



REPLY TO:
401 Davis Avenue
Suite 315
Elkins, WV 26241
Telephone: 636-1123

Members
James Paul Geary
Chairman
Orton A. Jones
David L. White

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

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

KAREN CONNER and PEGGY MOSS

v.

DOCKET NO. 01-88-261

BARBOUR COUNTY BOARD OF EDUCATION

DECISION

Grievants, Karen Conner and Peggy Moss, are employed as bus operators by the Barbour County Board of Education (Board). Ms. Conner and Ms. Moss filed a level one grievance on November 1, 1988 in which they alleged a violation of W.Va. Code §18A-4-8 when the Board changed the method of computing their earnings when regular runs were missed to accept extra-duty assignments. The grievance was denied at levels two and three; a level four appeal was filed on January 18, 1989. Both parties agreed to submit the matter for decision based upon the lower level record supplemented by proposed findings of fact and conclusions of law submitted by June 19.

In October 1988 the grievants accepted extra-duty assignments which prohibited them from completing their afternoon runs. When they were compensated the grievants found that one-half of their daily salary had been deducted

from their regular pay and that they were paid for the total number of hours spent in completing the extra-duty assignment. In prior school years it had been the practice of the Board to deduct the number of hours of the missed portion of a driver's regular run from the extra-duty trip. That is, if a driver accepted a five-hour extra-duty assignment which required him to miss his two-hour afternoon run he would receive his regular pay for the day plus three hours at the extra-duty rate.

The grievants argue that the change in compensation, made without their consent, has resulted in their receiving less pay when they accept extra-duty assignments, a violation of W.Va. Code §18A-4-8. The Board asserts that its past practice was clearly wrong as it resulted in the grievants being paid for work which they did not perform and not being paid for work they actually did perform. The Board further asserts that the provisions of W.Va. Code §18A-4-8 do not apply since extra-duty assignments are voluntary and may be refused without penalty.

The rate of pay for a bus operator's regular run is determined by the statutory minimum salary plus any county supplements and is different from the extra-duty rate, which is one-seventh of the driver's daily rate. To interchange payment for work done at two different rates of pay resulted in the employees' being paid at the regular, higher rate while they did not complete their regular run and in the deduction of the lower wages for the extra-duty assignment

which they did complete. To illustrate, Employee A has a four-hour daily schedule with daily wages of \$60.00, or fifteen dollars per hour. He accepts a five-hour extra-duty assignment which requires that he miss his afternoon run. Under the Board's previous practice the employee would be paid the sixty dollars for his regular run and be paid for only three hours at the extra-duty rate of eight dollars and fifty-seven cents per hour for a total of eighty-five dollars and seventy-one cents. The revised method of payment would result in payment for the morning run only, thirty dollars, plus payment for five hours at the extra-duty rate, eight dollars and fifty-seven cents, or \$42.85, for a total of \$72.85.¹

The prior practice of the Board was clearly wrong while the present procedure is the correct method of payment for overtime work. W.Va. Code §18A-4-8 does not apply in this situation since the Board has not acted to specifically reduce the grievants' salary but is now correctly compensating the grievants for the specific work performed. Unlike the issue in the companion case of Moss, et al. v. Barbour County Board of Education, Docket No. 01-88-260 (Aug. 31, 1989), this issue does not involve the reduction of a higher

¹The extra-duty compensation paid by the Barbour County Board of Education prior to the 1988-89 school year was five dollars per hour. Effective 1988 the minimum rate was statutorily required to be no less than one-seventh the employee's daily rate which is usually more than five dollars.

rate of pay which had been intentionally granted: An employee's consent is not required to adjust improper calculated salary.

In addition to the foregoing narration it is appropriate to make the following findings of fact and conclusions of law.

Findings of Fact

1. The grievants are employed as bus operators by the Barbour County Board of Education.

2. In October 1988 the grievants accepted extra-duty assignments which prohibited them from completing their afternoon runs.

3. The Board deducted the wages for their regular afternoon runs, which the grievants did not complete, from their salary and compensated them for the extra-duty assignments at the extra-duty rate of pay.

4. Prior to the 1988-89 school year the employees were compensated for their afternoon runs at their regular rate of pay with the number of hours missed deducted from the compensation earned from the extra-duty runs which have a lower rate of pay.

5. The grievants now receive less compensation when they accept extra-duty runs which require that they forfeit a part of their regular runs.

Conclusions of Law

1. A board of education cannot compensate employees for work which the employees do not perform.

2. A board of education may revise its method of calculating employee compensation to insure the correct payment for specific types of assignments for which differing rates of pay apply.

3. A reduction in compensation which occurs as a result of a correction in the method of calculating payment for the performance of two or more types of assignments for which differing rates of pay apply is not a violation of W.Va. Code §18A-4-8.

Accordingly, the grievance is DENIED.

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

DATED: August 31, 1989

Sue Keller
SUE KELLER
SENIOR HEARING EXAMINER