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**WEST VIRGINIA EDUCATION AND  
STATE EMPLOYEES GRIEVANCE BOARD**  
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ROY D. COLE

v.

Docket No. 40-88-240

PUTNAM COUNTY BOARD OF EDUCATION

DECISION

Grievant Roy D. Cole has been employed as a bus operator by Respondent Putnam County Board of Education for eighteen years. Complaining that he was not awarded three supplemental runs even though he was the most senior applicant, he filed this grievance, which was denied at Levels I and II and waived at Level III<sup>1</sup> before arriving at Level IV

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<sup>1</sup> Although Respondent officially waived Level III consideration of this matter on November 7, 1988, Stephen Baldwin, Respondent's Superintendent of Schools at the time, advised Grievant at the Level II hearing on September 23 "if. . .after my [Level II] decision you want to appeal it, then we go straight to Level IV." T. 35. The undersigned is not entirely sure what Baldwin's purpose was in this statement. It is noted that he also made comments regarding Respondent's reviewing the matter at Level III, and that he had conferred with Respondent's President prior to the Level II hearing, *id.*; however, any pronouncement or suggestion at Level II that Level III consideration would definitely be waived under any circumstances was inappropriate. County boards of education in West Virginia certainly may bypass consideration of grievances pursuant to Code §18-29-4(c) but only after careful and reasoned review of the Level II

(Footnote Continued)

on December 8, 1988. By way of relief, Grievant seeks assignment to two of the three contested runs. Prior to the scheduled hearing at this Level, the parties agreed that the matter could be resolved on the record of proceedings below, supplemented by proposed findings of fact and conclusions of law submitted on or before February 28, 1989.

In August 1988, Grievant made application<sup>2</sup> for three extracurricular morning runs<sup>3</sup>, i.e., pre-vocational school,

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(Footnote Continued)

hearing and decision including its findings of fact and conclusions of law. Any predetermination of waiver in a given case, or in grievances in general, is not consistent with resolving the same "at the lowest possible level" per §18-29-1.

<sup>2</sup> The evidence is somewhat unclear as to whether Grievant's applications were actually accepted or not. However, whatever the situation, it does not affect the outcome herein.

<sup>3</sup> At Level II, Jack Coyner, in charge of Respondent's transportation system, referred to "a regularly scheduled run that the Board of Education needs to have done for some reason" as a supplemental run. T. 28. Especially since the record does not indicate that bus operators in Putnam County generally have mid-day responsibilities in their job descriptions, or that Respondent has purported to officially define "supplemental run," the one described seems to be "extracurricular" per Code §18A-4-16. Further, he defined a run "scheduled generally by way of the school, the teacher, the principal that comes on an intermittent-type schedule with no regularity to it" as extracurricular. T. 29. This is instead "extra-duty" under Code §18A-4-8b(b). Counsel for Grievant attempted to correct Coyner at T. 30, but confused the matter further at T. 32-33 by asserting the law provides three types of runs -- extra-duty, extracurricular and supplemental. The term "supplemental run" does not appear in West Virginia's education statutes and in this Decision will be used as a general reference to either an extra-duty or extracurricular run. But cf. n. 11.

Based on the information presented in this case, the questioned runs must be considered extracurricular, see this Decision, supra.

vocational school and pre-vocational readiness. Respondent granted two of these assignments to Charles Beckett, who has fifteen years' seniority, and the other to Mike Hobbs, who has eight years in service. It does not contest Grievant's seniority or its significance;<sup>4</sup> however, it asserts that since at least 1977 its policy has been to allow applications for extracurricular runs only from drivers whose regular run is in the same region of the county. Respondent has divided Putnam County into four bus-route zones: Winfield, Poca, Buffalo-G.W.<sup>5</sup> and Hurricane. Grievant's regular duty area is Hurricane; all three supplemental runs in question are in Winfield, see T. 23. Grievant testified that he had never before filing this grievance heard of Respondent's policy regarding intra-area applications.<sup>6</sup> Respondent was uncertain whether such had ever been reduced

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<sup>4</sup> This Grievance Board notes that at least with regard to "promotion and filling of any service personnel positions," seniority is not defined as mere time in service; in the first instance, an employee's placement on a five-tier ordered list must be determined. At that point, "the date he enter[ed] into his assigned duties" on that level is determined to calculate seniority. This is obviously the reason that extra-duty assignments are not, as a matter of law, to be offered in order of pure seniority, but instead by order of "the greatest length of service time in a particular category of employment." Code §18A-4-8b(b); see also Jervis v. Wayne Co. Bd. of Educ., Docket No. 50-88-084 (Nov. 2, 1988).

<sup>5</sup> "G.W." is an abbreviation for "George Washington," see T. 24.

<sup>6</sup> Grievant admitted that he noticed the statement on the vacancy posting that applications would be accepted only from drivers regularly assigned to the Winfield zone.

to writing, but contended that it had been applied uniformly and fairly since its inception in 1977.<sup>7</sup> Respondent also pointed out that the extra run which Grievant now holds, or held in the recent past, was limited to applications from Hurricane-area drivers.<sup>8</sup> Respondent further states that Grievant is welcome to bid on regular runs in the Winfield area if he would like to serve supplemental runs in that region.

Grievant argues he is senior and believes he therefore should get any extra run in the county, no matter its location. He further contends that, even though he would unquestionably have greater "deadhead" or no-passenger miles were he awarded the extra runs, he would have no problem time-wise completing both them and his regular run. Respondent disputes this and cites its added cost if Grievant is allowed the runs and thus the "deadhead" miles. Grievant has not alleged that Respondent has gerrymandered the county, arbitrarily granted more extra runs to one zone

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<sup>7</sup> Coyner testified that he had been given specific instructions by Respondent to so assign extracurricular runs; however, he could not even verify whether this policy had been adopted at a regular meeting of Respondent and therefore whether it was reflected in official minutes. See, generally, T. 25-27.

<sup>8</sup> Testimony at Level II was inconsistent as to whether Grievant currently holds an extracurricular run; if he does not, he did at some point in the recent past. Apparently, when Grievant bid on and received this assignment, he was unaware of the application limitation.

as opposed to others, or otherwise discriminated among its bus operators.

In his proposed findings of fact and conclusions of law, Grievant characterizes the runs in question as extra-curricular and cites W.Va. Code §18A-4-16 which provides, in pertinent part:

The assignment of . . .service personnel to extra-curricular assignments shall be made only by mutual agreement of the employee and the superintendent. . .subject to board approval. Extracurricular duties shall mean, but not be limited to, any activities that occur at time other than regularly scheduled working hours, which include. . .providing support services or caring for the needs of students, and which occur on a regularly scheduled basis.

This statute makes no express reference to seniority, qualifications or other indicia of suitability for a position as codified for service personnel in Code §18A-4-8b(b).<sup>9</sup>

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<sup>9</sup> But see Smith v. Bd. of Educ. of the Co. of Logan, 341 S.E.2d 685 (W.Va. 1985) (professional personnel entitled to procedural protections with regard to dismissal or transfer from extracurricular assignments); Harrison v. Wyoming Co. Bd. of Educ., Docket No. 55-88-211 (Feb. 15, 1989) (applying Smith to filling of professional extracurricular position); Conclusion of Law 5.

Clearly, the §18A-4-8b(b) standards for filling positions cannot apply to the letter to extracurricular assignments. Qualifications, as defined in that statute, "shall mean that the applicant holds a classification title in his category of employment." If this were strictly adhered to, in this case, anyone classed as a bus driver, whether or not supplemental work would interfere with his/her regular duties, would have to be considered for extracurricular runs.

At T. 11, Grievant opined that, although he was "not real sure about it," bus operator Beckett "is a Buffalo driver to the best of my knowledge." Mr. Coyner testified that Beckett was the area coordinator for the Buffalo-G.W. area, T. 25, and that his morning run duties conclude at George Washington Middle School, T. 28.<sup>10</sup>

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

#### FINDINGS OF FACT

1. Grievant Roy Cole has been employed as a bus operator by Respondent Putnam County Board of Education for eighteen years.

2. Grievant applied for three supplemental runs; all were awarded to drivers with less seniority than Grievant.

3. Each of these runs was and is made daily, between the time of the driver's regular morning and afternoon duties.

4. Respondent has divided its county into four zones, Winfield, Hurricane, Buffalo-G.W. and Poca for purposes of

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<sup>10</sup> Beckett's morning run ends up "a hundred and fifty yards from the vocational school," T. 28, where he commences his extracurricular duties; in light of Respondent's policy, this is no more relevant than the fact that Winfield lies geographically between Grievant's residence and his regular duty station.

its bus routes. Its stated practice since 1977 has been to include, as a qualification for an extracurricular bus run, that the successful applicant be already assigned to a regular run within the same zone. This practice has not been reduced to writing except on the face of job vacancy notices.

5. Each of the three runs in question was in the Winfield area, where one of the two successful applicants had previously been assigned. The other successful applicant, Beckett, is in the Buffalo-G.W. region, and Grievant's regular duty zone is Hurricane.

6. By this grievance, Grievant contests his non-selection for the three runs and the reasonableness of Respondent's practice.

#### CONCLUSIONS OF LAW

1. A county board of education in West Virginia has substantial discretion in matters relating to the assignment of school personnel. This discretion must be exercised reasonably, in the best interests of the schools and in a manner neither arbitrary nor capricious. Dillon v. Bd. of Educ. of the Co. of Wyoming, 351 S.E.2d 58, 64-65 (W.Va. 1986); McClure v. Kanawha Co. Bd. of Educ., Docket No. 20-88-131 (Oct. 24, 1988).

2. A county board of education in West Virginia is bound by procedures it establishes to conduct its affairs.

See State ex rel. Hawkins v. Tyler Co. Bd. of Educ., 275 S.E.2d 908, 912 (W.Va. 1988).

3. An extracurricular assignment is defined as including "any activities that occur at times other than regularly scheduled working hours. . .[e.g.,] providing support services or caring for the needs of students, and which occur on a regularly scheduled basis." W.Va. Code §18A-4-16.

4. Based on the information presented in this matter, the three contested runs must be considered extracurricular per §18A-4-16.

5. For purposes of Code §18A-4-16, "regularly scheduled working hours" refers to those of the individual employee being considered for a given extracurricular assignment, generally as set prior to the commencement of that school term.<sup>11</sup> See Code §18A-4-8a.

6. Extracurricular service assignments must be made on the basis of seniority, qualifications and evaluation of past service per Code §18A-4-8b(b). See Harrison v. Wyoming Co. Bd. of Educ., Docket No. 55-88-211 (Feb. 15, 1989). However, in order for a person to be qualified to take on an

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<sup>11</sup> This Decision should not be read to preclude a county board of education from utilizing the term "supplemental run;" changing or establishing a bus driver's schedule to include the base schoolday; or adding set mid-day runs or other responsibilities as part of a driver's regular duties. See, e.g., Dennison v. Braxton Co. Bd. of Educ., Docket No. 04-88-251 (Mar. 17, 1989).

extracurricular assignment, he/she must further already be a regular employee of a county board of education and the assignment must not interfere with his/her normal duties or create unnecessary expense for his/her employer.

7. Respondent's practice of considering the geographic locale of a bus operator's regular run as a qualification for employment for extracurricular duties is reasonable.

8. Grievant has established that Respondent failed to apply this practice in this case.

Accordingly, this grievance is **GRANTED**, and Respondent is **ORDERED** to re-post the three extracurricular runs in question as vacant.

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



M. DREW CRISLIP  
HEARING EXAMINER

Dated: March 17, 1989