



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

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**CLYDE BREEDING and SHERLIAN JEFFRIES**

**v.**

**Docket No. 89-20-70**

**KANAWHA COUNTY BOARD OF EDUCATION**

**DECISION**

Grievants are bus operators<sup>1</sup> employed by Respondent Kanawha County Board of Education, assigned to the East Bank Terminal. In November 1988, they initiated the following grievance:

Grievants' work schedule was changed effective 11/01/88 without grievants' written consent in violation of. . .[W.Va. Code] §18A-4-8a.

Following denials at Levels I and II and waiver at Level III, this complaint was submitted for Level IV consideration on February 27, 1989. A hearing was conducted April 11,<sup>2</sup>

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<sup>1</sup>Grievants are multi-classification employees; apparently, both are qualified to act as either bus operator or aide.

<sup>2</sup>An earlier hearing was continued upon Respondent's motion due to the unavailability of a witness. Grievants did not object to this delay.

and it was agreed that the parties' proposals as to fact and law would be submitted no later than April 25.<sup>3</sup>

At the commencement of school year 1988-89, both Grievants had a morning run from 6:30 a.m. until 8:50 a.m.; as of November 7, 1988, their early assignments became 6:30 a.m. to 8:30 a.m. Further, Grievant Breeding's midday run, formerly 10:10-11:30 a.m., became 10:15 a.m.-12:00 noon, and Grievant Jeffries' 11:00 a.m.-12:00 noon duties were switched to cover the period 10:10 a.m.-12:00 noon. Attendant to the changes in time were slightly altered routes for each of Grievants. No evidence was presented on Grievants' afternoon runs save that they have ended at 4:00 p.m. throughout school year 1988-89, so it must be assumed they were unaffected by the November revision. Also throughout 1988-89, Grievants have neither been asked to drive more than six hours nor work over eight hours per day,<sup>4</sup> or start or end their workday at a different time.

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<sup>3</sup>At the Level IV hearing, Respondent requested the findings of fact and conclusions of law included in the Level II Decision be considered its proposal at Level IV.

<sup>4</sup>Two fifteen minute breaks, a thirty-minute lunch period, a thirty-minute maintenance period, and fifteen-minute check-in and check-out times constitute the two hours which, when added to six hours' driving time, make up an eight-hour workday.

Grievants are not "on the clock" continuously from 6:30 a.m. until 4:00 p.m., which would constitute nine-and-one-half hours, but instead have scheduled breaks in service each day.

George Beckett, Respondent's Director of Pupil Transportation, held meetings with personnel in each of Kanawha County Schools' bus terminals in and around late October 1988 to obtain input on possible schedule adjustments. Beckett characterized these adjustments as necessary to accommodate evolving needs in special education and other programs; to service lately-requested extra midday runs; and to maximize efficiency of operations.<sup>5</sup> The meeting at the East Bank terminal was October 26, and on or before that date Beckett discussed specific potential changes in East Bank drivers' assignments with a committee of three or four, including Grievant Jeffries. At Level IV, Ms. Jeffries admitted the changes in her schedule, which later actually occurred, were mentioned as part of this discussion and that she had then shrugged and perhaps responded, "How can they do that?" Ms. Jeffries further conceded that she is not the type of person to question authority and that she had not overtly objected to the proposal prior to initiation of this grievance. Mr. Beckett's recollection was that Ms. Jeffries had given verbal assent to the alteration during his conversation with her and the other committee members.

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<sup>5</sup> Respondent further defended these changes by characterizing them as "consistent with the constitutional mandate that 'a thorough and efficient system of free schools' be provided." The reference is to W.Va. Const., Art. XII, §1.

On October 26, both Grievants executed an agreement styled "Employee Work Assignments," (EWA) drafted by Respondent, which read as follows:

It is our intent to provide eight (8) hours/day or forty (40) hours/week of work to each transportation employee. Before making assignments to employees it is necessary to determine who is willing to work on a flex time basis and who prefers a daily assignment of eight (8) hours.

Working on a flex time basis may mean having assignments for more than eight (8) hours/day on certain days and less than eight (8) hours/day on other days not to exceed forty (40) hours/week. Flex time is worked on a weekly basis and not carried over to another week. Naturally any hours worked over forty (40) hours/week are to be paid at the overtime rate.

Working on a flex time basis each week may allow rotation of assignments which could create free time between morning and evening runs on certain days in order to handle personal matters such as doctor's appointments, shopping, etc. At the same time it allows the Office of Pupil Transportation flexibility to cover midday field trips with more efficiency.

Working on a strict eight (8) hours/day will mean having a daily assignment of eight (8) hours. This will also constitute forty (40) hours/week and may require changes in daily assignments that shall not exceed eight (8) hours on a normal basis.

Each transportation employee has the option of requesting the method of establishing their forty (40) hour week assignments. Please complete and return the following information to your terminal supervisor:

I \_\_\_\_\_ [employee's name] \_\_\_\_\_ wish to be assigned:

\_\_\_\_\_ 8 hours/day . . .

\_\_\_\_\_ on a flex time basis each week . . .

Signed \_\_\_\_\_ Date \_\_\_\_\_

Both Grievants checked the line "8 hours/day," indicating their desire not to be flex time personnel. At the Level IV hearing Grievants argued that the changes imposed upon them in November could have been handled by flex time employees<sup>6</sup> and that their schedules should have remained intact since they are eight-hour staff.<sup>7</sup>

Although no evidence was offered in this regard, in closing, Grievants' attorney argued that the 1988-89 EWA was forced upon the bus operators, in that they were required to sign it and choose between an eight-hour day or flex time. She further contended that such forms had generally, in past years, been presented to drivers for completion and approval during an in-service session prior to the commencement of the school term. Mr. Beckett testified that he recalled one year that the forms had been given bus operators at such an in-service but that was not necessarily true in other recent years. He admitted that October 26 was late for the issuance of the documents, but stated that, until their

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<sup>6</sup>Grievants asserted, without providing any particulars, that some of Respondent's East Bank-area flex time drivers work only twenty-five hours some weeks. Respondent refuted this claim and stated that, while it is doubtful that any bus operator in Kanawha County works a full forty hours weekly, all drivers normally are occupied approximately this amount of time.

<sup>7</sup>Grievants' morning schedules mesh in that Ms. Jeffries picks up Mr. Breeding at one point, from which he acts as Aide on her bus. This was also true before November 7, 1988.

execution for 1988-89, drivers were considered covered by the terms of the EWA signed the previous year. Grievants' 1987-88 agreements were not offered into evidence, but the unrefuted testimony was that the selection of either a flex time or an eight-hour schedule had been available to Kanawha County bus operators for several years; furthermore, the 1988-89 forms signed by Grievants included the designation "1987-88" in the bottom left corner. The clear inference is that the 1987-88 agreement was identical in language to the 1988-89 document. Grievant Jeffries had been a eight-hour employee during 1987-88, and the record strongly implies that the same was true of Grievant Breeding.

W.Va. Code §18A-4-8a provides, in pertinent part:

No service employee shall have his daily work schedule changed during the school year without his written consent, and his required daily work hours shall not be changed to prevent the payment of time and one-half wages or the employment of another employee.

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

#### FINDINGS OF FACT

1. On October 26, 1988, Grievants each executed a document titled "Employee Work Assignments" (EWA), which provides, in pertinent part:

Before making assignments to employees it is necessary to determine who is willing to work on a

flex time basis and who prefers a daily assignment of eight (8) hours.

. . .

Working on a strict eight (8) hours/day will mean having a daily assignment of eight (8) hours. This . . . may require changes in daily assignments that shall not exceed eight (8) hours on a normal basis. . .

(emphasis supplied).

2. Prior to October 26, 1988, Grievants were covered by the EWA document they had executed for the previous school year, which contained identical provisions to those recounted in Finding of Fact #1.

3. Grievants did not object to signing their 1988-89 EWA, and were in no way forced to do so.<sup>8</sup>

4. On November 1, 1988, Grievants were given revised work schedules for school year 1988-89 effective November 7, 1988. Grievants' morning schedules were decreased by twenty minutes each. Fifty minutes were added to Ms. Jeffries' midday duties, and twenty-five minutes extra were given to Mr. Breeding midday.

5. Both before and after November 7, 1988, Grievants have neither been requested to drive over six hours or work beyond eight hours per day, or to begin or end the workday at a different time.

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<sup>8</sup>It is noted that even if there were some impropriety in the execution of the 1988-89 EWA's, Grievants' coverage by the identical 1987-88 documents would prompt the same resolution of this complaint. No allegation was made of any problem related to the earlier EWA's.

## CONCLUSIONS OF LAW

1. The daily work schedule of a service employee of a West Virginia county board of education may not be changed during the school year without that employee's written consent. W.Va. Code §18A-4-8a.

2. A bus operator is such a service employee. Id.

3. The EWA's, once executed, constituted "written consent" per Code §18A-4-8a for the mid-year schedule changes imposed upon Grievants.<sup>9</sup>

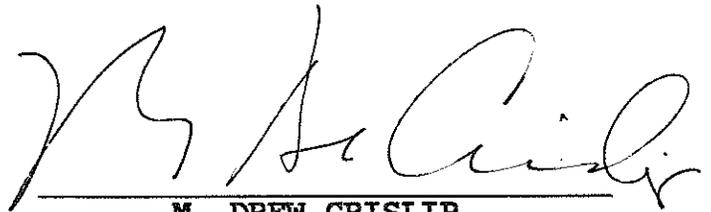
Accordingly, this grievance is **DENIED**.

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

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<sup>9</sup>In reaching this conclusion, the undersigned has noted the representations of Mr. Beckett that it is not Respondent's general practice to keep its bus operators "on call" but to give them at least a week's notice of any schedule alterations, or to change a driver's daily starting or ending time on the basis of the EWA.

the record can be prepared and transmitted to the appropriate court.

A handwritten signature in black ink, appearing to read "M. Drew Crislip". The signature is written in a cursive style with a horizontal line underneath it.

**M. DREW CRISLIP  
HEARING EXAMINER**

Dated: April 25, 1989