Mr. George Beckett, Respondent's Director of Pupil Transportation, was its only witness at Level II.

<sup>8</sup> As of February 14, 1989:

MORNING AND EVENING RUNS

(hours per day)

Bailey - 4:55  
Downey - 4:20  
Gordon - 4:00  
Basham - 5:25  
Hilbert - 5:15  
Young - 5:30

HRS/WK PAID FOR BUT NOT WORKING

(after make-up time factored in)

Bailey - 6:25  
Downey - 7:20  
Gordon - 6:00 or 6:30  
Basham - 4:10  
Hilbert - 4:45  
Young - 5:00

at her convenience.<sup>9</sup> Grievants address the time disparity in their proposed conclusions of law:

Advantageous treatment is demonstrated by the . . . circumstances [herein].

Throughout the grievance. . .[Respondent] has misconstrued the intent and purpose of the grievance. Whether this was done innocently or not, [G]rievants can only speculate. . . .[Respondent] has consistently viewed this grievance as a complaint regarding the amount of time each employee is required to work and have responded to this concern. The [G]rievants don't question the amounts of time, rather they believe favoritism is shown [in] the type of make-up time assigned. Quality rather than quantity [sic] is the issue here. The type of make-up time assigned to [G]rievants ties up their whole day in that it severely restricts their view of off-the-clock time. The named aides, in contrast, are granted considerable latitude in performing make-up time and as a consequence can better utilize their off-the-clock time.

It is not surprising that Grievants "don't question the amounts of time," and invite focus to "quality rather than quantity" since their actual work hours are fewer in number than the three aides' of whom they complain. The undersigned finds this discrepancy significant; furthermore, Respondent's other defenses are persuasive. It appears Respondent, in an attempt to react positively to personnel concerns, reviewed the St. Albans Terminal schedule and revised the same in December 1988, see n. 1, in an effort at

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<sup>9</sup> If Ms. Young or any aide was granted credit for personal chores, e.g., hairdressing, this practice is condemned and Respondent directed to cease the same forthwith.

service-time equalization. It is reasonable that certain make-up work, such as Ms. Hilbert's "maintenance report" and Ms. Basham's "gas sheets and report," most efficiently is completed by one specified aide, and that Respondent's efficacy is promoted by maintaining a proven performer in that role. Finally, while Grievants' lament is understandable from their personal viewpoint, Respondent's primary emphasis must be its own business needs as opposed to its staff's desires. The St. Albans terminal schedule for Grievants, when compared to that of Aides Basham, Hilbert and Young, and the manner in which these women's make-up assignments were determined, are both fair.

The remainder of this Decision will be presented as formal findings of fact and conclusions of law.

#### FINDINGS OF FACT

1. Grievants, bus aides at Respondent's St. Albans terminal, have mid-day bus runs in addition to their regular morning and evening routes. These mid-day runs are "make-up assignments" and have been given them in an effort to bring their actual service time closer to the eight hours per day for which they are paid.

2. Certain other aides at St. Albans have other make-up assignments, such as clerical and custodial duties, that do not require them to be at the terminal mid-day.

These aides have proven their competence at these duties, some of which are most efficiently performed by only one person, for some time.

3. No aide at the St. Albans terminal works eight hours per day. Grievants each work less than Aides Basham, Hilbert and Young, about whose mid-day assignments they complain herein.

4. Respondent, during school year 1988-89, revised the St. Albans aides' schedules in an effort to be responsive to their concerns and to equalize the amount of time each individual actually had to work.

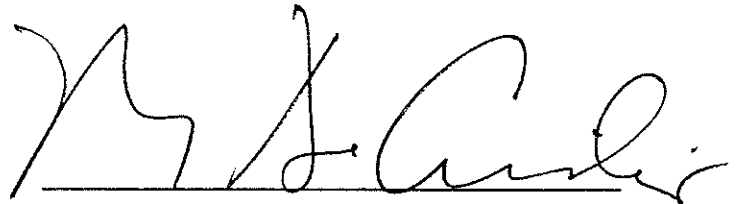
#### CONCLUSIONS OF LAW

1. In order to prevail, Grievants must prove the allegations of their case by a preponderance of the evidence. Shaver v. Jackson Co. Bd. of Educ., Docket No. 18-88-107 (Nov. 7, 1988).

2. Grievants have not established that Respondent treated them unfairly by engaging in favoritism toward Aides Basham, Hilbert and Young or any other person. See W.Va. Code §18-29-2(o) (definition of "favoritism").

Accordingly, this grievance is **DENIED**.

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

A handwritten signature in black ink, appearing to read 'M. Drew Crislip', written over a horizontal line.

M. DREW CRISLIP  
HEARING EXAMINER

Dated: September 20, 1989